

NOTICE OF PUBLIC HEARING AND REGULAR MEETING

February 12, 2019

MONTGOMERY CITY COUNCIL

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

NOTICE IS HEREBY GIVEN that a Public Hearing and Regular Meeting of the Montgomery City Council will be held on Tuesday, February 12, 2019 at 6:00 p.m. at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas for the purpose of considering the following:

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO FLAGS

PUBLIC HEARING(S):

Convene into Public Hearings for the purpose of giving all interested persons the right to appear and be heard regarding the following:

1. **Receive Final Report** from the Planning and Zoning Commission dated January 14, 2019 resulting from their Public Hearings held on October 22, 2018 and November 26, 2018, regarding
 - a) A request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R-2 MultiFamily, by owner Larry Jacobs; and
 - b) A request to rezone the property located at 2560 Lone Star Parkway from ID-Industrial to B-Commercial, by owner Larry Jacobs.

2. **Convene into Public Hearing** – Regarding the following:
 - a) A request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R-2 MultiFamily, by owner Larry Jacobs; and
 - b) A request to rezone the property located at 2560 Lone Star Parkway from ID-Industrial to B-Commercial, by owner Larry Jacobs.

Adjourn Public Hearing.

Convene into Regular Meeting

PRESENTATION:

Presentation of Plaques of Appreciation to: Dana Bickford, Don Carter and Randy Burleigh.

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

CONSENT AGENDA:

3. Matters related to the approval of minutes of the Public Hearings and Regular Meeting held on January 22, 2019.
4. Consideration and possible action regarding approval of an emergency expenditure of \$20,626.00 for the water line repair at Atkins Creek on FM 1097.
5. Consideration and possible action regarding Amendment No. 1 to Engineering Services Agreement Jones and Carter regarding Buffalo Springs Drive Bridge Embankment Rehabilitation Project.
6. Consideration and possible action regarding Certificate of Acceptance for public water, public sanitary sewer, and public paving included in the Emma's Way Extension (Dev. No. 1020) including acceptance of maintenance bond.

CONSIDERATION AND POSSIBLE ACTION:

7. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 98, "ZONING," FOR THE ZONING CLASSIFICATION OF A 2.186 ACRE TRACT OF PROPERTY AND A .0475 ACRE TRACT OF PROPERTY, LOCATED AT 1062 CLEPPER STREET IN MONTGOMERY FROM A "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO A "B" COMMERCIAL ZONING DISTRICT; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE. (*Ward Property*)
8. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 98, "ZONING," FOR THE ZONING CLASSIFICATION OF A 7.710 ACRE PROPERTY, BEING TRACTS 23-A AND 24-A LOCATED AT THE SOUTHWEST CORNER OF OLD PLANTERSVILLE ROAD AND WOMACK CEMETERY ROAD, FROM "ID" INDUSTRIAL ZONING DISTRICT TO "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE. (*Kammerer Property*)
9. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE ALTERING THE PRIMA FACIE SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF SECTION 545.356, TEXAS TRANSPORTATION CODE, UPON THE BASIS OF AN ENGINEERING AND TRAFFIC INVESTIGATION, UPON CERTAIN STREETS AND HIGHWAYS, OF PARTS THEREOF, WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY, AS SET OUT IN THIS ORDINANCE; AND PROVIDING A PENALTY OF A FINE NOT TO EXCEED \$200 FOR THE VIOLATION OF THIS ORDINANCE (*Extending the school zone area on SH 105 by the High School.*)
10. Consideration and possible action regarding adoption of the following Resolution:
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY TEXAS, TO EXPRESS ITS OPPOSITION TO LEGISLATIVE INTERFERENCE WITH LOCAL SERVICES, LOCAL REVENUE, AND LOCAL CONTROL.
11. Consideration and possible action regarding a request from Fernland, Inc. for funds to repair the Crane Cabin by Gareth Westlake.

12. Consideration and possible action regarding:
 - a. Mason Street options; and
 - b. Letter to Commissioner Mike Meador requesting 2019 street paving assistance.
13. Discussion regarding Live Streaming City Council Meetings.
14. Discussion regarding grease trap requirements for restaurants in the City of Montgomery.

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas.

15. Adjourn into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:
 - a) Section 551.074 (personnel matters) related to Annual Review of City Administrator's Contract;
 - b) Section 551.074 (personnel matters) related to review of applications for the position of Police Chief; and
 - c) Section 551.071 (consultation with attorney).
16. Reconvene into Open Session.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

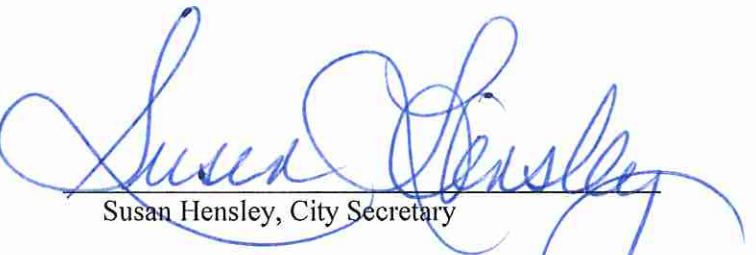
17. Consideration and possible action(s) if necessary on matter(s) deliberated in Closed Executive Session.

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

ADJOURNMENT




Susan Hensley, City Secretary

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 8th day of February, 2019 at 11:45 o'clock a.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Final Report on proposed rezoning from Planning and Zoning Commission
Date Prepared: February 4, 2019	

Subject

Receive the Final Report from the Planning & Zoning Commission resulting from their public hearings held on October 22, 2018 and November 26, 2018 regarding the proposed rezoning of the property located at 2560 Lone Star Parkway from (ID) Industrial to (B) Commercial, and 2580 Lone Star Parkway from (ID) Industrial to (R2) Multi-Family Residential as requested by Larry Jacobs.



Description

Attached is the Final Report with the Planning & Zoning Commissions findings and recommendation to City Council.

Recommendation

Read and consider the Report.

Approved By

Asst. to City Admin.	Dave McCorquodale 	Date: 2/4/19
City Administrator	Jack Yates 	Date: 2/4/19

PLANNING & ZONING COMMISSION FINAL REPORT OF FINDINGS AND RECOMMENDATION

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: JACK YATES, CITY ADMINISTRATOR

SUBJECT: FINAL REPORT CONCERNING PROPOSED RECLASSIFICATION OF AN APPROXIMATELY 2-ACRE PARCEL OF PROPERTY LOCATED AT 2560 LONE STAR PARKWAY, MONTGOMERY, FROM ID-INDUSTRIAL TO B-COMMERCIAL, AND AN APPROXIMATELY 5-ACRE PARCEL OF PROPERTY LOCATED 2580 LONE STAR PARKWAY, MONTGOMERY, FROM ID-INDUSTRIAL TO R2-MULTIFAMILY RESIDENTIAL AS REQUESTED BY LARRY JACOBS

Mayor and Members of City Council,

Pursuant to Sections 98-30 and 98-53 of the City of Montgomery Code of Ordinances (“the Code”), the Montgomery Planning and Zoning Commission met on October 22, 2018 and again on November 26, 2018 to consider a request from Larry Jacobs to reclassify the zoned acreage from ID-Industrial to B-Commercial. A copy of the property descriptions is attached here as Exhibit “A.”

After a second duly-noticed public hearing with an opportunity for public comments concerning the requested rezoning classification, the Commission at its November 26th meeting thereby found:

- The properties are currently designated with the zoning classification of ID-Industrial
- The proposed land uses for the properties by the property owner are consistent with the R2-Multifamily Residential and B-Commercial zoning designations.
- The Commission found it is in the interest of the community to reclassify the land use zoning designation of the said parcels from ID-Industrial to R2-Multifamily Residential and B-Commercial.

- By unanimous vote of 4-0 the members present (Arnette Easley, Bill Simpson, Nelson Cox, and Jeffrey Waddell; Carol Langley was not in attendance) and following the public hearing, the Planning and Zoning Commission hereby presents this Final Report pursuant to Section 98-30 of the Code, recommending to reclassify the land use zoning designation of the said parcels as follows:

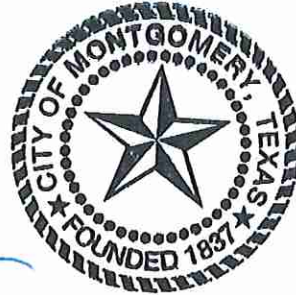
- (a) 2560 Lonestar Parkway from ID-Industrial to B-Commercial; and
- (b) 2580 Lonestar Parkway from ID-Industrial to R2-Multifamily Residential

on the Official Zoning Map of Montgomery Texas for, and thereby subject to all the requirements of Chapter 98 of the Zoning Code and Map, City of Montgomery Code of Ordinances for that designation.

I, Nelson Cox, Chairman of the Montgomery Planning and Zoning Commission, on this 14th day of January 2019, certify the above Final Report to be true and correct to the best of my knowledge.

Signed: Nelson Cox
NELSON COX, Chair

Attest: Susan Hensley
SUSAN HENSLEY, City Secretary



Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Letter of Request Map with Request Area map from Staff
Date Prepared: February 6, 2019	

Subject

Public Hearing regarding the following:

- a) The request to rezone the property located at 2580 Lone Star Parkway, Montgomery from ID-Industrial to R2-MultiFamily Residential, by owner Larry Jacobs; and
- b) The request to rezone the property located at 2560 Lone Star Parkway, Montgomery from ID-Industrial to B-Commercial, by owner Larry Jacobs



Description

This public hearing is to allow members of the community to speak directly to City Council regarding the proposed rezoning of this property.

Recommendation

Listen to and consider comments received from the public.

Approved By

Asst. to City Admin.	Dave McCorquodale 	Date: 2/6/19
City Administrator	Jack Yates 	Date: 2/12/19




City of Montgomery
Jack Yates
Montgomery, TX 77356
August 20, 2018

Dear Mr. Yates,

I am the owner of the attached described property. I request that the approximate 5 acres to the north, marked on the map as "R-2", be re-zoned from "I-D-Industrial" to R-2 Multi-family. I also request that the approximate 2 acres on the southern portion, marked "B" be re-zoned from "I-D" Industrial" to "B-Commercial".

I look forward to discussing my property with Planning and Zoning members at the next meeting. In the meantime, if you have any questions, please feel free to contact me.

Sincerely,


Larry Jacobs
Owner

Attached:

Check
Property maps - 2

RECEIVED BY:
AUG 20 2018
ALUMIN REDMAN
City of Montgomery

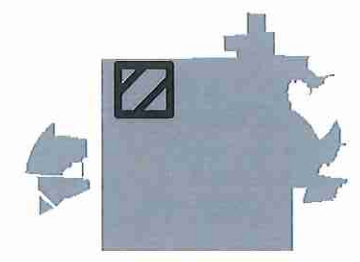
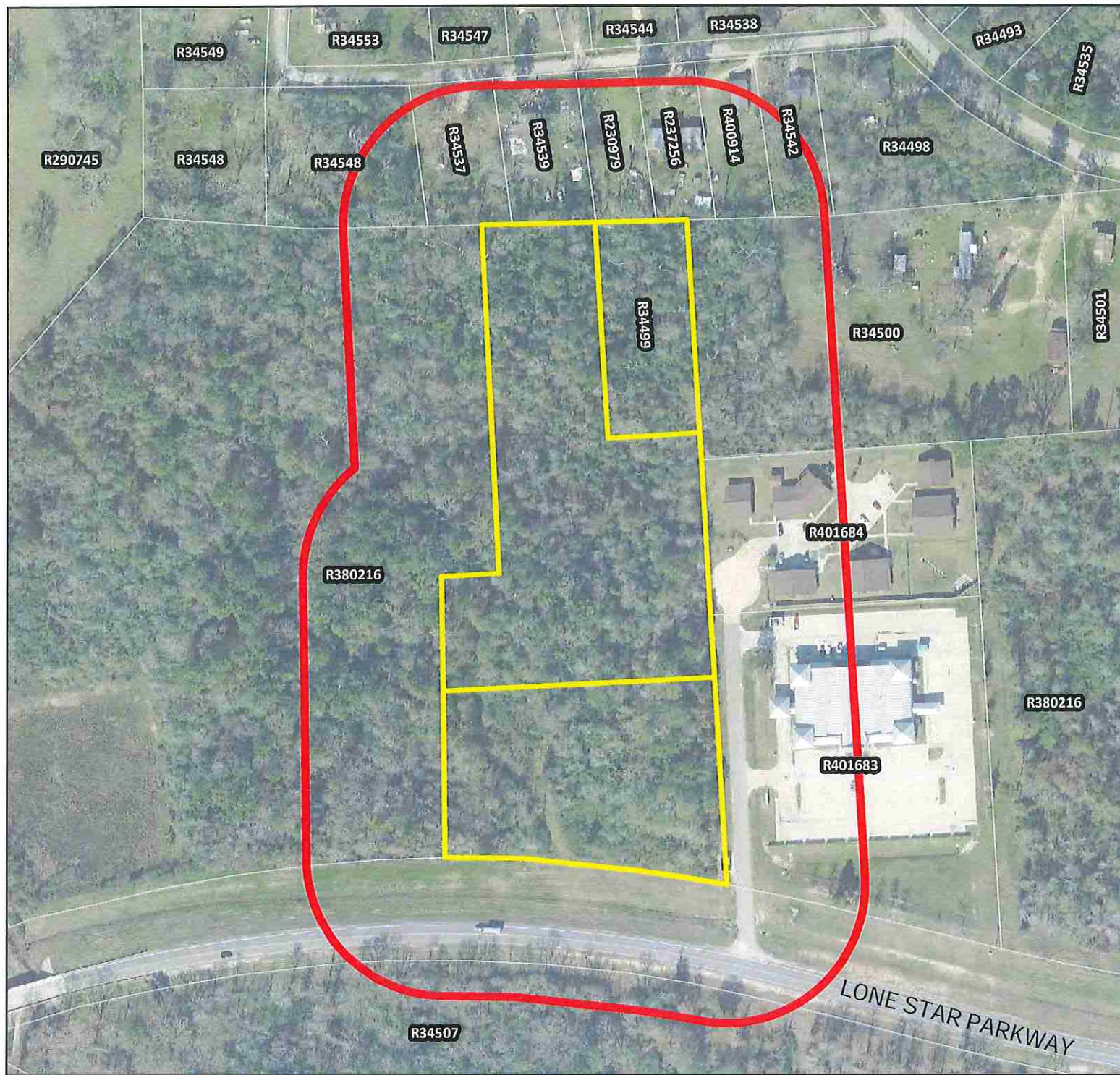
936.597.3301

txland.com

larrytxland@gmail.com







Farms * Ranches * Homesites * Investment * Commercial Services
P.O. Box 1370 14372 Liberty Street Montgomery, TX 77356



VICINITY MAP
Scale: 1 inch equals 2 miles

LEGEND

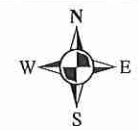
-  Tract Boundary
-  200-ft Notification Boundary
-  City of Montgomery City Limits
-  MCAD Parcel

Aerial Imagery flown January 2016

2580 & 2560 LONE STAR PARKWAY REZONING

Public Hearing Date:
City Council: 2/12/19 -- 6:00 PM

CITY OF MONTGOMERY
MONTGOMERY COUNTY, TEXAS



1 inch equals 200 feet

Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Jones & Carter, Inc. concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit.



JONES CARTER
Texas Board of Professional Engineers Registration No. F-439

MINUTES OF PUBLIC HEARING and REGULAR MEETING

January 22, 2019

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:01 p.m.

Present: Sara Countryman Mayor
John Champagne, Jr. City Council Place # 2
Rebecca Huss City Council Place # 4
Tom Cronin City Council Place # 5

Absent: Jon Bickford City Council Place # 1
T.J. Wilkerson City Council Place # 3

Also Present: Jack Yates City Administrator
Larry Foerster City Attorney
Susan Hensley City Secretary
Chris Roznovsky City Engineer

INVOCATION

John Champagne gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

PUBLIC HEARING(S):

Convene into Public Hearings for the purpose of giving all interested persons the right to appear and be heard regarding the following:

1. Receive Final Report from the Planning and Zoning Commission resulting from their Public Hearings held on January 7th and 14th, 2019, regarding the proposed rezoning of the property located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R1-Single Family, as requested by Michael and Judith Kammerer.

Mr. Yates presented the Final Report to City Council advising that by a vote of 4-0 the members of the Planning and Zoning Commission recommends the rezoning of this property from ID-Industrial to R1-Single Family because the property proposed use is consistent with R1-Single Family Residential zoning. Mr. Yates said the Commission found it in the interest of the community to reclassify the land use zoning designation from ID-Industrial to R1-Single Family Residential.

Rebecca Huss stated that this property is in the area where they had a lot of back and forth with another property that was originally thought to be dually zoned between ID-Industrial and Residential, where there was a lot of push back from the neighbors wishing the property was to be classified as residential because they were worried about traffic, so the request to zone it as R1 is consistent at least from what they heard from the neighborhood regarding property in that area.

Rebecca Huss moved to receive the Final Report from the Planning and Zoning Commission from their Public Hearings on January 7 and 14, 2019. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

2. **Convene into Public Hearing – Regarding a request to rezone a 7.710 acre tract of land property located at tracts 23-A and 24-A in the Landrum Zacharias Survey, located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R1-Single Family, as requested by Michael and Judith Kammerer.**

Mayor Countryman convened into the Public Hearing at 6:08 p.m.

There were no comments made during the Public Hearing.

Adjourn Public Hearing.

Mayor Countryman adjourned the Public Hearing at 6:09 p.m.

3. **Receive Final Report from the Planning and Zoning Commission resulting from their Public Hearings held on January 7th and 14th, 2019 regarding the proposed rezoning of the 2.187 acre tract of land and 0.475 acre tract of land located at 1062 Clepper Street, Montgomery, Texas from R1-Single Family to B-Commercial, as requested by James Ward.**

Rebecca Huss stated that on page 12 of the Agenda Pack it looks like a typo or it has been inserted; that is not James Ward's tract, it is a repeat of the Kammerer tract on the Final Report. Mr. Yates said Carol Langley, Commission member, abstained from voting because it was her employer that was making the application. Rebecca Huss said the description should state the 2.187 acre tract of land and 0.475 acre tract of land. John Champagne said the land was identified as 7.7 acre tract of land. Rebecca Huss said everything else afterward is identified correctly, but page 12 has the incorrect information in the report as to what tract it is and the owner of the tract. Mr. Yates said he would correct that information in the written report. Rebecca Huss said the other documentation is correct. Mr. Yates said that was correct.

Mr. Yates stated that Natalie Champagne and an adjacent property owner spoke at the meeting about drainage concerns and stated that she did not receive a mailed notice of the zoning change. Mr. Yates said the City Secretary can report on that information. John Champagne said he would like to hear the results. Ms. Hensley, City Secretary, advised that they did check with the Post Office and also ran electronic searches on the certified letters that were sent, and said that out of 11 certified letters to the adjacent property owners, only four of the letters had the green return receipts sent back to the City. Ms. Hensley advised four of the letters were lost in transit and have been moved around since before December 24, 2018. Ms. Hensley stated two of the letters are on their way back to the City, and they received two today that were never delivered and sat somewhere with the Post Office. Rebecca Huss asked if the Post Office gives the City the money back when their customer service is terrible. Ms. Hensley said they did track all of the certified letters and said all of the letters were in the system, sent out as they were supposed to, in fact they were sent out early due to the holiday season so they could make sure that people received them. Ms. Hensley said this is the first time that she has had this happen since she has been employed with the City and said the return receipt green cards usually come back pretty quick or the letter comes back. Ms. Hensley said they have never had certified letters take almost a month to come back. Rebecca Huss said four out of 11 certified letters is pretty terrible. Ms. Hensley agreed.

Rebecca Huss moved that they accept the Final Report from the Planning and Zoning Commission resulting from their Public Hearings held on January 7 and 14, 2019, pending Mr. Yates changing the wording of the Final Report to reflect the description of Mr. Ward's tract. John Champagne seconded the motion, the motion carried unanimously. (3-0)

4. Convene into Public Hearing – Regarding the proposed rezoning of the 2.187 acre tract of land and 0.475 acre tract of land located at 1062 Clepper Street, Montgomery, Texas from R1-Single Family to B-Commercial, as requested by James Ward.

Mayor Countryman convened into the Public Hearing at 6:15 p.m.

John Champagne asked Mr. Foerster if it was inappropriate to ask for some input from someone on the Planning and Zoning Commission as to their specific reason for approving this action. Mr. Foerster said this is a Public Hearing so they can engage in any kind of discussion that will allow the City Council to entertain comments and observations.

John Champagne said he was pretty neutral on this matter, but the Commission stated, and he paraphrased “that it would be advantageous to the City to have this put as Commercial” and asked if any of the Commission members present could give some specific advantages that they saw regarding this plat of land. Jeffrey Waddell, Commission member, stated from the beginning what was discussed was a boutique, small type of retail business. John Champagne asked in rating a property commercial, can those specific requirements and limitations be placed on that property. Mr. Yates said no. John Champagne said once it is commercial, it is commercial. Jeffrey Waddell said they were looking at some different situations. Mr. Yates asked if Jeffrey Waddell meant the connection between residential use and business use that requires the screening. Jeffrey Waddell said yes and also some limitations on space and type of use. Mr. Yates said the use would be anything that falls in commercial. John Champagne said it was a pretty wide net. Jeffrey Waddell said the Commission’s main question was about the buffer between the two types of uses, to make sure that there was a buffer especially on the back side of the property. John Champagne asked if that was in terms of the residential. Jeffrey Waddell said yes in terms of a green belt. John Champagne said the property is residential and City Council rarely goes from residential to commercial, and he was just looking for guidance as to what the Commission saw. Jeffrey Waddell said the red flags did go up and they definitely looked at it.

Jeffrey Waddell said there were also comments made that no one else on the street had problems with the change in use, but that is only informal. John Champagne said he has done some anecdotal questioning and got negative responses, but he could go either way on this matter, so he was just looking for some guidance. Jeffrey Waddell said regarding the drainage issue, they were assured that engineering would be done to approve the drainage.

Tom Cronin said being a business owner downtown, there is such a wide array of businesses that can go in there, light industrial, a machine shop, and said he just did not think something like that would fit esthetically downtown. Tom Cronin said he would love to see a boutique retail or boutique hotel, but there is such a big grab bag of things that can go in there and it really concerns him. Jeffrey Waddell said there is also the street itself. John Champagne mentioned parking issues.

Adjourn Public Hearing

Mayor Countryman adjourned the Public Hearing at 6:19 p.m.

Convene into Regular Meeting

Mayor Countryman convened into the Regular Meeting at 6:19 p.m.

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

There were no citizen's comments.

CONSENT AGENDA:

5. Matters related to the approval of minutes of the Regular Meeting held on January 8, 2019.
6. Consideration and possible action regarding adoption of an ENCROACHMENT AND MAINTENANCE AGREEMENT, between the CITY OF MONTGOMERY, TEXAS (CITY) and STYLECRAFT BUILDERS, INC., a Texas corporation (OWNER). Regarding certain property ("Property") located in the City of Montgomery, Texas on Scenic Hills Court, proposing to place a small retaining wall on the CITY's street right-of-way on Scenic Hills Court with the Subdivision's home owners association, the OWNER's successor and assignee, to maintain the small retaining wall at no cost to the City.

7. Consideration and possible action regarding Certificate of Acceptance for public water and public sanitary sewer infrastructure to serve the Hills of Town Creek Section III (Dev. No. 1019) including acceptance of maintenance bond.
8. Consideration and possible action regarding adoption of the Election Services Agreement by and between the City of Montgomery and Montgomery County Elections for the May 4, 2019 Election.
9. Consideration and possible action regarding adoption of the Joint Election Agreement by and between the City of Montgomery and Montgomery County Elections for the purpose of sharing jointly conducting elections to be held on May 4, 2019.
10. Consideration and possible action regarding road closures for the Antiques Festival as requested by the HMBA.

John Champagne asked about Item 10, and asked if planning by the City and Police Department had been done. Mr. Yates advised yes, it had be done.

Mr. Yates said regarding Item 6, the Home Owner's Association (HOA) issue that was discussed the last time this item was on the Agenda. Mr. Yates said the HOA has been added and they have signed the document. Rebecca Huss said to be completely honest at this point in the process, the HOA is 100% the same as the builder, so it is not like it is a third entity that has agreed to take on the responsibility; it is basically they don't know what they are getting into, but when they buy the property they will find out. Mr. Yates said it was the owner's and assigns. Rebecca Huss said she understood that it was basically in there officially and it protects the City, which is what Jon Bickford correctly pointed out needed to be included in the document, but the HOA is not an independent Association at this point. John Champagne stated there are others that are that way in the City. Rebecca Huss said presumably they will take over and find out what their liabilities are, but at this point it is basically the builder has assigned it to them.

John Champagne moved to accept the Consent Agenda as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (3-0)

CONSIDERATION AND POSSIBLE ACTION:

11. Consideration and possible action on Department Reports.
 - A. Administrator's Report- Mr. Yates presented his report to City Council. Mr. Yates said in addition to his duties he had worked on Atkins Creek and the payment to Kroger for the 380 Agreement, which is almost ready to be accomplished next week, along with the billing

for the escrow accounts. Mr. Yates said he has attached two items to his report this month, first being the inflow cost, which he would like to take back because of some additional information that he received from Mr. Randy Burleigh. Mr. Yates said he also attached a report on the last two years covering manhole inspections and smoke testing, and said he will make this a regular agenda item at the next meeting and do a more detailed report.

John Champagne asked if it would be safe to say the City does not have a good grasp on our cost for treating sewer and water. Mr. Yates said no, he would not say that. John Champagne asked why they can't get a cost on effluent processing. John Champagne said the reason he is saying that is because he is looking at Jones and Carter's assessment of our costs relative to what we are charging, and it is exponentially higher than what they are charging, so when he looks at the figures they are all over the board. John Champagne said to date he has not heard of a hard cost to process and he does not know the criteria in which we are using to establish the cost. Mr. Yates said he thought it was them coming up with the criteria that is the issue. John Champagne said he totally agreed and said, to him, this is important.

Mr. Yates said the other item that he has attached to his report is the Board of Adjustment information, which he had brought to City Council because there was a discussion at the December 11, 2018 City Council Meeting about the Board of Adjustment. Mr. Yates said he has the attendance record of the Board of Adjustment attached to the report. Mr. Yates said there are a couple of members that have only made one or two meetings. Mr. Yates said that each member of the Board of Adjustment shall be removable for just cause by City Council upon written charges and after public hearings. Mr. Yates said this would require them to conduct a Just Cause Hearing. Mr. Yates said the Board of Adjustment does not meet that often and they have always been able to have a quorum.

Rebecca Huss said she agreed that it is too hard to have a forced removal of a board member, but she felt they should ask Mrs. Jennifer Stewart and Mr. Tommy Hauser to resign or improve their attendance dramatically, because one meeting out of eight is an unacceptable record and is not what we expect of people that say they are volunteering and putting time into the City. Rebecca Huss said she would like to commend Mr. Nelson Cox, who has attended every meeting and also volunteers on other Boards. Rebecca Huss said when the City calls, Mr. Cox is always there. Rebecca Huss said when someone says that they are here for the City when they are in fact not, they really need to find someone else

who is more enthusiastic about the position. Rebecca Huss said she thought that they needed to start by asking them to consider resigning.

John Champagne asked what the alternate members do. Mr. Yates said they can attend the meetings and if there is not a quorum, they can vote. Rebecca Huss said on November 1, 2018 the Board waited until Carol Langley was able to come from work to attend the meeting, so they could have a quorum and get the job done.

Mayor Countryman asked if City Council would propose to have Mrs. Stewart and Mr. Hauser step down from the Board of Adjustment and move Mr. John Fox and Mrs. Carol Langley over to the Board, or would you ask to keep them as alternates. Rebecca Huss said that she thought they would have to reopen the process. Mr. Yates said that was correct. Rebecca Huss said at the very least, the City needs to strongly encourage those two members to resign.

Mr. Yates advised that, regarding the CDBG Grant for paving of Baja Road, the City accepted bids and the bids came in this time at \$93,000, which was basically what the first round of bids were. Mr. Yates said they had \$23,000 - \$24,000 from FEMA so they have a \$70,000 gap. Mr. Yates said Mr. Roznovsky, Mr. Muckleroy and he discussed the matter and since they had funds remaining from the CDBG Grant that was also regarding Baja Road, the bids came in so low on that project they had \$111,000 remaining in that grant. Mr. Yates said one of the three of them recommended that they contact the CDBG Grant and see if they could add the street to that Grant and the answer that they have gotten so far is yes. Mr. Yates said that will also mean that they will have to do an environmental review of Baja, so they will probably put off the paving of Baja a couple months, which is the bad news, but the good news is it is worth about \$70,000 to the City to go through that process. Mr. Roznovsky said there should be overlaps since the existing project is already on both sides of Baja. Mr. Roznovsky said this just came up Friday so they are having the grant writers to review the information just to make sure. Rebecca Huss said \$70,000 for paving covers a lot of extra footage, so that makes sense even if they have to delay the project a few months because they have already waited this long.

Mr. Yates said the other item was he received a denial from FEMA for repaving Plez Morgan. Mr. Yates said they could appeal that finding, but he did not know if the City would have a very good case for appeal. Rebecca Huss said she thought that FEMA had

already accepted the project a long time ago. Mr. Yates said in the early stages someone from FEMA said that they would try and run the project through the process, which was about three or four representatives ago. Mayor Countryman asked if it was just a verbal approval and nothing was in writing. Mr. Roznovsky said by the time the FEMA representative said yes the project should be covered because it is related to the bridge and this is the detour route, by the time she was working on the paperwork to approve the project FEMA switched her out and brought the next person on board. Rebecca Huss asked if this was paperwork denial. Mr. Roznovsky said this was a paperwork denial from FEMA. Mr. Yates said he thought they could do some testing of the road base and see where the worse parts of the road are and then do a seal coat or over coating of the road for about \$25,000 - \$30,000. Mr. Yates said that would be something that Commissioner Mike Meador could do, where the City would pay for the materials and Commissioner Meador's crew would do the work. Mr. Yates said it would be less than what they would have paid on the 25% share with the FEMA project. John Champagne said the road is being worn down appreciably on Buffalo Springs where CVS was taking fill out of that section behind Ransom's. John Champagne said that part of the road is going to require attention soon.

- B. Public Works Report – Mr. Muckleroy, Director of Public Works, presented his report to City Council. Mr. Muckleroy said this is a combined report for November and December 2018. Mr. Muckleroy said they have completed the meter box assessment of repairs for the year, and installed all the Christmas decorations in the City and the entire department attended a Safety Class put on by TML, which he has on a thumb drive. Mr. Muckleroy said the Safety Class was a good class and was free. Mr. Muckleroy said they cleaned the sewer easement at Lone Star Estates in preparation for smoke testing and completed the first phase of smoke testing. Mr. Muckleroy said they conducted the quarterly heavy trash event, installed the Texas Flag benches that they ordered from the State at the sidewalk at Jacob's property lot and excavated the ditch at 905 College for better drainage. Mr. Muckleroy said they had the Christmas Parade setup and cleanup.

Rebecca Huss asked if they could put on the Agenda or put some time into quantifying how to either reduce the amount of trash and City time that they spend on the Christmas Parade, or increase the deposit that is put on the parade. Mayor Countryman said maybe they reduce the idea of throwing candy, which a lot of cities do. Rebecca Huss said when she ran the parade in Kingsville they had prohibited throwing things from floats; they could hand out candy directly to the people on the sides. Rebecca Huss said that was not to say

there was still a lot of trash, but the candy is a lot of effort and is just disgusting in downtown for a long time after the parade. Mr. Muckleroy said he thought that Dave McCorquodale had asked him what they were charging per hour, and he thought that Dave McCorquodale had already increased the fee on the parade application. John Champagne asked if guidelines were also included with the application. Mr. Muckleroy said that was correct. Rebecca Huss said they are still waiting until Monday, Tuesday or Wednesday when staff is all back on duty, and their value to the City is worth more than what they are charging. John Champagne said he agreed with that. Mayor Countryman asked Mr. Muckleroy how long it took them to clean up after the Christmas Parade. Mr. Muckleroy said it took three of the workers six hours or six and a half hours. Mayor Countryman said if they could take that six to six and a half hours down to an hour or hour and a half that would be valuable. Mr. Muckleroy said some of the events they have had required no time. Mr. Muckleroy said he knew that Mrs. Shannan Reid had really stepped it up the last couple of years with the events that she had regarding cleanup and they had to do no clean up. Rebecca Huss said she knew the Scouts were not told anything about not throwing candy and making sure that the candy went directly into someone's hand and said everyone is guilty of throwing the candy, and she did not know any way of doing it unless they ban the candy. Mayor Countryman said she thought it was really nice to see Mr. Muckleroy and 90% of his crew at the City Christmas dinner, and said that was the first time that all of the guys showed up and it was good to see them. Mr. Muckleroy said they only had one missing and he is new.

Mr. Muckleroy said they had seven water taps, seven sewer taps for the two month, 13 water leaks and two sewer stoppages. Mr. Muckleroy said the docents at Fernland Park reported a total of 1,371 visitors and they provided 77 tours for the two months.

John Champagne asked about the library parking lot, and said he did not know if it was runoff or a leak, but it is wet all the time. Mr. Muckleroy said it has dried up in the summertime. Mr. Muckleroy said if there is a leak it is going to be in the fire line that is dedicated for the library. Mr. Muckleroy said he talked to one of the Montgomery County maintenance workers about the water, and they said they would be willing to come out and dig up the parking lot to look for the leak. Mr. Muckleroy said he made the suggestion to pay a leak detecting company to come out and listen for the leak to see if they can locate it, but it was during the holidays, and they were supposed to get back with him, but he had not heard anything since. John Champagne said once again we are supposed to have a

closed system, and they need to find these breaches and if they can do something about them because this is a cost; we just do not know what the cost is. Mr. Muckleroy said he was not 100% convinced that it is a leak because it is such a steep hill. John Champagne said he did not know, but asked where the water is coming from. Mr. Muckleroy said there could be a spring or just uphill irrigation runoff. John Champagne asked if it would show up in the measurements for the pond or anything like that. Mr. Muckleroy said no, it would not. Mr. Muckleroy said he has been dealing with a company with an irrigation system because he did not know if they took a lighting strike or what, because they only have four zones coming on. Mr. Muckleroy said he has a company coming out to look at the system and do a complete evaluation by a professional. Mr. Muckleroy said he would contact Montgomery County to see what their plan is for the library parking lot. John Champagne asked if someone would get with Mr. LeFevre on all the drainage impediments that they have in the new development.

- C. Police Department Report – Mr. Yates presented the Police Report to City Council in the absence of Lt. Belmares who is attending a suicide prevention training class. Mr. Yates said there were no calls for service that were not answered during the course of the month. Mr. Yates said there were 179 citations issued and Sergeant Bracht attended training for the evidence room so that he can become the new evidence room officer. Mr. Yates said Sergeant Hernandez and Lt. Belmares have attended training with TxDOT for a step grant, which is extra hours that TxDOT pays the officers to run traffic primarily during the Christmas holiday, Independence Day, New Year’s and Labor Day that will pay for extra patrol during those times.

Mayor Countryman said Officer Chris Carswell took it upon himself to have a Wild Animal Adoption in the front lobby for children to take home, and he even made Certificates of Adoption. Mayor Countryman thanked Officer Carswell and said “good job.”

John Champagne asked, with all the training that is going on, whether this training is obligatory and has to be done now because his last understanding they were pretty shorthanded and asked how many officers they had out other than Lt. Belmares being trained. Mr. Yates said he did not think there was anyone else out. Rebecca Huss said from what she could tell, Officer Carswell’s truck has been in the parking lot and he has been working a lot. Rebecca Huss said she thought the guys have been really great about doing

what needs to be done to keep the City going because they have a lot of really great people working here. Mayor Countryman said they have received some good feedback too.

- D. Court Department Report – In the absence of Mrs. Kimberly Duckett, Court Administrator, Mr. Yates presented the Court Report to City Council. Mr. Yates said there were 174 citations entered into Municipal Court last month and the total collected for 2018 was \$501,483 compared to 2017 at \$518,336.
- E. Utility/Development Report – Mr. Yates presented the Utility/Development Report to City Council advising that they collected \$138,440 for utilities last month; there were 49 permits representing \$16,837. Mr. Yates said they had 23 new water accounts and 13 disconnects for a total number of active accounts 719.

John Champagne asked what the arrears totaled. Mr. Yates said they were currently doing fairly well. John Champagne asked for the total number for arrears and how many days are the accounts in arrears. Mr. Yates said he would have to check on that information. John Champagne said he would be interested in knowing that information. Mr. Yates said the 30-60 days was roughly \$3,000 - \$4,000. John Champagne said that information should be part of this monthly report. Mr. Yates said he would get that information.

- F. Water Report – Mr. Michael Williams, with Gulf Utility Service, Inc., presented the November and December reports to City Council. Mr. Williams advised in November they had three district alerts, one a damaged force main caused by a contractor while they were boring on Lone Star Parkway that they were able to repair and get back on line. Rebecca Huss asked if the contractor paid for the extra time and everything. Mr. Muckleroy said it was not their problem because they did not know where the force main was located; they told them the general area, without physically digging it up, but now they know where it is located. Mr. Williams said one of the other district alerts was due to rain events in the City, and the third alert was due to a blower surge that they were able to reset.

Mr. Williams advised the waste water flow for the month of October to November was 5.422 million gallons and the day of peak flow was November 1st at 357,000 gallons that is 89% of the permit and the daily average flow was 174,900 gallons at 44% of permitted value.

Mr. Williams said the effluent monitoring report shows that all samples were in compliance for November with 7.50 inches of rain. Mr. Williams stated the City sourced a total of 7.647 million gallons of water, flushed 778,000 gallons and they sold 6,344,000 gallons for 93% accountability. Mr. Williams reported that during the month of November they had an 85% return to the Sewer Treatment Plant.

Rebecca Huss stated that Mr. Williams is stating they had an 85% return to the Sewer Treatment Plant with 7.50 inches of rain and 65% return with 12.75 inches of rain. Mr. Williams said it was not only the rain but it is also a matter of irrigation. Rebecca Huss said it was not in November. Mr. Williams said the month before would be October, which would be the middle of September through October. Rebecca Huss said there were six inches of rain during that month, so people would not be irrigating. Rebecca Huss said those numbers are wrong and they have been wrong for a while. Mr. Williams stated that there are people that do not turn off their irrigations systems all year.

Mr. Williams said during December they had four district alerts, a sewer backup where they were able to clear the debris and have the sewer line flowing normally. Mr. Williams advised on December 1st they experienced a phase failure at the Waste Water Treatment Plant where they had two blown fuses that they had to replace. Mr. Williams said they had a high wet well at Lift Station #2 on December 7th due to rain, and on December 15th they had low water pressure at Water Plant #3 due to a broken water main from work that was being done on FM 1097. Mr. Williams advised the operator monitored the facility until the pressure was returned to normal.

John Champagne asked Mr. Williams if they are running the cooling tower right now. Mr. Williams advised they were not running the cooling tower. John Champagne asked when they stopped running the tower. Mr. Williams stated they stopped running the cooling tower in November.

Mr. Williams reported the effluent flow for the month was 5,093,000 gallons, daily peak flow on December 9, 2018 was 393,000 gallons at 93% of permitted value, Average daily flow at 169,800 gallons, which is 42 % of permitted value. Mr. Williams said the effluent monitoring report shows all samples were in compliance with 5.6 inches of rain reported. Mr. Williams stated they sourced a total of 6.629 million gallons, flushed 725,000 gallons, and sold 5.847 million gallons bringing them to a 99% accountability. Mr. Williams said

they are at the end of the year with 13 days left in this period with 7.25% left on the permit. Mr. Williams said they were all in compliance with the City's permit. Mr. Williams said they started the new permit on January 1, 2019 with a new amount of 90 million rather than 75,100,000 gallons. Rebecca Huss said well done and said they did an amazing job. Mr. Williams said they still had 30% of the City's Jasper permit.

Mr. Williams said the water sold versus water treated was at 87%. Rebecca Huss asked why their accountability in the November report was 93% but in the December report the November accountability drops to 90%. Mr. Williams said that was probably a typo that he would have corrected. Rebecca Huss said she just wanted to know which one was correct. Mr. Williams said he was positive that it was 93% for the month of November.

John Champagne asked how often all the mechanisms that measure these items on the report are calibrated. Mr. Williams said they are calibrated twice a year. John Champagne asked if that was standard operating procedure. Mr. Williams said that was correct. John Champagne asked what would cause a red flag to check the calibration on one of these devices to see if it was out of calibration or if it needs to be replaced more often than twice a year and whether that has happened. Mr. Williams said yes it has happened, such as on the sewer count; with the flow meter if that number starts to decline they will recalibrate the meter. Mr. Williams said the signal on the meter can change with the weather and if their deviation gets over 10% in either direction they will have it recalibrated.

- G. Engineer's Report – Mr. Roznovsky presented his report to City Council. Mr. Roznovsky advised the Buffalo Springs Bridge project is complete and the waterline across the bridge is in service and the contractor is still addressing the punch list items. Mr. Roznovsky said the waterline improvements downtown have been approved by the Water Development Board and they are finalizing the plans for final approval.

Mr. Roznovsky stated that the Baja Road water and drainage improvements project contractor has received a letter stating that he is severely behind schedule and they have sent another letter today to his bonding company letting them know that he is behind schedule. Rebecca Huss asked if the contractor responded to the letter from Jones and Carter. Mr. Roznovsky said the contractor did respond, but not adequately and said the schedule that he provided was not sufficient and he did not meet the deadlines that are set out in the letter, which was five days to submit a report addressing specific issues. Mr.

Roznovsky said the contractor was notified again today. Mr. Roznovsky said last Thursday the contractor also caused a waterline break during the evening hours and Public Works was out there at 2:00 a.m. to get the service restored. John Champagne asked how the waterline break occurred. Mr. Roznovsky said the contractor was laying two pipes in close proximity. Mayor Countryman asked if it was due to the saturation of the ground. Mr. Roznovsky said the waterline break was not gross negligence by the contractor, his crews were out there making repairs. John Champagne said the contractor is grossly behind schedule. Mr. Roznovsky said that is correct and there is no doubt about that. Mayor Countryman said the contractor's work has been less than satisfactory. Mr. Roznovsky said that was correct.

John Champagne said they have a criteria in choosing a contractor, and asked what the predominant driver is when making the selection. Mr. Roznovsky said it was cost. John Champagne asked if they measured the cost in lost time, poor customer service and all the tangibles and intangibles that go into choosing a poor contractor. Mr. Roznovsky said it was harder to do on these grant projects because of the funding requirements and criteria involved. John Champagne said at some point, while he knows that free money is very alluring, if they measure the costs he is not so sure it is. Mayor Countryman asked if they were not cleaning up what Montgomery County did in the first place with free money. Mr. Roznovsky said a portion of the project is cleanup of what Montgomery County did in the first place. John Champagne said they were still doing a job inadequately. Rebecca Huss said she wanted to state a qualifier, the City is not going to finish the job inadequately like the job was originally done, because she feels with confidence that the City's oversight is far superior to what occurred the first time around. John Champagne asked what the cost was for that, because there is a cost. Rebecca Huss said there definitely is a cost. Mr. Yates asked what the amount of the second bid was. Mr. Roznovsky said the contractor's low bid was \$179,000 and the second lowest bid was \$320,000. John Champagne said you could not tell by him because they have no idea what it is costing. John Champagne said he was disputing the process of selecting the contractor. Rebecca Huss said it is definitely a different process. John Champagne said it is very easy to pick that low number. Rebecca Huss said if you look at some of the projects the City has done and the amount of grants that the City has received, they would not have lowered the taxes this year and had those projects completed. John Champagne said he was not saying across the board, he was saying, as a rule, he has seen in the nine years he has been here, we take the low number.

Rebecca Huss said it has been an unfortunate byproduct of free money, but she would not walk away from the free money for the bridge or to fix roads.

Mr. Roznovsky said the reason they bid the Baja project was to get a better price, and the low bidder before he realized his math error was \$75,000, he wrote a square foot versus a square yard price, so when he carried out the math his \$22,000 bid became a \$200,000 bid. Mr. Roznovsky said since what he wrote governs not his math, he was no longer the low bidder.

Mr. Roznovsky advised that TxDOT has moved off site on the Atkins Creek project, and they are waiting on a more definitive plan before they proceed with any additional work, so they are continuing to have discussions with TxDOT. Mr. Roznovsky stated, regarding the FEMA project for the water and sewer lines further downstream, they still expect FEMA approval by the middle of February 2019. Mr. Roznovsky said the project team that was on this got switched out, so they are on a new project team, but prior to that everything was submitted.

Mr. Roznovsky said on the GLO funds they are still waiting for the contract to come back from the State to the City on those projects. Mr. Roznovsky said the Utility and Economic Feasibility Study was underway for the Woods of Town Creek and they expect to present the study at the March 12, 2019 meeting. Mr. Roznovsky reported that the plan reviews for Exxon came back last week and was approved for the parking lot only.

Mr. Roznovsky stated the developer for Lake Creek Village advised that they are waiting until the weather is more favorable before they begin work on the ditches and culverts.

Rebecca Huss asked if the City has the FEMA reimbursement to the construction or general fund because Mr. Roznovsky had stated that FEMA requested the City to provide additional information. Mr. Roznovsky said they provided that information but he did not believe that they have received anything from FEMA. Mr. Yates said FEMA has had everything for five to six weeks, and about once a week he sends a threatening letter telling them how much they need the funds and how late they are in providing them, because there are several that are pushing four months. Rebecca Huss said it is a good thing the City did not borrow that money and paying interest on the money that they have not delivered in a timely fashion.

H. Financial Report – Mr. Yates presented the Financial Report to City Council. Mr. Yates advised the following balances: General Fund - \$724,870, Capital Project Fund - \$3,418,154 with about \$2 million of that is TWDB funds, Utility Fund - \$1,047,974, and the total funds on hand for the City is \$5,998,476. Mr. Yates said the General Fund has a positive balance for this year of \$96,104, but that will be reduced next month because they have to pay Kroger, but next month will also be the quarterly sales tax payment so he expects \$125,000 to \$150,000 more in sales tax. John Champagne asked how much will be coming in and going out from Kroger. Mr. Yates said coming in will be about \$107,000 for Kroger. Mr. Yates said the Capital Projects Fund is minus \$511,000 because of the two large expenses of \$210,000 for the bridge and \$288,000 for the 18-inch gravity line. Mr. Yates said the 18-inch gravity line is not shown, but they have carryover from last year so they are okay cash wise, because they received the funds last year and they have the expense this year. Mr. Yates said the Utility Fund has \$269,290, which is very good for that fund.

Rebecca Huss said under miscellaneous expenses, which they should have as few things as possible under, she saw they were over budget by \$81,000 for miscellaneous expenses, and then realized it is the SH 105 – FM 149 property. Rebecca Huss said that expense should not be under miscellaneous expenses and could be put anywhere else. Mr. Yates said they have a line item for that expense specifically for the land purchase.

Rebecca Huss moved to approve the Departmental Reports as presented. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

12. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, PROVIDING FOR THE HOLDING OF A GENERAL ELECTION TO BE HELD ON MAY 4, 2019, FOR THE PURPOSE OF ELECTING THREE (3) CITY COUNCIL MEMBERS, PLACES 1, 3 AND 5; APPROVING ELECTION SERVICE AGREEMENTS WITH MONTGOMERY COUNTY, TEXAS; AND PROVIDING DETAILS RELATING TO THE HOLDING OF SUCH ELECTION.

Rebecca Huss moved to adopt the Ordinance as presented. John Champagne seconded the motion, the motion carried unanimously. (3-0)

13. Consideration and possible action regarding City Engineer services.

Mr. Yates advised this was a report item and was not the final action. Mr. Yates advised he had attached an up to date budget for a 40-hour per week Licensed Professional Engineer capable of preparing plans, inspecting work by City contractors and subdivision improvements, plus the other items on the job description. Mr. Yates said the City would still need Jones and Carter for planning, but he thought they could save approximately \$100,000 per year.

Mr. Yates said an alternative to a full-time person would be to contract with Jones and Carter or another engineering firm to provide a specific person at a specific rate of pay to accomplish the duties of the job, perhaps at less than 40 hours per week. Mr. Yates said he and Mr. Roznovsky have discussed an option where Jones and Carter could assign a specific engineer to the City and we would treat that person as though they were an in-house person for an hourly rate.

John Champagne asked if Jones and Carter would be amenable to presenting a situation that would reduce revenue to Jones and Carter and make it more effective for the City of Montgomery. John Champagne said Mr. Yates stated it would save \$100,000 for one scenario, and asked if they could have a value proposition on these two or three options. John Champagne said he has very clear in his mind what a value proposition is, and said if Mr. Yates wanted to discuss it, he would love for a value proposition to be presented to City Council that would empirically show what we believe the savings would be and the advantages and disadvantages. Mr. Yates said he would figure that information. Rebecca Huss said she would like to be a little bit more specific or have some more back and forth as to what the duties of the in-house engineer would be, because she thought there is a lot they could do or there is value in farming out certain things. John Champagne said that would be a good place to put a value proposition. Rebecca Huss said there is a lot more work to be done before they advertise, but she is 100% behind going forward with making progress toward this idea because where the City was four or five years ago, even three years ago in terms of the amount of activity in the City, we need a full time engineer on staff. John Champagne said if he can see the information on paper, and said he knows that Jones and Carter knows how to prepare a value proposition, because if you take one engineering firm off a certain municipality you have to show them where the value is, which is what he is asking for because their fees might be higher, but the City's cost could go down.

Mr. Yates said he would get together with John Champagne sometime next week. John Champagne said that he would send Mr. Yates a template for the value proposition.

Rebecca Huss said this is really not an action item, just direction to keep moving forward with putting numbers behind the information.

14. Water Plant Inspection Report by Jones and Carter Engineering.

Mr. Roznovsky advised they had started on this report back in the summer and delayed the actual inspections until after the summer heat was over. Mr. Roznovsky said this was a full mechanical and electrical inspection of both the water plants, including interior inspections of the facilities, electrical controls of the facilities and the lighting, etc. Mr. Roznovsky said all of the results are summarized in the report, and if there are any problems they have a photo with the recommendations to fix the problem. Mr. Roznovsky said there was a number system that shows who is covering what item, and if there is an immediate concern whether it can be taken care of in house.

Mr. Roznovsky said the high points are there are a lot of recoating work at Water Plant #3 and since there is an active project out there, the recommendation is to include that recoating scope with the contractor that is going to be doing the work because it makes sense to do it all at once. Mr. Roznovsky said this is not something that Public Works or Gulf Utility is able to do. Mr. Roznovsky said all the other items were 90% covered by Public Works or Gulf Utility to make the minor repairs.

John Champagne asked what were the options regarding mitigating the corrosion problem. Mr. Roznovsky said it was either to do the recoating or procure. Mr. Roznovsky said these items have deteriorated enough where a top coat won't hold, so they have to blast it down to bare metal and recoat so that it applies.

Mr. Roznovsky said all the items are listed in the report, with a couple items to note that are when they looked in the Ground Storage Tank at Water Plant #2 there is sand accumulation at the bottom of the tank, and for the number of years the amount of sand is not abnormal. Mr. Roznovsky said the tank was cleaned out and put back into service and what they discussed with Public Works is taking it down a little more frequently and monitoring the level to see if there is something there. Mr. Roznovsky said since the well performance was at the same time there is no issues there, and the rest are miscellaneous items.

Rebecca Huss said she would love to see the inside of Water Plant #2 and said it was very interesting to see all that sludge before it migrated.

15. Consideration and possible action regarding calling a Community Meeting on February 28, 2019 to discuss the Comprehensive Plan.

Mr. Yates said this is the same person that came before City Council several months ago, Walter Peacock of Texas A&M's Texas Target Communities, who has been working on a State of the Community Report that he will present at the Community Meeting. Mr. Yates said Mr. Peacock has done enough research and gathering of information where he would like to come and meet with the community and get the community's input on the Comprehensive Plan on February 28, 2019. Mr. Yates said Mr. Peacock also wants to come and give a preliminary presentation to the Planning and Zoning Commission on February 25, 2019 and City Council on February 26, 2019 prior to the Community Meeting. Mr. Yates said the purpose of the Community Meeting on February 28, 2019 is to give the report to the community and to get some feedback from the citizens.

Mr. Yates said they intend to put a news release out in the newspaper and also have something in the water bills to invite the community to the February 28, 2019 meeting and explain why we feel it is important for them to attend. Rebecca Huss asked that they put a notice on the electronic billboard and social media to announce the meeting.

Rebecca Huss moved to direct City staff to organize a Community Meeting on February 28, 2019 to discuss the Comprehensive Plan presented by Walter Peacock of Texas A&M. Tom Cronin seconded the motion, the motion, the motion carried unanimously. (3-0)

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas.

16. Adjourn into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:

- a) Section 551.074 (personnel matters) related to Annual Review of City Administrator's Contract; and
- b) Section 551.074 (personnel matters) related to review of applications for the position of Police Chief.

Mayor Countryman adjourned into Closed Executive Session at 7:26 p.m.

17. Reconvene into Open Session.

Mayor Countryman reconvened into Open Session at 8:23 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

18. Consideration and possible action(s) if necessary on matter(s) deliberated in Closed Executive Session.

Tom Cronin moved to direct the City Attorney to prepare a new contract, as discussed, for the current City Administrator; and then direct the current City Administrator to advertise in TML and other City Administration and appropriate search vehicles for a replacement; and direct the City Administrator to follow the rough outline along with the City Council that he prepared for the transition. John Champagne seconded the motion, the motion carried unanimously. (3-0)

COUNCIL INQUIRY:

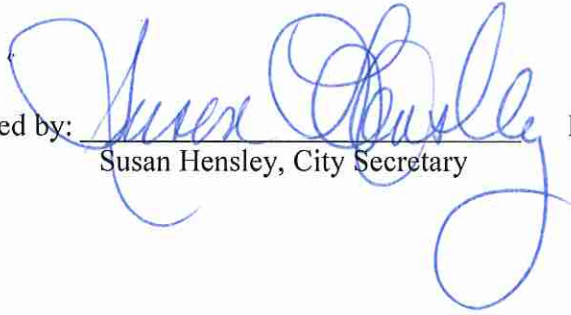
Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

There were no comments.

ADJOURNMENT

Rebecca Huss moved to adjourn the meeting at 8:25 p.m. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved: _____

Mayor Sara Countryman

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: cost estimate for water line, e-mail of Request for emergency repair from Mike Muckleroy and my approval, picture of before and after water line repair
Date Prepared: February 7, 2019	

Subject

This is to approve an emergency expenditure needed because of the concern for a major break in a 12 inch water line on Atkins Creek immediately South of the FM 1097 box culvert. The City ordinances allow emergency expenditures with an approval by the City Council at their next meeting. Emergency expenditure was approved on January 24th. The amount requested for the emergency expenditure is \$20,626.

Description

The emergency was that the line had been uncovered because of the erosion of Atkins Creek and the line had already broken into. A four-inch temporary connection had been placed on the ground connecting to fire hydrants in order to keep the Terra Vista subdivision and water supply. The fire department had been notified of the reduction of fire safety flow to the subdivision. It was thought that TxDOT was about to come in and repair the erosion immediately adjacent to FM 1097, so that our line needed to be repaired before their work, and the line needed to be encased in cast-iron pipe prior to the repair of more dirt and rock being placed into the Atkins Creek channel. Thus, the emergency repair was necessary.

City crews were able to do this job and did an excellent job. The actual price is slightly less than the \$20,626 allowed for in the emergency approval.

Funds for the repair came from repairs and maintenance line item in the budget of which there was \$212,584 available and that budget line item at the end of December – so funds were available in the project was needed.

Montgomery City Council
AGENDA REPORT

An email was sent to the Council on January 24 letting the Council know of my emergency expenditure approval.

Recommendation

Approve the emergency expenditure -- as part of the Consent Item Agenda

Approved By

City Administrator	Jack Yates	Date: February 7, 2019
--------------------	------------	------------------------

Cost Estimate for Adkins Creek 12" Waterline Repair

The concept is to dig back into the banks on both sides of the creek approximately 25 feet with 100 feet of 20" steel casing and new 12" C-900 pipe installed with casing spacers. Both sides would be backfilled with 3 sack stabilized sand.

Item/Material	Quantity	Price
20" steel casing, .375" wall thickness	100 ft.	\$4900.00
12" C-900 pipe	120 ft.	\$2480.00
12" MJ sleeves	2	\$408.00
12" Megalug packs	4	\$498.00
3 sack stabilized sand	40 tons	\$1840.00
12" casing spacers	136	\$2250.00
Cat 336 excavator	1 for 1 week	\$5500.00
Diesel fuel for excavator	100 gallons	\$250.00
Welding services for casing assembly by NTS	n/a	\$2500.00
Public Works labor	3 guys for 16 hours each	\$1440.00

Supplies
Parts
\$20,626

Total estimate for job: **\$22,066.00**

City of Montgomery

CLASS General Police P/W Utility Other
 ANK ACCT# _____
 ANK ACCT NAME Water/Sewer
 EXPENSE CODE # 36335
 EXPENSE CODE NAME Maint/Repairs
 Approved By Josh Yates

Prepared by:
 Mike Muckleroy
 Director of Public Works
 January 24, 2019



Branco, Cathy <cbranco@ci.montgomery.tx.us>

Fwd: Cost Estimate for Adkins Creek Waterline

1 message

Yates, Jack <jyates@ci.montgomery.tx.us>

Thu, Jan 24, 2019 at 2:00 PM

To: Mike Muckleroy <mmuckleroy@ci.montgomery.tx.us>

Cc: Sara Countryman <scountryman@ci.montgomery.tx.us>, "T. J. Wilkerson" <TWilkerson@ci.montgomery.tx.us>, Jon Bickford <jbickford@ci.montgomery.tx.us>, John Champagne <jchampagne@ci.montgomery.tx.us>, "Huss, Rebecca" <rhuss@ci.montgomery.tx.us>, Tom Cronin <tronin@ci.montgomery.tx.us>, Larry Foerster <foerster@dfcllp.com>, Chris Roznovsky <CRoznovsky@jonescarter.com>, Cathy Branco <cbranco@ci.montgomery.tx.us>

In the interest of the emergency situation regarding serving Terra Vista subdivision with adequate water supply and to prevent another break in this crucial line located immediately south, adjacent to the FM 1097 drainage crossing, I think this is an emergency repair - So you are authorized to proceed. The funds will come from the Water/Sewer Fund -- Maint. and Repairs" line item which at the end of December had a \$212,584.05 available budget balance in that line item.

Jack

----- Forwarded message -----

From: **Muckleroy, Mike** <mmuckleroy@ci.montgomery.tx.us>

Date: Thu, Jan 24, 2019 at 1:46 PM


Subject: Cost Estimate for Adkins Creek Waterline

To: Yates, Jack (jyates@ci.montgomery.tx.us) <jyates@ci.montgomery.tx.us>, McCorquodale, Dave <dmccorquodale@ci.montgomery.tx.us>, Chris Roznovsky <CRoznovsky@jonescarter.com>, Katherine M. Vu <kvu@jonescarter.com>

Jack,

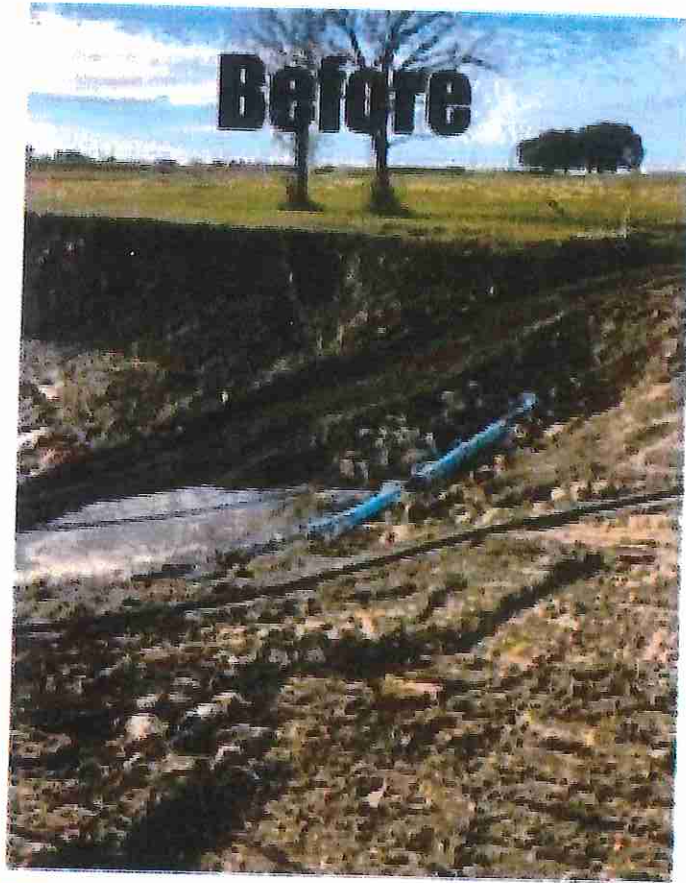
Please let me know if we have authorization for this emergency repair.

Mike Muckleroy, CWP
City of Montgomery
Director of Public Works
Main: 936-597-6434
Cell: 936-521-5294
Fax: 936-597-6437
mmuckleroy@ci.montgomery.tx.us

 **Cost Estimate for Adkins Creek Waterline.pdf**
63K

2/1/2019

image8.jpeg



Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Engineer memo explaining the Amendment, the Contract as proposed --amended
Date Prepared: February 7, 2019	

Subject

This is essentially the engineer asking for a \$39,500 increase on the Buffalo Springs bridge engineering contract due to their actual time versus their estimated time at the original contract to the contract. The actual increased cost to the city is \$14,179.15 with the remainder being paid by FEMA and the CDBG grant.

Description

Summary of the original project cost is:

FEMA share \$989,060.93
CDBG share \$296,506.97
Local share \$ 33,180.00
Total \$1,318,747.90

As proposed due to engineering amendment:

FEMA share \$1,087,077.45
CDBG share \$ 315,000.00
Local shares \$ 47,359.15
Total \$1,114,936.60

Summary of the engineering original contract is:

FEMA share \$ 221,250.00
CDBG share \$ 40,570.00
Local share \$ 33,180.00
Total \$ 295,000.00

Montgomery City Council
AGENDA REPORT

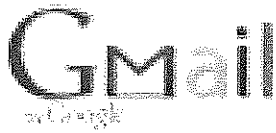
<p>Engineering is proposed:</p> <table style="margin-left: 40px;"><tr><td>FEMA share</td><td>\$ 250,875.00</td></tr><tr><td>CDBG share</td><td>\$ 40,570.00</td></tr><tr><td>Local share</td><td>\$ <u>43,055.00</u></td></tr><tr><td>Total</td><td>\$ 334,500.00</td></tr></table> <p>On page 3 of the attached email- the engineer explains the engineering inspection increases due to the increased length of the project and the problems with the contractor that they had to be on site more coordinate more and produce more pay estimates. Also on page 3 for survey services the Council action staking was considerably less than originally proposed. Also on page 3 concerning construction materials testing was approximate 15,000 overbudget due to increased time having to be on-site an additional test that had to be performed due to the delays in the project. As a reminder the city received approximately \$20,000 reduction and contract amount paid due to delayed adjustments to the contract price.</p>	FEMA share	\$ 250,875.00	CDBG share	\$ 40,570.00	Local share	\$ <u>43,055.00</u>	Total	\$ 334,500.00
FEMA share	\$ 250,875.00							
CDBG share	\$ 40,570.00							
Local share	\$ <u>43,055.00</u>							
Total	\$ 334,500.00							

Recommendation

Motion to approve the contract amendment as proposed– as part of the Consent Item Agenda.

Approved By

City Administrator	Jack Yates	Date: February 7, 2019
--------------------	------------	------------------------



Yates, Jack <jyates@ci.montgomery.tx.us>

RE: Buffalo Springs Drive Bridge

1 message

Chris Roznovsky <CRoznovsky@jonescarter.com>

Mon, Jan 14, 2019 at 10:27 AM

To: "Jack Yates - City of Montgomery (jyates@ci.montgomery.tx.us)" <jyates@ci.montgomery.tx.us>

Cc: "Katherine M. Vu" <kvu@jonescarter.com>, "scountryman@ci.montgomery.tx.us" <scountryman@ci.montgomery.tx.us>

Good Morning Jack,

I wanted to send you an updated summary on the total cost of the bridge project and follow up with you regarding the engineering portion.

Construction Final:

Below is a summary of the final construction cost and a comparison of the source of funding from the original bid to the final cost.

Original Contract Amount	\$1,023,747.90
Total revised contract amount (w/ change orders)	\$1,136,436.60
Total revised amount Less LD (\$21,500) -	\$1,114,936.60

Source of funds of original construction amount:

FEMA (75%)	\$767,810.93
CDBG (Per Contract)	\$255,936.97
City	\$0
Total	\$1,023,747.90

Source of funds of final construction amount:

FEMA (75%)	\$836,202.45
------------	--------------

CDBG (Per Contract)	\$274,430.00
City	<u>\$4,304.15</u>
Total	\$1,114,936.60

Engineering Contract:

As we have been discussing for some time, JC has spent considerably more time at the bridge than was originally proposed in our contract. As we discussed, we would like to request to amend the contract to cover the extra time (166% to substantial completion and 182% to final completion) that had to be spent due to the delays. Below is a brief summary of the changes, and attached is a marked-up contract showing the changes. I have updated this number to reflect a slight (\$1,000) reduction from what I sent to you on November 29th to account for the actual cost of materials testing now that the project is complete.

Summary:

The new proposed maximum compensation is \$334,500, up \$39,500 (13.4%) from the original \$295,000. The reasons for the increase are as stated below and as detailed on the attached mark ups to the contract. The root cause is the delay in construction.

The source of funding for the entire engineering contract would be as follows:

Source of Funds Original:

FEMA (75%) -	\$221,250.00
CDBG (Per Contract) -	\$40,570.00
Local -	<u>\$33,180.00</u>
Total -	\$295,000.00

Source of Funds Proposed:

FEMA (75%) -	\$250,875.00
CDBG (Per Contract) -	\$40,570.00
Local -	<u>\$43,055.00</u> (\$9,875 increase from original)
Total -	\$334,500.00

Please note that there is budget remaining in the \$50,000 additional services task, approximately \$6,000. This is to be used as we continue to coordinate with FEMA to close out the project. It is an hourly task so any amount not used will not be charged to the City.

Engineering and Inspection:

We are proposing a \$47,500 (37%) increase to the engineering. This is all for construction phase services, including contract administration and inspection. Due to the increased length of the project and the problems with the contractor we had to be onsite more, coordinate more, and produce more pay estimates, etc.

Survey Services:

The cost for construction staking came in much less than originally proposed (\$4,200 vs the \$22,000 original) due to being able to stake the project only once and the contractor being able to work off of those stakes and not need the additional staking.

Construction Materials Testing:

The actual cost for a sub consultant to perform the construction materials testing for the project came in approximately \$15,000 over budget due to the increased time having to be onsite and additional test that had to be performed due to the delays. This is a pass through cost that JC pays to the construction materials testing lab. JC does have a \$150 processing fee per invoice which accounts for a total of approximately \$1,950 for all the invoices (structural, environmental, geotechnical, and construction materials testing) for the project.

Summary:

The total proposed project cost and source of funding is detailed below. With the changes to engineering proposed above and the changes in the construction price from the original to final, the City's share has increased from \$33,180.00 to \$47,359.15, a \$14,179.15 increase. The City's final share of the total project cost is 3.3%.

Source of Funds Original:

FEMA (75%)	\$989,060.93
CDBG (Per Contract)	\$296,506.97
Local -	<u>\$33,180.00</u>
Total -	\$1,318,747.90

Source of Funds Proposed Final:

FEMA (75%)	\$1,087,077.45
------------	----------------

CDBG (Per Contract)	\$315,000
Local -	<u>\$47,359.15</u>
Total -	\$1,449,436.60

You mentioned that you needed to meet with Mayor to discuss. I am available to meet with both of you if you like to discuss.

Thanks,

Chris Roznovsky, P.E.

Department Manager

Municipal and District Services
croznovsky@jonescarter.com

JONES | CARTER

Direct Telephone 713.389.1514

Cell Phone 281.796.3101

Telephone 281.363.4039 Ext. 1008

From: Chris Roznovsky

Sent: Thursday, November 29, 2018 6:38 PM

To: Jack Yates - City of Montgomery (jyates@ci.montgomery.tx.us) <jyates@ci.montgomery.tx.us>

Cc: Katherine M. Vu <kvu@jonescarter.com>; scountryman@ci.montgomery.tx.us; Larry Foerster <foerster@dfcllp.com>

Subject: Buffalo Springs Drive Bridge

Good Evening Jack,

I wanted to send a summary/follow up on the closing out of the Buffalo Springs Drive bridge project, as we are completing the final documents.

Liquidated Damages:

The revised contract period of performance end date was July 24, 2018. The contractor did not substantially complete the project (road was not ready to be opened) until October 31, 2018. This was a delay of 99 days. Pursuant to General Conditions of the Contract, Section 9.0(c) –Liquidated Damages for Delays, the City can pursue Liquidated Damages for Delays in the amount of \$250 a day for every day past the period of performance. This equates to \$24,750.00.

We relayed the \$24,750 to the contractor and he disagrees and is fighting it. He has asked for 21 days to be removed from the Liquidated Damages due to impact days. We reviewed our logs within the time period requested and have identified a total of 13 days that could be considered impact days. The difference between what he is asking for and what we can account for is 8 days or \$2,000. Assuming the City agrees with the 13 less days, the total liquidated damages comes to \$21,500.00. If the City is willing to not charge LDs on the 21 days requested the total liquidated damages come to \$19,500.00.

As we have previously discussed, the City may need to prove the damages incurred to justify the liquidated damages if this ends up in court. The additional costs the City incurred are additional engineering, testing, and administration efforts to monitor the project and cost for the concrete flume that was delayed due to the project.

Change Order:

We have been discussing the need for an additional change order for the project to account for the adjustment to final quantities. The final adjustments include:

Additional Asphalt Paving (Bid Item No. 35) -	\$10,871.00
Additional Hydro mulch (Bid Item No. 44) -	\$6,337.50
Reduction to sod (Bid Item No. 45) -	\$(1,500.00)
 Total -	 \$15,708.50

The additional asphalt was for additional road damage that had occurred which required replacement and the additional hydromulch is to cover the additional areas that were disturbed.

With this change order the revised total construction contract becomes:

Original Contract Amount	\$1,023,747.90
Total revised contract amount (w/ change orders)	\$1,138,386.40
Total revised amount Less LD (min reduction \$19,500) -	\$1,118,886.40

Source of funds of final construction amount:

FEMA (75%)	\$839,164.80
CDBG (Per Contract)	\$274,430.00
City	\$5,291.60

FYI - If the City charged the full \$24,750 in LDs, that the contractor may fight, the total from City would be \$4,104.10. If charged the full LDs minus the 13 days we can account for the total from the City would be \$4,731.60.

GrantWorks is reviewing to see if the decision on the days can be delayed or if it has to be decided to put the additional days on the Change Order. **Per the CDBG cutoff date, the Change Order needs to be approved by the City tomorrow as we previously discussed.**

Engineering Contract:

As we discussed a few weeks ago, JC has spent considerably more time at the bridge than was originally proposed in our contract. As we discussed, we would like to request to amend the contract to cover the extra time (166% to substantial completion and 182% to final completion) that had to be spent due to the delays. Below is a brief summary of the changes, and attached is a marked-up contract showing the changes.

Summary:

The new proposed maximum compensation is \$335,500, up \$40,500 (13.7%) from the original \$295,000. The reasons for the increase are as stated below and as detailed on the attached mark ups to the contract. The root cause is the delay in construction.

The source of funding for the entire engineering contract would be as follows:

Source of Funds:

FEMA (75%) -	\$251,625
CDBG (Per Contract) -	\$40,570
Local -	\$43,305 (\$10,000 increase from original)
Total -	\$335,500

Engineering and Inspection:

We are proposing a \$47,500 (37%) increase to the engineering. This is all for construction phase services, including contract administration and inspection. Due to the increased length of the project and the problems with the contractor we had to be onsite more, coordinate more, and produce more pay estimates, etc.

Survey Services:

The cost for construction staking came in much less than originally proposed (\$4,200 vs the \$22,000 original) due to being able to stake the project only once and the contractor being able to work off of those stakes and not need the additional staking.

Construction Materials Testing:

The actual cost for a sub consultant to perform the construction materials testing for the project came in approximately \$15,000 over budget due to the increased time having to be onsite and additional test that had to be performed due to the delays. This is a pass through cost that JC pays to the construction materials testing lab. JC does have a \$150 processing fee per invoice which accounts for a total of approximately \$2,100 for all the invoices (structural, environmental, geotechnical, and construction materials testing) for the project.

Summary:

The total proposed project cost (assuming the contract amendment and the minimum amount of LDs) for engineering, testing, construction, etc. is \$1,454,386.40.

Source of Funds:

FEMA (75%)	\$1,090,789.80
CDBG (Per Contract)	\$315,000
Local -	\$48,596.60
 Total -	 \$1,454,386.40

Please let me know if you have any questions. We can also further discuss in the morning.

Thanks,

Chris Roznovsky, P.E.
Department Manager

Municipal and District Services
croznovsky@jonescarter.com

JONES | CARTER

1575 Sawdust Road, Suite 400

The Woodlands, Texas 77380
Direct Telephone 713.389.1514

Cell Phone 281.796.3101

Telephone 281.363.4039 Ext. 1008

One Company. Unlimited Potential.™www.jonescarter.com***Join our team!*****Follow us for the latest industry news and company updates.**

This e-mail and any attachments are intended only for the named recipient(s) and may contain information that is legally privileged, confidential, or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), you may not retain copy or use this e-mail or any attachment for any purpose or disclose all or any part of the contents to any other person. Any such dissemination, distribution or copying of this e-mail or its attachments is strictly prohibited. Please immediately notify the sender and permanently delete this e-mail and any attachment from your computer and/or electronic devices. Any personal views or opinions expressed by the writer may not necessarily reflect the views or opinions of Jones & Carter, Inc.

**JC Proposed Contract Amdendments Revised 011419.pdf**

490K

**ENGINEERING AND SURVEYOR SERVICES AGREEMENT
AMENDMENT NO. 1**

**PART I
AGREEMENT**

THIS AGREEMENT, entered into this _____ day of January, 2019 by and between the CITY OF MONTGOMERY, hereinafter called the "City", acting herein by Jack Yates, City Administrator hereunto duly authorized, and JONES & CARTER, INC. hereinafter called "Firm," acting herein by Joshua P. Lee, PE, Vice President. **THIS AGREEMENT, replaces the previous agreement dated the 22 of March, 2018 in its entirety.**

WITNESSETH THAT:

WHEREAS, the City of Montgomery desires to implement the following: Buffalo Springs Drive Bridge Embankment Rehabilitation Project under the general direction of the Texas Community Development Block Grant (hereinafter called "TxCDBG") Program administered by the Texas Department of Agriculture (TDA); and

WHEREAS, the City desires to engage the Firm to render certain engineering and surveying services in connection with the TxCDBG Project, Contract Number 7217037.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services - The Firm will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the Firm shall commence on February 14, 2017. In any event, all of the services required and performed hereunder shall be completed no later than the ending date of the City's contract with the TDA.
3. Local Program Liaison - For purposes of this Agreement, the City Administrator or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and the City, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Firm which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to close out the City's TxCDBG contract with TDA.
5. Retention of Records - The Firm shall retain all required records for three years after the City makes its final payment and all pending matters are closed.

6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **\$334,500.00**. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.

The maximum amount of reimbursement paid from the Grant is not to exceed \$40,570. The remaining funds will come from FEMA and City funds.

7. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against any and all claims, costs, suits, and damages, including attorney's fees, arising out of the Firm's performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.
8. Miscellaneous Provisions
 - a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Montgomery County, Texas.
 - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
 - c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
 - d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
 - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.
9. Extent of Agreement - This Agreement, which includes Parts I-V represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and the Firm.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

CITY:

City of Montgomery, Texas

BY: _____

Jack Yates
City Administrator

Date: _____

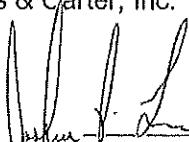
Attest: _____

Susan Hensley
City Secretary

FIRM:

Jones & Carter, Inc.

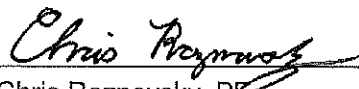
BY: _____


Joshua P. Lee, PE
Vice President

Date: _____

1/24/19

Attest: _____


Chris Roznovsky, PE
Engineer for the City

PART II
SCOPE OF SERVICES

The Firm shall render the following professional services necessary for the development of the project:

SCOPE OF SERVICES

1. Attend preliminary conferences with the City/County regarding the requirements of the project.
2. Assist City in coordination with FEMA to obtain approval for funding including performing additional analysis and evaluations as required.
3. Determine necessity for acquisition of any additional real property/easements/rights-of-way (ROWs) for the TxCDBG project and, if applicable, furnish to the City:
 - a. Name and address of property owners;
 - b. Legal description of parcels to be acquired; and
 - c. Map showing entire tract with designation of part to be acquired.
4. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City's representative in connection with any such services.
5. Prepare railroad/highway permits.
6. Furnish the City a written monthly status report at least seven (7) days prior to the regularly scheduled council's court meeting until the project is closed by TDA. The format for this report is attached to this Agreement as Exhibit 1.
7. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
8. Prepare bid packet/contract documents/advertisement for bids. At the time, the bid packet is completed, the Firm shall also furnish to the City an updated written Estimate of Probable Costs for the Project.
9. Ensure 10-day call to confirm prevailing wage decision.
10. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
11. Conduct bid opening and prepare minutes.
12. Tabulate, analyze, and review bids for completeness and accuracy.
13. Ensure construction contractor's eligibility verification through www.SAM.gov is accomplished.
14. Conduct pre-construction conference and prepare copy of report/minutes.
15. Issue Notice to Proceed to construction contractor.
16. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
17. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.

18. Use TDA-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
19. Make periodic visits, no less than every 30 days during the construction period, to the site to observe the progress and quality of the work, and to determine, in general, if the work is proceeding in accordance with the Agreement.
20. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City and the Firm and submit to TDA for approval prior to execution with the construction contractor.
21. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
22. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
23. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
24. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the City and approval by TDA, unless State or local law provides otherwise.
25. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
26. Conduct interim/final inspections.
27. Revise contract drawings to show the work as actually constructed, and furnish the City/County with a set of "record drawings" plans.
29. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City/County. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the City.

2. The Firm shall, prior to proceeding with the work, notify the City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).
5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be affected and the basis for settlement.
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
 - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
 - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
 - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
 - d. Section 3 of the Housing and Urban Development Act of 1968;
 - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
 - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
 - g. For procurement of recovered materials where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance

programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.

9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City has made final payment to the contractor and all other pending matters are closed.

STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
 2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
 3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Firm's expense if the deficiency is due to Firm's negligence. The City shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City/County under applicable state or federal law.
 4. The Firm agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.
-

**PART III -
PAYMENT SCHEDULE**

City shall reimburse the Firm for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

Milestone	% of Contract Fee
• Completion of Topographic Survey	20%
• Approval of Preliminary Engineering Plans and Specifications by City.	20%
• Approval of Plans and Specifications by Regulatory Agency(ies).	20%
• Completion of bid advertisement and contract award.	10%
• Construction 50% Complete.	10%
• Construction Complete Prior to Final Inspection	10%
• Final Inspection, Submittal of Record Drawings, and Acceptance by the City.	10%
Total	100%

BASIC SERVICES

1. The Firm shall provide basic services including preliminary design, design, construction administration, and field project representation. The payment for these BASIC SERVICES shall be paid as a lump sum of **one hundred and seventy-six thousand and No/100 Dollars (\$176,000)**.
2. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.

ADDITIONAL SERVICES

1. The Firm shall be reimbursed the actual costs of additional services including:
 - a. Coordination with FEMA
 - b. Analysis and evaluations required by FEMA
 - c. Coordination with CDBG
 - d. Other additional engineering services not listed in the scope of work above.Actual costs shall be based upon the enclosed schedule of hourly rates. All fees for additional services not exceed a total of fifty thousand and No/100 Dollars (\$50,000.00).
2. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.

SURVEYING SERVICES

1. The Firm shall be reimbursed the actual costs of topographic surveying and construction staking services based upon the enclosed schedule of hourly rates (Exhibit 2). All fees for surveying shall not exceed a total of **twenty-six thousand, five hundred and No/100 Dollars (\$26,500.00)**.
2. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.

SPECIAL SERVICES

1. The Firm shall be reimbursed the actual costs of necessary geotechnical investigation and materials testing based on itemized billing statements from the independent testing laboratory, plus a \$150.00 processing fee per invoice. **All fees for testing shall not exceed a total of sixty-one thousand and No/100 Dollars (\$61,000.00).**
2. The Firm shall be reimbursed the actual costs of necessary structural engineering and environmental sub consultant fees based on billing statements from the sub consultants, plus a \$150.00 processing fee per invoices. **All fees for testing shall not exceed a total of twenty-one thousand and No/100 Dollars (\$21,000.00)**
2. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.
3. Any work performed by the Firm prior to the execution of this Agreement is at the Firm's sole risk and expense.



PART IV
TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Firm, and the City may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the City.

City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City for any additional compensation or damages in the event of such termination and payment.

3. Changes. The City may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement.

To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.

- a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Firm from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

7. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Records and Audits. The Firm shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.
11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
 - a. Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
 - b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
 - a. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the City or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the City or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Federal Civil Rights Compliance.

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000).

During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 16. Section 109 of the Housing and Community Development Act of 1974. The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
 17. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
 18. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 19. Reporting Requirements - The Firm shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

20. Patent Rights - The Firm shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).
21. Copyrights and Rights in Data - The Firm shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).
22. Energy Efficiency - The Firm shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).
23. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Firm will not subcontract with any subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

h. The Firm shall follow the City's Section 3 plan.

24. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000)

The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

25.

PART V
PROJECT TIME SCHEDULE
ENGINEERING AND SURVEYOR
PROFESSIONAL SERVICES

Activity to be Completed by Date Specified	Milestone Date
City of Montgomery's Contract Start Date	2/14/2017
Engineering Contract Executed	3/15/2017
Topographic Survey Completed	4/16/2017
Plans and Specifications Completed	9/30/2017
Plans and Specifications Submitted for Approval (As Required per TxCDBG Project Implementation Manual)	9/30/2017
Wage Rate 10-Day Confirmation	10/30/2017
Construction Contract Awarded and Executed	12/12/2017
Construction – 50% TxCDBG Project Complete	3/30/2018
Construction – 75% TxCDBG Project Complete	5/15/2018
Construction – 90% TxCDBG Project Complete	6/15/2018
Construction & Final Inspections Completed	7/2/2018
City of Montgomery's Contract End Date	11/30/2018

Exhibit 1.

MONTHLY STATUS REPORT

Grant Recipient: _____

Date Submitted: _____

Grant No.: _____

Reporting Period: _____

Project Status:

Date of Last Inspection: _____

Name of Inspector: _____

Inspection Description:

Projected Date of Construction Completion: _____

Amount of Last Pay Request: _____

Date of Last Pay Request: _____

Status of Last Pay Request: _____

List of Subcontractors Onsite

Name

Date Cleared by Grant Administrator

**This report may be e-mailed or faxed to the Grant Recipient*

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: the engineer memo, Certificate of Acceptance
Date Prepared: February 7, 2019	

Subject

This is to consider approval acceptance of public water, public sanitary sewer, and public paving included in the Emma's Way Extension subdivision and the approval of the Certificate of Acceptance.

Description

Attached is the engineer's memo regarding his recommendation for the city to accept the public water, sanitary sewer and paving infrastructure and to begin the one year warranty.

There are no outstanding punchlist items.

Also attached is the Certificate of Acceptance which serves as the approval of the work to begin the one-year guarantee of the work on the project to and on February 12, 2019.

Recommendation

Motion to accept the water, sanitary sewer and paving infrastructure in the Certificate of Acceptance-- as part of the Consent Item Agenda

Approved By

City Administrator

Jack Yates

Date: February 7, 2019



1575 Sawdust Road, Suite 400
The Woodlands, Texas 77380
Tel: 281.363.4039
Fax: 281.363.3459
www.jonescarter.com

February 6, 2019

The Honorable Mayor and City Council
City of Montgomery
101 Old Plantersville Rd.
Montgomery, Texas 77316

Re: Acceptance of Public Infrastructure
Emma's Way Extension Public Infrastructure
City of Montgomery

Dear Mayor and Council:

We have conducted a final inspection of the referenced development and find it to be substantially complete in accordance with the approved plans and specifications. The developer has provided the required maintenance bond for the infrastructure, as included with this letter. We recommend the City accept the public water, sanitary sewer, and paving infrastructure and begin the one-year warranty period, which will end on February 12, 2020.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE
Engineer for the City

CVR/kmv

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2019\MEMO to Council RE Emma's Way Extension Acceptance.doc

Enclosures: Final Punch List – W5841-1020-00
Certificate of Substantial Completion – Jones | Carter
Maintenance Bond
Certificate of Acceptance

cc/enc (via email): Mr. Jack Yates – City of Montgomery, City Administrator
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Larry Foerster – Darden, Fowler & Creighton, City Attorney
Mr. Mike Muckleroy – City of Montgomery, Public Works Director

CERTIFICATE OF SUBSTANTIAL COMPLETION FOR
CONSTRUCTION OF EMMA'S WAY EXTENSION
CITY OF MONTGOMERY

February 6, 2019

OWNER: The Honorable Mayor and City Council
City of Montgomery
101 Old Plantersville Road
Montgomery, TX 77316

CONTRACTOR: Spartan Direct Solutions, LLC
3400 Churchill Dr.
Nacogdoches, TX 75965

CONTRACT: Construction of Emma's Way Extension
City of Montgomery

We have observed the subject project constructed by the **CONTRACTOR** and find it to be substantially complete in accordance with the approved plans and specifications. The project was periodically observed during construction by our field project representative.

We recommend that the **OWNER** issue the **CONTRACTOR** a Certificate of Acceptance of the Work. We also recommend that the Contractor's guarantee period of 1 year begin February 12, 2019.



Sincerely,

Chris Roznovsky, PE
City Engineer

CVR/KMV:jmr

K:\W5841\W5841-1020-00 Emma's Way Extension\3 Construction Phase\Contract Documents\Substantial Completion.doc

cc: Mr. Jack Yates – City of Montgomery, City Administrator
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Larry Foerster – Darden, Fowler & Creighton, LLP, City Attorney
Mr. Jonathan White, PE – L2 Engineering, Engineer
Mr. Mike Muckleroy – City of Montgomery, Public Works Director



JONES | CARTER

1575 Sawdust Rd, Suite 400, The Woodlands, Texas 77380
TBPE Registration No. F-439

MAINTENANCE BOND

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT Christian C. Cheatham of the City of Montgomery, County of Montgomery, and State of Texas, as PRINCIPAL, and Hudson Insurance Company is/are authorized under the Laws of the State of Texas to act as SURETY on bonds for PRINCIPAL, as SURETY, are held and firmly bound unto **City of Montgomery, Texas** as OWNER, in the penal sum of Seventy Two Thousand Five Hundred Twenty Nine dollars and 65 cents (\$ 72,529.65) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their officers, directors, successors and assigns, jointly and severally, pursuant to the following:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the ____ day of _____, 20__, for construction of:

Emma's Way Extension Paving----- **Improvements**
 to serve
 City of Montgomery, Texas

which contract is hereby referred to and make a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said PRINCIPAL shall perform regular maintenance and shall repair, replace and restore any and all defects for work provided in said Contract for a period of one (1) year from the date of acceptance of said work from defects in materials furnished by, or workmanship of the contractor or subcontractor performing the work covered by said contract, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 for Public Work of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the 21st day of January, 2019.

Christian C. Cheatham
Principal

By: *Christian C. Cheatham*

Title: OWNER

Address: P.O. Box 234
Montgomery, Texas 77356

Hudson Insurance Company
Surety

By: *Michele Bonnin*
Michele Bonnin

Title: Attorney-In-Fact

Address: 100 William Street, 5th Floor
New York, New York 10038

(SEAL)

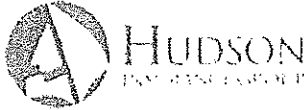
(SEAL)

The name and address of the Resident Agent of Surety is:

Michele Bonnin c/o Technical Assurance, L.L.C.
26623 Oak Ridge Drive, The Woodlands, Texas 77380

The name, mailing address, physical address and telephone number, including the area code, of the Surety to which any notice of claim should be sent:

Hudson Insurance Company
100 William Street, 5th Floor
New York, New York 10038
(800) 388-3647



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Erica Anne Cox, Jillian McKenzie, Michele Bonnin, Shelly Bolender of the State of Texas

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of Ten Million Dollars (\$10,000,000.00).

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Executive Vice President thereunto duly signed on this 20th day of November, 2014 at New York, New York.



Attest: [Signature] Dina Daskalakis Corporate Secretary

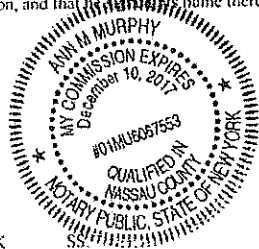
HUDSON INSURANCE COMPANY

By [Signature] Christopher T. Suarez Executive Vice President

STATE OF NEW YORK COUNTY OF NEW YORK SS.

On the 20th day of November, 2014 before me personally came Christopher T. Suarez to me known, who being by me duly sworn did depose and say that he is an Executive Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation, and that he attests to its name thereto by like order.

(Notarial Seal)



[Signature] ANN M. MURPHY Notary Public, State of New York No. 01MU607553 Qualified in Nassau County Commission Expires December 10, 2017

CERTIFICATION

STATE OF NEW YORK COUNTY OF NEW YORK

The undersigned Dina Daskalakis hereby certifies: That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOLVED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed"

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this 21st day of January, 2019.

(Corporate Seal) Form HICSW-10-A218-0111 (v1)

[Signature] Dina Daskalakis, Corporate Secretary

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact Blair Holl at (312) 706-0258.
3. You may call Hudson Insurance Company's toll-free telephone number for information or to make a complaint at:

1-800-388-3647

4. You may also write to Hudson Insurance Company at:

100 William Street, 5th Floor
New York, NY 10038

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the (agent) first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con Blair Holl al (312) 706-0258.

Usted puede llamar al numero de telefono gratis de Hudson Insurance Company's para informacion o para someter una queja al:

1-800-388-3647

Usted tambien puede escribir a Hudson Insurance Company al:

100 William Street, 5th Floor
New York, NY 10038

Puede Comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concierne a su prima o a un reclamo, debe comunicarse con el (agente) primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



For Single Bonds up to \$350,000 and
Aggregate Programs up to \$700,000

QUICK START PROGRAM

This document must be encrypted prior to electronic transmission to Hudson Insurance Company

PRINCIPAL	
Entity: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Sub S Corporation <input type="checkbox"/> LLC	
Name Christian C. Cheatham	
Mailing Address P.O. Box 234	
City, State, Zip Montgomery, Texas 77356	
Physical Address 21300 Eva Street, Suite 210	
City, State, Zip Montgomery, Texas 77356	
Phone (936-449-5400)	Fax (936-597)5405
Nature of Business Real Estate Development	Federal I.D. Number 452-78-1263
How long have you been engaged in the business for which this bond is required? Year Business Started 1997	
Have any claims ever been made against bonds you have posted in the past? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If Yes, explain on separate sheet)	
Has Principal or have any of its owners, partners or stockholders ever failed in business, compromised with creditors, been subject of bankruptcy or surety claims proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If Yes, please explain on separate sheet)	
BOND REQUIRED	
Obligee City of Montgomery, Texas	
Address 101 Old Plantersville Road	
City, State, Zip Montgomery, Texas 77356	
DOES THE OBLIGEE/OWNER REQUIRE A SPECIAL BOND FORM? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If Yes, ATTACH Form(s)	
Start Date: July 1, 2018 Completion Date: December 1, 2018 Penalty Clause \$	
Total Cost to Complete Current Work On Hand	
Project Description Paving for Emma's Way Extension	
Project Solicitation or Invitation Number	
Project Location (City & State) Montgomery, Texas	
<input type="checkbox"/> For a BID BOND: Bid Date	Bid Estimate \$
Percent (%) Bid Bond Required	or Flat Amount \$
<input type="checkbox"/> For a FINAL BOND (Performance/Payment): Attach copy of contract and bid results	
Date of Contract:	Contract Price
<input checked="" type="checkbox"/> For a MAINTENANCE BOND Attach copy of Contract	Bond Amount \$ \$72,529.65
# of Years 1	1 st Yr. % 100% 2 nd Yr. % 3 rd Yr. % Other:
GIVE THE FOLLOWING INFORMATION ON EACH OWNER, PARTNER OR STOCKHOLDER	
Attach additional owner, partner or stockholder information on separate sheet. We WILL pull a credit report.	
Name Christian C. Cheatham	Social Security # 452-78-1263
Name of Spouse Mary E. Cheatham	Social Security # 453-11-2251
Residence Physical Address 509 Louisa Street	
City, State and Zip Montgomery, Texas 77316	Phone (936-520-7599)
Title Owner	Personal Net Worth 25,000,000.00
% Ownership 100%	Years Experience 20
Name	Social Security #
Name of Spouse	Social Security #
Residence Physical Address	
City, State and Zip	Phone ()
Title	Personal Net Worth
% Ownership	Years Experience
Name	Social Security #
Name of Spouse	Social Security #
Residence Physical Address	
City, State and Zip	Phone ()
Title	Personal Net Worth
% Ownership	Years Experience

INDEMNITY AGREEMENT – READ CAREFULLY

Each of the undersigned Principal(s) and Indemnitor(s) hereby affirms that the foregoing statements made and answers given are the truth and are made to induce Hudson Insurance Group (herein called Surety), its successors and assigns, to execute or procure the execution of any and all of the bonds described herein, and any extension, modification, or renewal thereof, addition thereto, or substitution therefore. Each of the undersigned further affirms and understands the bond applied for is a credit relationship and hereby authorizes Surety, to gather such credit information Surety considers necessary and appropriate for purposes of evaluating whether such credit should be granted, extended or continued. Bonds shall be defined as any surety bond, undertaking, or other express or implied obligation of guaranty of suretyship executed or committed to by Surety on, before or after this date, and any riders, endorsements, extensions, continuations, renewals, substitutions, increases or decreases in penal sum, reinstatements or replacements thereto. IN CONSIDERATION of the execution of such bonds, and in compliance with a promise of the undersigned made prior thereto, the undersigned hereby agree, for themselves, their personal representatives, successors, and assigns, jointly and severally, as follows:

- To reimburse Surety, upon demand for all payments made for and to indemnify and keep indemnified Surety from: a) all demands, loss, contingent loss, liability and contingent liability claim, expense, including all attorney's fees (in house and outside counsel) and any and all costs, for which Surety is or may become liable or shall become contingently liable by reason of such suretyship, whether or not Surety shall have paid same at the time of demand; and b) to pay to Surety an initial premium upon the execution of each bond, computed on the basis of contract price, regardless of the amount of any such bond, in accordance with rates in effect at the time such bond is issued, and to pay to Surety, or receive from Surety, as the case may be, a premium computed on the difference in contract price occurring in the progress or upon completion of the project or operation for which a bond is executed.
- Surety shall have the exclusive right to determine whether any claim or suit shall, on the basis of liability, expediency or otherwise, be denied, paid, compromised, defended or appealed. An Itemized statement of payments made by Surety for loss, contingent loss, liability, and/or expense, sworn to by an officer of Surety, or the voucher or vouchers for such payments, shall be prima facie evidence of the obligation of the undersigned to reimburse Surety.
- Each of the undersigned agrees to pay the full amount of the foregoing regardless of (a) the failure of the Principal(s) to sign any such bond or (b) any claim that other indemnities, securities, or collateral was to have been obtained or (c) the release, return or exchange by Surety with or without the consent of the undersigned, of any indemnity, security or collateral that may have been obtained or (d) the fact that any party signing this instrument is not bound for any reason.
- The undersigned hereby expressly waive notice from Surety of any claim or demand made against Surety or the Principal(s) under the bond, or of any information Surety may receive concerning the Principal(s), or bond. Surety shall have the right to decline any or all bonds herein applied for, and shall have the right to withdraw from, or cancel, or procure its release from such suretyship at any time, all without incurring any liability to the undersigned.
- Whenever used in this Agreement, the plural term shall include the singular and the singular shall include the plural, as the circumstances require. If any portion of this Agreement be in conflict with any law controlling the construction hereof, such portion of the instrument shall be considered to be deleted and the remainder shall continue in full force and effect.
- This Agreement is a continuing obligation of the Principal(s) and Indemnitor(s) and may be terminated only upon written notification to Surety. Such notice shall state the effective date of such termination, which shall, in no event, be less than 30 days following receipt of such notice by Surety. No termination of this Agreement shall relieve any Principal or Indemnitor of any obligation or liability under this Agreement, or the bond, regardless of when such obligation or liability shall become known to Surety.
- The Principal(s) and Indemnitor(s) hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Principal(s) and Indemnitor(s) assigned, transferred and set over to the Surety in this Agreement, and in the name of the Principal(s) and Indemnitor(s) to make, execute and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Principal(s) and Indemnitor(s) hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact. Indemnitor(s) agree(s) that Surety may at anytime it deems necessary take whatever steps Surety deems necessary to protect its interests, including but not limited to filing liens, mortgages and any other document that will protect Surety's interests.
- A facsimile of this Agreement shall be considered an original and shall be admissible in a court of law to the same extent as an original copy.
- If a claim or demand for performance of any obligation under any bond is made against Surety, undersigned, upon Surety's demand, shall immediately deposit with Surety United States legal currency, as collateral security, in an amount equal to the reserves posted by Surety with respect to such claim or demand, plus an amount equivalent to Surety's estimate of its anticipated expenses and attorney's fees to be incurred in connection therewith. Undersigned acknowledges and agrees that Surety shall be entitled to specific performance of the obligations imposed by this paragraph.
- Surety shall have the right in its sole discretion to decide whether any claims arising out of or related to any bond shall be paid, compromised, defended, prosecuted or appealed regardless of whether or not suit is actually filed or commenced against Surety upon such claim. Absent Surety's intentional wrongdoing, undersigned agree to be conclusively bound by Surety's determination.

IF PRINCIPAL IS:

SOLE PROPRIETORSHIP, owner must sign as principal. Also the owner and spouse must sign individually.
PARTNERSHIP, one authorized partner must sign for principal. Also all authorized partners and their spouses must sign individually.
CORPORATION, President must sign for principal. Also stockholders of corporation owning 10% or more and their spouses must sign individually.
LLC, the managing member must sign on behalf of the LLC. Also all authorized managers/members and their spouses must sign individually.

Signed this 17th day of JANUARY, 20 19

PRINCIPAL NAME:

CHRISTIAN C. CHEATHAM

Type or Print Principal Name

Signature: Christian C. Cheatham

OWNER

Type or Print Name & Title

STATEMENT OF PERSONAL INDEMNITORS

In consideration of the execution by Hudson Insurance Group, each of the undersigned, jointly and severally, agrees to be bound by all of the terms of the foregoing Indemnity Agreement, executed by the applicant, as fully as though each of the undersigned were the sole applicants named herein, and admit to being financially interested in the performance of the obligation which the suretyship applied for is given to secure.

Type or Print Name of Individual Indemnitor

X

Signature

Type or Print Name of Individual Indemnitor

X

Signature

Type or Print Name of Individual Indemnitor

X

Signature

Type or Print Name of Individual Indemnitor

X

Signature

****Duplicate this page if additional Indemnitor signatures are required****

Agent Name Technical Assurance, L.L.C.

Address 26623 Oak Ridge Drive

City, State and Zip The Woodlands, Texas 77380

Phone # (281) 296-9997

Fax # (281) 296-9998

Re: Emma's Way Extension Bond Estimate

Job No. 10360

L Squared Engineering

Prepared By: Jonathan White, PE

November 26, 2018



L SQUARED ENGINEERING

MUNICIPAL COMMERCIAL RESIDENTIAL

				Spartan Direct Solutions	
No.	Item Description	Qty	Unit	Unit Cost	Line Item Cost
A. Paving and Grading					
1	6" Stabilization including mixing, manipulation, compaction and fine grading (lime, fly-ash, or other mixing agent material by separate item).	2781	SY	\$ 5.00	\$13,905.00
2	Lime for use in stabilization.	47	TON	\$ 175.00	\$8,225.00
3	Fly-ash for use in stabilization.	24	TON	\$ 185.00	\$4,440.00
4	8" Reinforced Concrete Pavement (including apron tie in), complete in place with all joints, seals, and miscellaneous appurtenances.	2505	SY	\$ 47.00	\$117,735.00
5	4.5" Reinforced Concrete Sidewalk, complete in place with all joints, seals, and miscellaneous appurtenances.	323	SY	\$ 46.00	\$14,858.00
6	6" Standing Curb complete in place with all joints, seals, backfill and miscellaneous appurtenances. Curb to have notches ground into curb at all property corners.	1255	LF	\$ 3.40	\$4,267.00
				Subtotal:	\$163,430.00

B. Storm Drainage					
1	24" RCP Storm Sewer Pipe all depths, complete in place with all excavation, bedding, backfill, fittings and miscellaneous appurtenances.	44	LF	\$ 52.00	\$2,288.00
2	Tie-in proposed 24" RCP into existing storm manhole. Complete in place including excavation, bedding, backfill, core and grout, backfill and other miscellaneous appurtenances.	1	EA	\$ 3,200.00	\$3,200.00
3	Type "C" Inlet including excavation, bedding, backfill, put in place to tie in with existing inlet.	4	EA	\$ 2,650.00	\$10,600.00
				Subtotal:	\$16,088.00

C. Water Utility					
1	12" Domestic Water Line C-900 DR 18 PVC, all depths, complete in place with all excavation, bedding, backfill, bends, fittings, and miscellaneous appurtenances.	603	LF	\$ 59.20	\$35,697.60
2	8" Domestic Water Line C-900 DR 18 PVC, all depths, complete in place with all excavation, bedding, backfill, bends, fittings, and miscellaneous appurtenances.	5	LF	\$ 316.00	\$1,580.00
3	Fire hydrant assembly, complete in place with all necessary appurtenances.	2	EA	\$ 1,400.00	\$2,800.00
4	12" Cap complete in place with all excavation, bedding, backfill, bends, fittings and miscellaneous appurtenances.	1	EA	\$ 750.00	\$750.00

No.	Item Description	Qty	Unit	Unit Cost	Line Item Cost
5	8" Gate Valves complete in place with all excavation, bedding, backfill, bends, fittings and miscellaneous appurtenances.	1	EA	\$ 1,400.00	\$1,400.00
6	12" Gate Valves complete in place with all excavation, bedding, backfill, bends, fittings and miscellaneous appurtenances.	1	EA	\$ 2,450.00	\$2,450.00
7	2" BOV complete in place with all excavation, bedding, backfill, bends, fittings and miscellaneous appurtenances.	2	EA	\$ 900.00	\$1,800.00
8	Remove existing cap and tie into existing waterline	1	EA	\$ 1,200.00	\$1,200.00
				Subtotal:	\$47,677.60

D. Sanitary Utility					
1	8" SDR-26 Class 150 PVC Gravity Sanitary Sewer, all depths, complete in place with all excavation, bedding, backfill, bends, fittings and miscellaneous appurtenances.	1489	LF	\$ 27.50	\$40,947.50
2	Tie into existing manhole, complete in place including excavation, bedding, core and boot, grout, backfill and all other miscellaneous appurtenances.	1	EA	\$ 2,100.00	\$2,100.00
3	Sanitary Sewer manhole, including excavation, bedding, backfill, complete in place with all necessary appurtenances.	8	EA	\$ 2,400.00	\$19,200.00
				Subtotal:	\$62,247.50

Total Construction Cost:	\$241,765.50
---------------------------------	---------------------

Total Bond Cost:	\$72,529.65
-------------------------	--------------------

Bond No. _____

MAINTENANCE BOND

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT _____ of the City of _____, County of _____, and State of Texas, as PRINCIPAL, and _____ is/are authorized under the Laws of the State of Texas to act as SURETY on bonds for PRINCIPAL, as SURETY, are held and firmly bound unto City of **Montgomery, Texas** as OWNER, in the penal sum of _____ dollars and ___ cents (\$_____) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their officers, directors, successors and assigns, jointly and severally, pursuant to the following:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the ___ day of _____, 20___, for construction of:

----- Improvements
 to serve
 City of Montgomery, Texas

which contract is hereby referred to and make a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said PRINCIPAL shall perform regular maintenance and shall repair, replace and restore any and all defects for work provided in said Contract for a period of one (1) year from the date of acceptance of said work from defects in materials furnished by, or workmanship of the contractor or subcontractor performing the work covered by said contract, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 for Public Work of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the _____ day of _____, 20__.

Principal

Surety

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

(SEAL)

(SEAL)

The name and address of the Resident Agent of Surety is:

The name, mailing address, physical address and telephone number, including the area code, of the Surety to which any notice of claim should be sent:

CERTIFICATE OF ACCEPTANCE

Spartan Direct Solutions, LLC
3400 Churchill Dr.
Nacogdoches, TX 75965

Re: Construction of Emma's Way Extension
City of Montgomery

Gentlemen:

This is to certify that City of Montgomery accepts the subject project on the basis of the Certificate of Substantial Completion issued by our engineers, Jones|Carter, and understands that a guarantee shall cover a period of one (1) year beginning February 12, 2019.

By: _____

Mr. Jack Yates
City Administrator, City of Montgomery

Approved by City Council on: _____

K:\W5841\W5841-1020-00 Emma's Way Extension\3 Construction Phase\Contract Documents\Certificate of Acceptance.doc

cc: Mr. Jack Yates – City of Montgomery, City Administrator
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Larry Foerster – Darden, Fowler and Creighton, LLP, City Attorney

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Rezoning Ordinance
Date Prepared: February 7, 2019	

Subject

Consideration and possible action regarding adoption of an ordinance rezoning a 2.186-acre tract of land and a 0.475-acre tract of land located at 1062 Clepper Street, Montgomery from R1-Single Family Residential to B-Commercial.



Description

The passage of this ordinance is the final step in the rezoning process. The request to rezone the property was made by the property owner, James Ward. The P&Z Commission held two public hearings and submitted a Final Report to City Council recommending reclassification of the land use designation. During the P&Z public hearings, two adjacent property owners made comments. Ron Lubojacky owns an adjoining parcel on Clepper Street and believes that his survey shows that he owns approximately a 60'x 60' piece of land that Mr. Ward's survey shows to be part of the Ward property. Messrs. Ward and Lubojacky acknowledged that they would work to determine the correct parcel boundaries. Ms. Natalie Champagne, whose Berkley Street property is adjacent to the north boundary of the Ward property, spoke during the second public hearing and stated that she and her husband had concerns regarding drainage issues that may arise from future development and that they had general concerns related to the visual impact a business may have on their property. She also stated they she did not receive a mailed notice of the potential rezoning. The City Council held one public hearing. Discussion was held between the Council and a member of the P&Z Commission; no member of the community spoke in favor of or opposition to the rezoning.

Recommendation

Consider the ordinance and act as you deem appropriate.

Approved By

Asst. to City Admin.	Dave McCorquodale 	Date: 2/7/19
City Administrator	Jack Yates 	Date: 2/7/19

Motion was made by _____, seconded by _____

_____, that the following Ordinance be passed:

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 98, "ZONING," FOR THE ZONING CLASSIFICATION OF A 2.186 ACRE TRACT OF PROPERTY AND A .0475 ACRE TRACT OF PROPERTY, LOCATED AT 1062 CLEPPER STREET IN MONTGOMERY FROM A "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO A "B" COMMERCIAL ZONING DISTRICT; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE.

WHEREAS, the City Council has passed the City of Montgomery Zoning Ordinance providing certain rules and regulations concerning zoning within the City of Montgomery, as found in the Code of Ordinances ("CODE") at Chapter 98; and

WHEREAS, two tracts of land comprising 2.186 acres and 0.0475 acres located at 1062 Clepper Street, described in attached Exhibit "A," (the "Property"), are currently zoned as "R-1" Single-Family Zoning District on the City's Official Zoning Map; and

WHEREAS, the Owner of the Property, James Ward, has requested that the City Council rezone the Property as "B" Commercial Zoning District as authorized by Section 98-30 of the CODE; and

WHEREAS, the Planning and Zoning Commission conducted two public hearings on the proposed zoning reclassification of the Property on January 7, 2019 and again on January 14, 2019; and

WHEREAS, pursuant to Section 98-30(c) of the CODE, the City Planning and Zoning Commission has submitted a Final Report to the City Council in which it has voted to approve and recommend that the Property be reclassified as "B" Commercial Zoning District consistent with its proposed use; and

WHEREAS, a public hearing was also conducted on February 12, 2019 before the City Council, as authorized by Section 98-30(d) of the CODE, in order to consider the Final Report and the proposed amendment of the zoning classification of the Property to; and

WHEREAS, the City Council finds that all notifications and other procedures required by

Section 98-30 of the CODE have been followed; and

WHEREAS, the City Council has determined that it in the best interest of the citizens of the City that this Property should be reclassified as “B” Commercial Zoning District.

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

Section 1. Adoption of Recitals. The recitals in the preamble to this Ordinance are hereby adopted as the findings and conclusions of the City Council.

Section 2. Amendment to the City Zoning Map. Pursuant to Section 98-30 of the Code of Ordinances, City of Montgomery, Texas, the Official Zoning Map of the City of Montgomery is hereby amended so that the zoning classification of the Property located at 1062 Clepper Street Montgomery, Texas as herein described in the attached Exhibit “A”, is reclassified as a “B” Commercial Zoning District.

Section 3. Codification of this Ordinance. Wherever any provision of this Ordinance provides for the amendment of the Code of Ordinances, City of Montgomery, Texas, such provision shall be liberally construed to provide for the codification of the specified provision and for such other provisions of the Ordinance that the codifier in its discretion deems appropriate to codify. The codifier may change the designation or numbering of chapters, articles, divisions or sections as herein specified in order to provide for logical ordering of similar or related topics and to avoid the duplicative use of chapter, article or section numbers. Neither the codification nor any application of the codified Ordinance shall be deemed invalid on the basis of a variance in the number or section of this Ordinance and its codified provisions. The failure to codify the specified provisions of this Ordinance shall not affect their validity or enforcement.

Section 4. Repeals all Ordinance in Conflict with this Ordinance.

Any and all provisions of ordinances in conflict with this Ordinance are hereby expressly repealed.

Section 5. Savings Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portion of this Ordinance shall not be affected hereby, it being the intention of the City Council of the City of Montgomery in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

Section 6. Effective Date.

The effective date of this Ordinance shall be upon its passage.

PASSED AND APPROVED this _____ day of February 2019

Sara Countryman, Mayor

ATTEST:

Susan Hensley, City Secretary

APPROVED AS TO FORM:

Larry L. Foerster, City Attorney

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Rezoning Ordinance
Date Prepared: February 7, 2019	

Subject

Consideration and possible action regarding adoption of an ordinance rezoning a 7.710-acre tract of land located at Tracts 23-A & 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, Montgomery from ID-Industrial to R1-Single Family Residential.



Description

The passage of this ordinance is the final step in the rezoning process. The request to rezone the property was made by the property owners, Michael and Judith Kammerer. The P&Z Commission held two public hearings and submitted a Final Report to City Council recommending reclassification of the land use designation. The City Council held one public hearing. No one from the community spoke at any of the public hearings.

Recommendation

Consider the ordinance and act as you deem appropriate.

Approved By

Asst. to City Admin.	Dave McCorquodale 	Date: 2/7/19
City Administrator	Jack Yates 	Date: 2/7/19

Motion was made by _____, seconded by _____

_____, that the following Ordinance be passed:

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 98, "ZONING," FOR THE ZONING CLASSIFICATION OF A 7.710 ACRE PROPERTY, BEING TRACTS 23-A AND 24-A LOCATED AT THE SOUTHWEST CORNER OF OLD PLANTERSVILLE ROAD AND WOMACK CEMETERY ROAD, FROM "ID" INDUSTRIAL ZONING DISTRICT TO "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE.

WHEREAS, the City Council has passed the City of Montgomery Zoning Ordinance providing certain rules and regulations concerning zoning within the City of Montgomery, as found in the Code of Ordinances ("CODE") at Chapter 98; and

WHEREAS, Tracts 23-A and 24-A located at the southwest corner of Old Plantersville Road and Womack Cemetery Road, described in attached Exhibit "A," (the "Property") is currently zoned ID" Industrial Zoning District on the City's Official Zoning Map; and

WHEREAS, the Owners of the Property, Michael and Judith Kammerer, have requested that the City Council rezone the Property as "R-1" Single-Family Residential District as authorized by Section 98-30 of the CODE; and

WHEREAS, the Planning and Zoning Commission conducted two public hearings on the proposed zoning reclassification of the Property on January 7, 2019 and again on January 14, 2019; and

WHEREAS, pursuant to Section 98-30(c) of the CODE, the City Planning and Zoning Commission has submitted a Final Report to the City Council in which it has voted to approve and recommend that the Property be reclassified as "R-1" Single-Family Residential District consistent with its proposed use; and

WHEREAS, a public hearing was also conducted on February 12, 2019 before the City Council, as authorized by Section 98-30(d) of the CODE, in order to consider the Final Report and the proposed amendment of the zoning classification of the Property to; and

WHEREAS, the City Council finds that all notifications and other procedures required by

Section 98-30 of the CODE have been followed; and

WHEREAS, the City Council has determined that it in the best interest of the citizens of the City that this Property should be reclassified as “R-1” Single Family Residential Zoning District.

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

Section 1. Adoption of Recitals. The recitals in the preamble to this Ordinance are hereby adopted as the findings and conclusions of the City Council.

Section 2. Amendment to the City Zoning Map. Pursuant to Section 98-30 of the Code of Ordinances, City of Montgomery, Texas, the Official Zoning Map of the City of Montgomery is hereby amended so that the zoning classification of the Property located at the southwest corner of Old Plantersville Road and Womack Cemetery Road in Montgomery, Texas as herein described in the attached Exhibit “A”, is reclassified as a “R-1” Single Family Residential Zoning District.

Section 3. Codification of this Ordinance. Wherever any provision of this Ordinance provides for the amendment of the Code of Ordinances, City of Montgomery, Texas, such provision shall be liberally construed to provide for the codification of the specified provision and for such other provisions of the Ordinance that the codifier in its discretion deems appropriate to codify. The codifier may change the designation or numbering of chapters, articles, divisions or sections as herein specified in order to provide for logical ordering of similar or related topics and to avoid the duplicative use of chapter, article or section numbers. Neither the codification nor any application of the codified Ordinance shall be deemed invalid on the basis of a variance in the number or section of this Ordinance and its codified provisions. The failure to codify the specified provisions of this Ordinance shall not affect their validity or enforcement.

Section 4. Repeals all Ordinance in Conflict with this Ordinance.

Any and all provisions of ordinances in conflict with this Ordinance are hereby expressly repealed.

Section 5. Savings Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portion of this Ordinance shall not be affected hereby, it being the intention of the City Council of the City of Montgomery in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

Section 6. Effective Date.

The effective date of this Ordinance shall be upon its passage.

PASSED AND APPROVED this _____ day of February 2019

Sara Countryman, Mayor

ATTEST:

Susan Hensley, City Secretary

APPROVED AS TO FORM:

Larry L. Foerster, City Attorney



Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Map with proposed expansion TxDOT proposed Ordinance
Date Prepared: January 25, 2019	

Subject
TxDOT proposed school zone expansion at Montgomery High School

Description
Per TxDOT's recommendation, this ordinance would expand the boundary of the proposed MHS school zone approximately 690 feet to the east of the current boundary (which is near McWashington Drive / east football stadium entrance). The proposed eastern edge of the school zone would be approximately 200 feet east of the traffic light at Old Plantersville Road.

Recommendation
Consider the information provided and act as you see fit.

Approved By		
Asst. to City Admin.	Dave McCorquodale . 	Date: 1/25/19
City Administrator	Jack Yates 	Date: 1/25/19

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS ALTERING THE PRIMA FACIE SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF § 545.356, TEXAS TRANSPORTATION CODE, UPON THE BASIS OF AN ENGINEERING AND TRAFFIC INVESTIGATION, UPON CERTAIN STREETS AND HIGHWAYS, OF PARTS THEREOF, WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY, AS SET OUT IN THIS ORDINANCE; AND PROVIDING A PENALTY OF A FINE NOT TO EXCEED \$200 FOR VIOLATION OF THIS ORDINANCE; PROVIDING A REPEALING CLAUSE AND A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION

WHEREAS, § 545.356, Vernon's Texas Civil Statutes, provides that whenever the governing body of the City shall determine upon the basis of an engineering and traffic investigation that any prima facie speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a pavement, and other circumstances on such portion of said street or highway, as well as the usual traffic thereon, said governing body may determine and declare a reasonable and safe prima facie speed limit by the passage of an ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the street or highway; and

WHEREAS, such an engineering and traffic investigation has been performed for portions of State Highway 105 within the City of Montgomery, Texas;

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

SECTION I.

Upon the basis of an engineering and traffic investigation conducted as authorized by the provisions of § 545.356, Texas Transportation Code, the following prima facie speed limits hereafter indicated for vehicles are hereby determined and declared to be reasonable and safe; and such speed limits are hereby fixed at the rate of speed indicated for vehicles traveling within the City of Montgomery, Texas upon State Highway 105 described as follows:

Along **State Highway 105**, a school zone from 300 feet west of Emma's Way to 200 feet east of the centerline of Old Plantersville Road, that being a distance of approximately 0.600 miles, the speed limit shall be 30 MPH when the sign is flashing.

SECTION II.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than Two Hundred Dollars (\$200).

SECTION III.

Any ordinance or part of an ordinance that conflicts with this Ordinance is hereby repealed.

SECTION IV.

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION V.

This Ordinance shall be effective upon its publication as provided by law.

PASSED AND APPROVED by the City Council of the City of Montgomery, Texas, on the _____ day of _____, 2019.

THE CITY OF MONTGOMERY, TEXAS

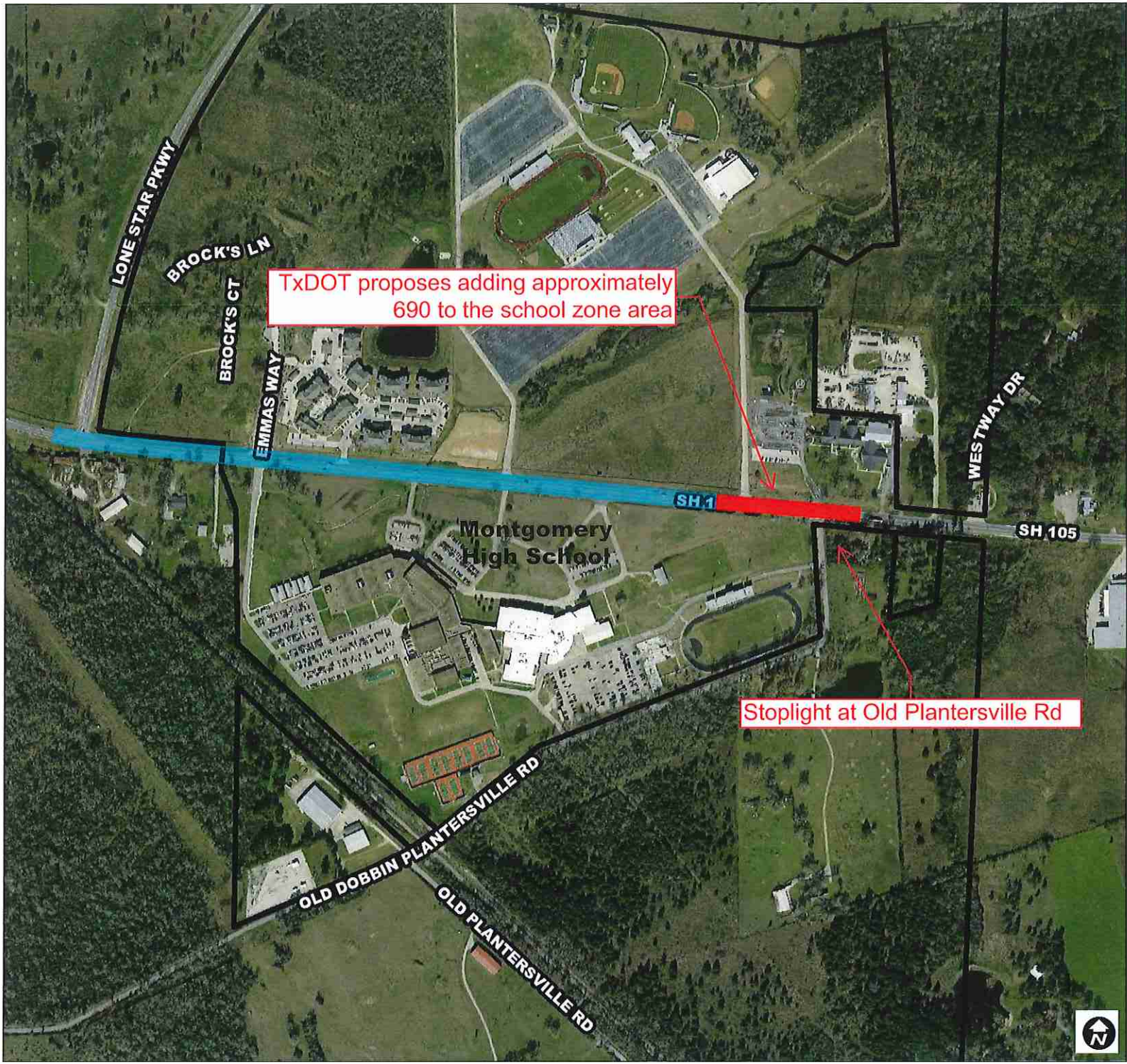
Sara Countryman, Mayor

ATTEST:

Susan Hensley, City Secretary

APPROVED AS TO FORM:

Larry L. Foerster, City Attorney






TxDOT proposes adding approximately 690 to the school zone area

Stoplight at Old Plantersville Rd



LEGEND

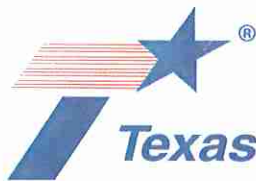
-  City Limit
-  Existing 30 MPH School Zone
-  Proposed 30 MPH School Zone Extension



Proposed MHS School Zone Changes

1 inch = 750 Feet





P.O. BOX 1386 | HOUSTON, TEXAS 77251-1386 | (713) 802-5000 | WWW.TXDOT.GOV

January 16, 2019

The Honorable Sara Countryman
Mayor
City of Montgomery
P.O. Box 708
Montgomery, Texas 77356-0708

RE: Request City School Zone Ordinance – SH 105 – Montgomery County

Dear Mayor Countryman:

Our office has completed a Speed Zone Study along SH 105 within the City of Montgomery. Attached you will find a Speed Zone Strip Map numbered 5607B through 5607C and a prepared Speed Zone Ordinance suggested by the Texas League of Municipalities containing the recommended zone along SH 105. If you concur with the recommended zone please furnish this office with a copy of your executed ordinance.

Should you have questions please contact Gaurang Pandit, Transportation Engineer Supervisor at (713) 802-5856 or Rogelio Rubico, at (713) 802-5182.

Sincerely,

Ugonna U. Ugharize, P.E.
Director of Transportation Operations
Houston District

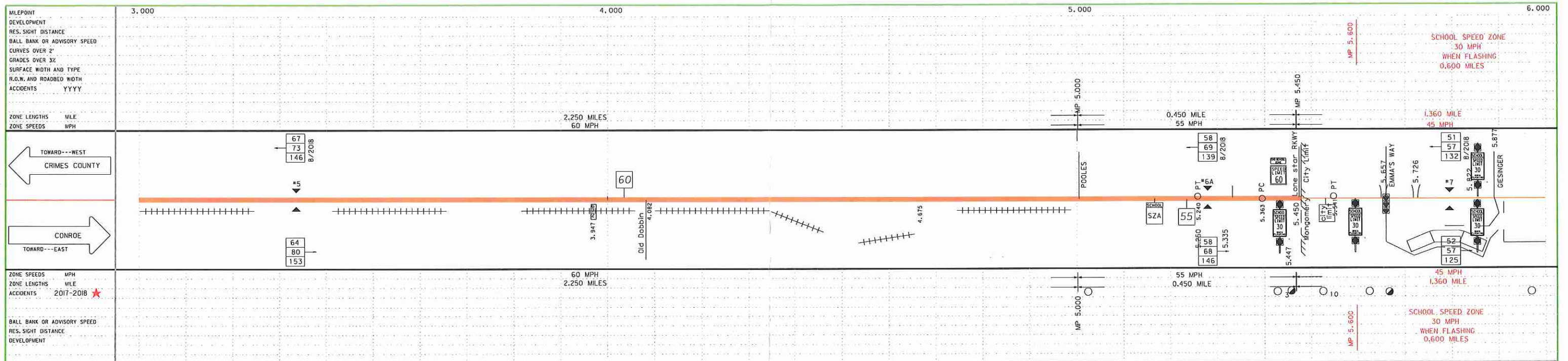
Attachments

cc: Susan Hensley – City of Montgomery
Gaurang S. Pandit, P.E.
Rogelio R. Rubico, P.E.

OUR VALUES: *People • Accountability • Trust • Honesty*

OUR MISSION: *Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.*

An Equal Opportunity Employer



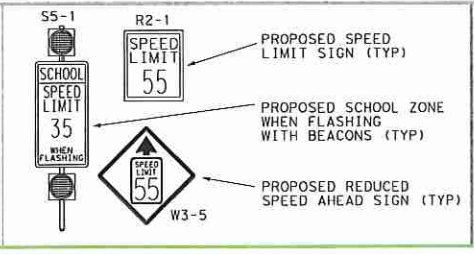
DISTRICT	HOUSTON	COUNTY	MONTGOMERY	MINUTE NO.	DATE	/ /
HIGHWAY	SH 105	CITY	RURAL	REPLACES	DATE	/ /
DATE OF SURVEY	8/2018	SCALE	5" = 1 MILE	REPLACED BY	DATE	/ /
				CANCELED BY	DATE	/ /

LIMITS OF ZONE					
SECTION ONE			SECTION TWO		
BEGINS	STA. OR M.P.	CONT. & SECT.	PROJECT	BEGINS	STA. OR M.P.
	0.000	0338-02			
ENDS	STA. OR M.P.	CONT. & SECT.	PROJECT	ENDS	STA. OR M.P.
	7.499	0338-02			

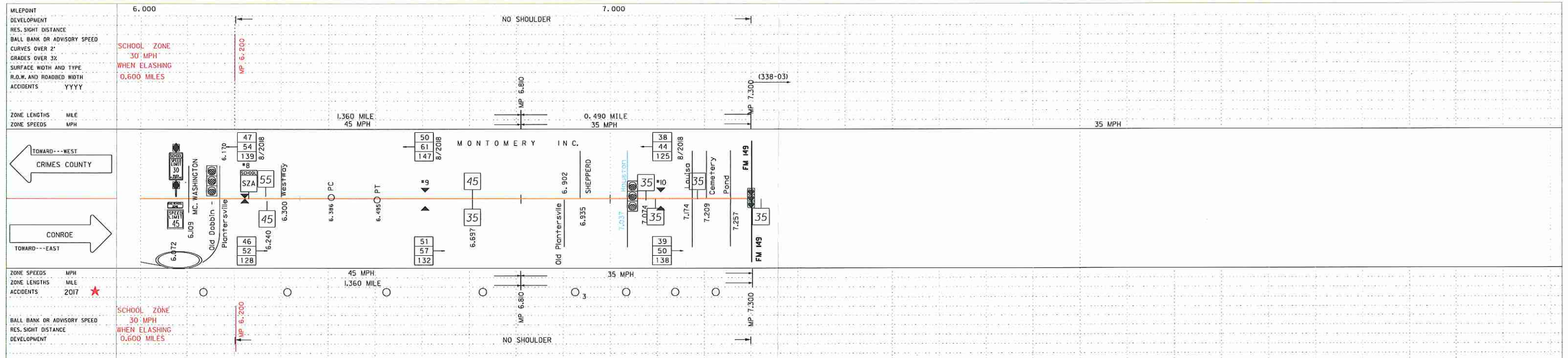
LIMITS OF ZONE			
SECTION THREE		LENGTH	
BEGINS	STA. OR M.P.	CONT. & SECT.	PROJECT
ENDS	STA. OR M.P.	CONT. & SECT.	PROJECT
SECTION FOUR		LENGTH	
BEGINS	STA. OR M.P.	CONT. & SECT.	PROJECT
ENDS	STA. OR M.P.	CONT. & SECT.	PROJECT

SPEED CHECK BLOCK:
 68 — 85 PERCENTILE SPEED
 74 — TOP SPEED MEASURED
 85 — NUMBER OF CARS CHECKED
 65 — TRIAL RUN CONDUCTED

- — FATAL ACCIDENT
- — PERSONAL INJURY ACCIDENT
- Ⓜ — PROPERTY DAMAGE ACCIDENT
- SECTION ZONED BY COMMISSION MINUTE ORDER
- 55 — EXISTING SPEED LIMIT SIGN
- SECTION ZONED BY CITY ORDINANCE
- Ⓝ — SPEED CHECK STATION
- ★ — EXCEEDED STATEWIDE AVERAGE ACCIDENT
- EXISTING SIGNAL
- EXISTING FLASHING BECON
- EXISTING POLE
- PROPOSED SIGN
- PC — POINT OF CURVE
- PT — POINT OF TANGENT



TEXAS DEPARTMENT OF TRANSPORTATION
SPEED ZONE
 STRIP MAP 5607 B

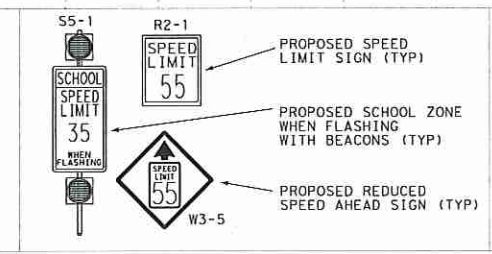


DISTRICT	HOUSTON	COUNTY	MONTGOMERY	MINUTE NO.	DATE	/ /
HIGHWAY	SH 105	CITY	RURAL	REPLACES	DATE	/ /
DATE OF SURVEY	8/2018	SCALE	5" = 1 MILE	REPLACED BY	DATE	/ /
				CANCELED BY	DATE	/ /

LIMITS OF ZONE			
SECTION ONE	LENGTH	SECTION TWO	LENGTH
BEGINS STA. OR M.P.	CONT. & SECT. PROJECT	BEGINS STA. OR M.P.	CONT. & SECT. PROJECT
ENDS STA. OR M.P.	CONT. & SECT. PROJECT	ENDS STA. OR M.P.	CONT. & SECT. PROJECT
SECTION THREE		SECTION FOUR	
BEGINS STA. OR M.P.	CONT. & SECT. PROJECT	BEGINS STA. OR M.P.	CONT. & SECT. PROJECT
ENDS STA. OR M.P.	CONT. & SECT. PROJECT	ENDS STA. OR M.P.	CONT. & SECT. PROJECT

SPEED CHECK BLOCK:	
68	- 85 PERCENTILE SPEED
74	- TOP SPEED MEASURED
85	- NUMBER OF CARS CHECKED
65	- TRIAL RUN CONDUCTED

- - FATAL ACCIDENT
- - PERSONAL INJURY ACCIDENT
- ⊖ - PROPERTY DAMAGE ACCIDENT
- ★ - EXCEEDED STATEWIDE AVERAGE ACCIDENT
- ⊙ - EXISTING SIGNAL
- ⊕ - EXISTING FLASHING BECON
- ⚡ - EXISTING POLE
- ⚡ - PROPOSED SIGN
- PC - POINT OF CURVE
- PT - POINT OF TANGENT
- ⊖ - SECTION ZONED BY COMMISSION MINUTE ORDER
- ⊖ - EXISTING SPEED LIMIT SIGN
- ⊖ - SECTION ZONED BY CITY ORDINANCE
- ⊖ - SPEED CHECK STATION



TEXAS DEPARTMENT OF TRANSPORTATION

SPEED ZONE

STRIP MAP 5607 C

\$FILEL\$ \$DATE\$ \$TIME\$

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Email from city attorney proposing this resolution, TML information re: the subject, The Resolution
Date Prepared: February 7, 2019	

Subject

This regards various Texas State legislative bills offered in this current upcoming session and in previous sessions that are thought to infringe upon the local control of city governments. Many cities are joining in the “Our Home, Our Decisions” lobbying effort of the Texas Municipal League.

Description

The TML information request the state legislature for cities to be allowed to make their own decisions about how to continue the delivery of quality local services to be decided by those who were elected to do so- local government officials.

This should lead to the following legislative priorities according to the TML:

1. Ensure that local decisions are made locally by supporting local regulatory authority and but opposing attempts to harm the ability of cities to protect property values by imposing reasonable development standards.
2. Protect and enhance essential infrastructure by opposing efforts to diminish municipal revenue and instead supporting initiatives that will meet the needs of our cities for streets, clean water, safe and effective wastewater treatment, storm water management and sustainable solid waste is collection and disposal.
3. Ensure funding for community services by opposing efforts to erode revenue needed to keep city safe crime, respond to emergencies, enhance economic growth and job creation and provide recreational facilities such as parks.

Montgomery City Council
AGENDA REPORT

Specific to Montgomery—as a growth city, restrictions to property tax collections could work critically against funding of the city’s growth needs if collections were topped at a certain low percentage- as opposed to the City Council having the option of reducing the property tax assessment rate to best fund the city as opposed to having to hold to a larger tax assessment rate due to concerns of revenue reduction by the legislature.

Also, the state of Texas has approximately 475 cities, each with their specific interest and circumstances that does not lead to "one-size-fits-all" legislative acts that would require all 475 cities to fund their city in a certain way, or to repair their streets in a standardized fashion, or regulate a local natural gas company in a certain standardized method.

If approved a copy of the Resolution would go to State Representative Will Metcalf and State Senator Don Nichols.

Recommendation

Motion to approve the Resolution as proposed.

Approved By

City Administrator

Jack Yates

Date: February 7, 2019



Yates, Jack <jyates@ci.montgomery.tx.us>

Resolution in opposition to local control by cities

1 message

Larry Foerster <foerster@dfcllp.com>
To: Larry Foerster <foerster@dfcllp.com>

Wed, Jan 23, 2019 at 11:23 AM

TO OUR CITIES:

We are being told by the Texas Municipal League that there are a number of legislative bills being offered in Austin this session that are designed to further reduce the local control that Texas citizens have over the affairs of their city governments. Put another way, some members of the Texas legislature feel that the Texas legislature in Austin knows what is best for the residents of Texas cities, and not the city councils that govern the day-to-day affairs of the city.

The City of Willis is expected to pass the attached resolution which has already been passed by the city of Huntsville. You may wish to consider a similar resolution by your city.

Larry

Larry L. Foerster

Darden, Fowler & Creighton, LLP

414 West Phillips, Suite 100

Conroe, Texas 77301

Office 936-756-3337

Fax 936-756-2606

Email foerster@dfcllp.com

For more information about our law firm, please go to www.dfcllp.com

*****CONFIDENTIAL NOTICE*****

This message may contain confidential or privileged information under an attorney-client relationship. It is intended only for the use of the individual or entity to whom it is addressed. Any other dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Larry L. Foerster at the law firm of Darden, Fowler & Creighton, LLP immediately by



Our Home, Our Decisions: Safe Communities, Essential Infrastructure, Vital Services

Cities, the government closest to the people, embody the idea that “We the People” should be in control. Cities provide the services that we cannot do without. Those services reflect the will of the local taxpayers. They are not the kind of services people think of when they say they want less government. **Put simply: City services are the nuts and bolts of our society.**

Starting with Texas’ statehood in 1845, the legislature began creating cities to do its local work. **The Texas Municipal League now represents more than 1,155 cities of every size, shape, and service level.** The locally-elected city councils in those cities decide – based on the wants of their citizens – how to provide appropriate services.

They provide police and fire protection, the roads we drive on, local business development, the utilities we need to survive and prosper, the protection of property values through thoughtful rules that benefit everyone, and more. It costs money to provide these services, but **keeping taxes low while meeting citizens’ demand for services** is a core value of city officials.

Cities don’t typically seek funding from the state, and they receive virtually nothing from the state. What cities need in lieu of state funding is **to be allowed to make their own decisions about how to keep the “Texas Miracle” alive.** They want to continue providing local services in the way they were elected to do. That leads to the following legislative priorities:

1. Ensure that local decisions are made locally by supporting reasonable enhancements to regulatory authority and by opposing attempts to harm the ability of cities to protect property values by imposing reasonable development standards.
2. Protect and enhance essential infrastructure by opposing efforts to diminish municipal revenue and by supporting initiatives that will meet the needs of our cities for: (1) streets, roads, and bridges; (2) clean water; (3) safe and effective wastewater treatment; (4) stormwater management; and (5) sustainable solid waste collection and disposal.
3. Ensure funding for vital community services by vigorously opposing efforts to erode revenue needed to: (1) keep cities safe from crime; (2) respond to emergencies; (3) enhance economic growth and job creation; and (4) provide recreational facilities, parks, and libraries.

**The City Message to Legislators is Clear:
Our Home, Our Decisions**

To learn more, visit www.tml.org or call 512-231-7400
Legislative direct contact: Shanna Igo 512-750-8718

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, TO EXPRESS ITS OPPOSITION TO LEGISLATIVE INTERFERENCE WITH LOCAL SERVICES, LOCAL REVENUE, AND LOCAL CONTROL.

WHEREAS, the dramatic growth of jobs and population in Texas cities in recent decades is indisputable proof that the decisions Texans have made at the local level have produced the kinds of communities where people want to live, work, and do business; and

WHEREAS, local issues call for local solutions that reflect the uniqueness of each community; and

WHEREAS, the ability of Texans to create vibrant, livable cities is under assault from state officials who wish to dictate that every community and neighborhood conform to their agenda; and

WHEREAS, some in the Texas legislature have willfully disregarded the voice of the voters of Texas cities and pre-empted the will of Texans by seeking to overturn approved ballot propositions where citizens have sought to deal with issues affecting their communities and to improve conditions for their residents, such as bag bans, temporary rentals, fracking and ride-sharing, even in situations where voters utilized direct democratic tools to bring these decisions before the public – an offense to the American system of participatory democracy and the historic Texan spirit of independence; and

WHEREAS, state officials are attempting to put one-size-fits-all restrictions on the annual budgets of all cities and counties through revenue caps and spending limits, under the guise of property tax relief.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, THAT:

1. All of the above recitals are true and correct.
2. The unique character of each city is shaped by the priorities and values of the people who live there.
3. Texans do not want to be told to conform to one way of thinking or one way of living.
4. The City of Montgomery, Texas, is **OPPOSED** to any legislation that erodes the ability of Texans to have a voice in developing local solutions to local problems that affect their neighborhoods and their communities.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2019.

Sara Countryman, Mayor

ATTEST:

APPROVED AS TO FORM:

Susan Hensley, City Secretary

Larry L. Foerster, City Attorney

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: letter from American Log Restoration describing work, Pictures of Jardine Cabin showing part needing to be repaired
Date Prepared: February 7, 2019	

Subject

This is there a request for \$6326.66 as one third of payment for repair to one of the cabins at Fernland Park. This amount equals one third the total cost of the repair.

Gareth Westlake will present this item.

Description

The Jardine Cabin for land has six logs that are in the process of rotting and if not repaired permanent damage that will cause serious damage to the structure. The Fernland, Inc Board has discussed this for several months and have had a log restoration company, give a repair estimate of \$18,980 for the work. Gareth Westlake is the Board member who has been in charge of the getting the estimates and overseeing the consideration of the work.

Attached is the American Log Restoration quote. The Fernland Board beliefs this to be the best possible quote for the job.

The Fernland Board is requesting \$6326.66 as one third of the payment for this work. It is their intent to also asked the MEDC for the same amount of financial support. If successful, following the project's completion they intend to request reimbursement for their \$6326.66 as a grant from the Montgomery County Historic Society—with the continued use of those funds is support for the Fernland Park.

Montgomery City Council
AGENDA REPORT

The funds for this could come from the \$4000 budgeted for Fernand Park maintenance, or out of the General Fund setback monies from contract labor – streets in public works were the surplus of revenue versus expenditures were placed in the budget.

Recommendation

Motion to approve the amount of \$6,326.66 requested for repair of the Jardine Cabin under the basis of MEDC approval also.

Approved By

City Administrator

Jack Yates

Date: February 7, 2019

January 15, 2019



P.O. Box 1142 • Brevard, North Carolina 28712
Phone (828) 278-0086 • Toll Free (877) 788-5647 • Fax (828) 264-4214
www.logrepair.com • ryan@logrepair.com

Gareth Westlake
Fernland Historical Park
770 Clepper Drive
Montgomery, TX 77356

Ryan Sigsbey
American Log Restoration, Inc.

Thank you for contacting American Log Restoration for your log repair project. After viewing the Historic Log Cabin at Fernland, I have found 6 logs that need to be replaced. Please see the enclosed marked photos for approximate locations.

Listed below are the steps American Log Restoration plan to take to restore your home:

1. Replace logs using the same building practice and precision that was used when originally built. We will be using pine logs that will match the original logs.
2. During restoration, we will be replacing logs full length. Each log marked for replacement will be removed and have the inside 1" to 1 1/2" removed and saved. We will then re-attach this slab to the inside of our new logs and reinstall in place.
3. During installation, sections of the new or existing dovetail ends may need to be removed in order to get the new logs into place. The small sections can be re-secured once the new logs are in place.
4. Provide a 4 hour seminar on mixing and installing the historic chinking in between the logs. A small section will be completed during the instruction.

The owner is responsible for the following:

1. Removal of any plants, shrubs or trees that may interfere with the log restoration.

January 15, 2019

2. Disposal of all log related debris created by ALR. This consists of sawdust and rotted or scrap log material. ALR crew will stack debris in a location designated by you or you can bring a dumpster in at your expense.
3. Removal of any breakable items on the interior or exterior walls. ALR is not responsible for items not removed.
4. Stain and chink all new logs to match the color of the existing home.
5. ALR crew will try to save gutters and window trim to reinstall after the log replacement is completed. However, ALR is not responsible for removal or reinstallation of any items beyond the scope of work stated above.
6. All electrical, plumbing, or gas fixtures must be removed and reinstalled by a licensed contract other than American Log Restoration. ALR crew can work around many of these items.

Payment schedule is as follows:

Down Payment:	\$4,980.00
Upon Start-up:	\$7,000.00
Upon Completion:	\$7,000.00
Total Job Cost:	\$18,980.00

This cost includes labor, materials and travel. Any additional half logs not marked that need replacing will be at a cost of \$135.00 per lineal foot. Payment for extras is due upon request by ALR crew and may be requested via wire transfer.



Ryan Sigsbey

Gareth Westlake - Fernland Historical Park

Please print two copies. Sign one copy and return it with your down payment made payable to American Log Restoration, Inc. The other is for your file.



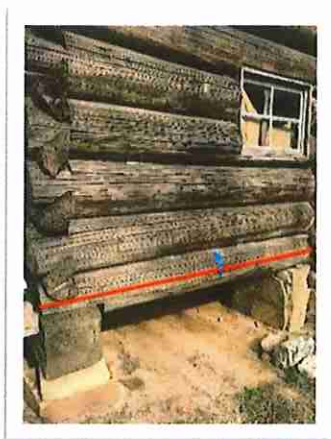
Crane Cabin



North wall. Red lines indicate logs to be replaced



Closeup of the rot



Red line indicates log to be replaced



Closeup of the rot close to the chimney

American Log Restoration is leading the way in the restoration of historic log cabins. For over 35 years, our professional team of innovative craftsmen have restored over 1,000 homes throughout the United States ranging from Adirondack Camps to 200 year old single room cabins. It is our mission to replicate the workmanship and characteristics of the original log homes by sourcing the right materials and using original and historical techniques.

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: E-mail exchange with Mr. Brosch, Draft letter to County Commissioner Mike Meador
Date Prepared: January 30, 2019	

Subject

- a. This concerns the question of whether or not to improve the pavement on Mason Street or force the city to somehow legally vacate the street. This is a subject that has been on the and off as an active discussion item for at least two years. Most recently was approximately 18 months ago when negotiations with Mr. Karl Brosch stopped following a Council decision not to agree to terms that Mr. Brosch proposed.
- b. The letter is requesting Mike Meador to assist the City in paving streets in the upcoming construction season of 2019. The three streets proposed cost is estimated at approximately \$35,000.

Description

- a. The City Attorney has concluded that Mason Street, the paved area between Maiden Street and Prairie Street is a City public street, based upon its public use for more than 10 years (otherwise known as “right by prescription”). The City Attorney also has given the opinion that the only way that the street can be vacated is for a petition from Mr. Brosch. The only other way the city could otherwise control this property as if they want to make it into a park or plaza type of area and change its use. As the emails exchange with Mr. Brosch reads, he is no longer interested in any type of trade- or a vacation of the street, he—as a citizen has the right--- is requesting an adequate pavement for the street surface in front of his home.

Montgomery City Council
AGENDA REPORT

To remind the Council of a similar situation on Wade Street, that was transacted approximately three years ago—in that case the City, although not required, paid the three property owners adjacent to the “right by prescription” street the amount the street property was valued by the County Assessor--- based on a square foot cost and committed to a repavement that is not happened yet because of its lesser priority of the streets needing paved in the City.

The city has not offered Mr. Brosch the same opportunity, because he owns both sides of the street has been the Council’s rationale up to this point for not offering the same type of payment to Mr. Brosch.

Opinion – At this point since the City does not want the property for any type of use as a Park or Plaza—and Mr. Brosch is not willing to sign a petition requesting the vacation, the only option to the Council is to consider the street as any other street in the City and pave the street or to allow it to continue to deteriorate, which will happen due to its current potholed state. The street is an integral part of the downtown vehicle traffic system.

- b. I do not have a specific figure for the cost of paving Mason Street, my estimation, because of needing to mill and grind and adding some base to Wade Street is approximately \$14,000 for materials only with the County providing the labor and machinery for the repavement. Caroline Street estimate is \$12,000. Funds are available if the Council wanted to add Wade Street at approximately \$8,000 additionally, for a total street project cost of \$35,000.

Recommendation

Send the street repair letter to Mike Meador as presented.

Approved By

City Administrator

Jack Yates

Date: January 30, 2019



Yates, Jack <jyates@ci.montgomery.tx.us>

RE: Mason Street -- Paving- Trade?

2 messages

Brosch, Karl <KBrosch@cityofconroe.org>

Tue, Jan 29, 2019 at 3:58 PM

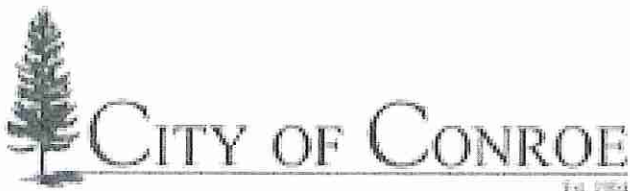
To: "Yates, Jack" <jyates@ci.montgomery.tx.us>, "scountryman@ci.montgomery.tx.us"

<scountryman@ci.montgomery.tx.us>

Cc: "Tex1939@gmail.com" <Tex1939@gmail.com>

Jack,

Let's be clear about your indications to a trade. I'm not interested in giving any land or trading with the city. All we are interested in is having the street paved.



Karl Brosch

Utility Billing Manager

300 W. Davis

City of Conroe, Texas

936-522-3171 Direct

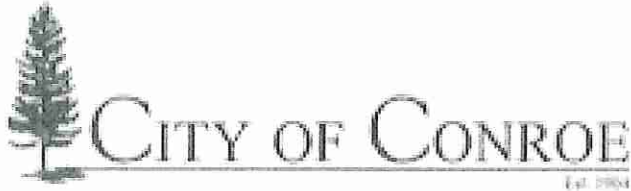
936-522-3178 Fax

Kbrosch@cityofconroe.org

From: Brosch, Karl**Sent:** Tuesday, January 29, 2019 1:13 PM**To:** 'Yates, Jack' <jyates@ci.montgomery.tx.us>; 'scountryman@ci.montgomery.tx.us' <scountryman@ci.montgomery.tx.us>**Cc:** 'Tex1939@gmail.com' <Tex1939@gmail.com>**Subject:** RE: Mason Street -- Paving- Trade?**Importance:** High

Jack,

Just wanted to be clear on the paving of Mason Street. The City's goal should be to pave Mason Street. I would like to have this street paved like other city streets.



Karl Brosch

Utility Billing Manager

300 W. Davis

City of Conroe, Texas

936-522-3171 Direct

936-522-3178 Fax

Kbrosch@cityofconroe.org

From: Yates, Jack [mailto:jjyates@ci.montgomery.tx.us]

Sent: Thursday, January 24, 2019 4:53 PM

To: Brosch, Karl <KBrosch@cityofconroe.org>

Cc: scountryman@co.montgomery.tx.us

Subject: Re: Mason Street -- Paving- Trade?

Got it. I will report that to the Council -- at their next meeting. It will be an item on the agenda because we want to ask Mike Meador to do some paving for us and we need to decide where we intend to ask him to pave -- and Mason Street is one of, if not the top priority streets needing pavement. I will let the Council know that if they want to abandon the street that the property goes back to the adjacent property owners at no cost to the adjacent owner (meaning you). So, their choice is to get serious about making a proposal that entices you to accept a trade or to accept that this is a public street that needs improvement.

Jack

On Thu, Jan 24, 2019 at 3:34 PM Brosch, Karl <KBrosch@cityofconroe.org> wrote:

Jack,

I have spoken to my wife Debbie about your offer and we both would like to just have the City of Montgomery or Montgomery County pave Mason Street. Drainage as a key factor on Mason Street because of the City sidewalks on the east and south property lines.

Thanks,

Karl & Debbie Brosch

303 Mason St.

Montgomery TX, 77356

From: Yates, Jack [mailto:jyates@ci.montgomery.tx.us]
Sent: Wednesday, January 23, 2019 9:22 AM
To: Brosch, Karl <KBrosch@cityofconroe.org>
Subject: Mason Street -- Paving- Trade?

Karl, the City Council asked me to re-discuss with you the possibility of a trade for Mason Street for a parking area along Maiden Street.

As I tried to remember what were discussing:

That Mr. & Mrs. Brosch are willing to transact to the City approximately nineteen feet of the east side of your property at the northeast corner of Maiden and College Streets extending north to Clepper Street, if:

-The replacement of the fence on the Brosch property, that will be torn down for the parking spaces or roadway will be of like wire fence presently on Maiden Street. Following placement, the fence is Mr. & Mrs. Brosch's responsibility to maintain and replace.

-The City in return agrees to vacate the portion of Mason Street lying between Maiden Street and Prairie Street to Mr. & Mrs. Brosch.

-The two areas to be transacted, from Mr. and Mrs. Brosch to the city and the property vacated by the city shall be surveyed and a map drawn, and paid by City. Filing of documents at County Deed Records to be paid by the city. (city cost \$2,800).

What I seem to remember is that you wanted the street paved by the City before you would trade and the Council would not agree to that. I do not know the council's opinion about the paving now. To re-discuss with you came up at the December meeting when I showed the Council a draft letter to Mike Meador asking Mr. Meador to pave two city streets, one of which was Mason. The directed me to not send the letter to Mr. Meador and to re-discuss the possibility of the street trade with you. Mr. Peel has also brought up the issue of the City re-paving Mason several times tome and various Council members.

Would you please contact me.

Jack Yates

Yates, Jack <jyates@ci.montgomery.tx.us>
Draft

Tue, Jan 29, 2019 at 5:26 PM

[Quoted text hidden]



February 13, 2019

Montgomery County Commissioner
Mr. Mike Meador
Willis, Texas

Dear Mr. Meador;

The City of Montgomery request your assistance in the pavement of three streets in the City.

The first street is Caroline Street from Liberty Street (FM 149) east to Prairie Street. The street measures 272' long by 17' wide. We are requesting your equipment and labor to pave this street. We think this can best be accomplished by mill and overlay by asphalt.

The second street is Mason Street from Maiden Street to Prairie Street. The street measures 135' long by 17' wide. We are requesting your equipment and labor to pave this street. We think this can best be accomplished by mill and overlay with asphalt with some possible addition to base material.

The third street is Wade Street from Old Plantersville Road to where Wade joins Worsham Street. The street measures 295' long by 15' feet wide. We think this can best be accomplished by mill and overlay by asphalt.

Thank you for your consideration and we continue to appreciate your cooperation with the City of Montgomery.

Sincerely,

Jack Yates
City Administrator

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount:
	Exhibits: Texas Open Meetings Act Laws Made Easy, Videoconferencing information, Videoconferencing under the Open Meetings Act (All provided by the Council member)
Prepared By: Jack Yates City Administrator	
Date Prepared: February 7, 2019	

Subject

This was requested by a City Council member. I think the member had more in mind for televising, or getting the public meetings of the city Council on the Internet or some sort of viewing platform, then videoconferencing but maybe I am wrong.

Videoconferencing is where a Council member can be on video outside of the public meeting in another location and participate in the discussion.

Streaming, or arranging for viewing of the City Council member meetings as a different matter and is covered in the Open Meetings Act Laws Made Easy attachment.

It is not contemplated a decision will be reached at this meeting but is more of a discussion, that may require more research and costs determination.

Description

The rules about videoconferencing are very specific and would require more technology – namely that the quality of the video is such that not only can the remote person be able to hear and adequately be able to speak on the matter before the Council but that the quality be such that demeanor of every person in the open portion of the meeting must be perceived—and if the aesthetic quality is not present the meeting has to stop until the quality is returned or the meeting must stop. The person in the videoconferencing cannot vote.

Streaming a meeting through the Internet is not a difficult or expensive thing to do. In fact, some cities, create a video via Facebook and post the meeting to the Facebook page of the city. The Internet method has the advantage of being able to be posted to the city website and retained for months, or years.

I am told that setting up a camera for the Internet to be in a set position so as to be very discreet and include in its view the City Council, the staff table and the podium for visitor speaking.

Having a camera in a meeting sometimes affects the meeting itself. Much is what you may have read regarding the Supreme Court decision not to video their hearings applies to City Council – some persons may act differently or say things differently if they know that a camera is on them. Also, once you start having cameras it would be probably very difficult to stop. Having said this, democracy has survived quite well as have the lower Courts, who do allow cameras in their proceedings, with the technology of televising public meetings.

Recommendation

If you are of the mind to consider the cameras you could direct the staff to research the cost, the technology, what procedures would have to be put into place, and any other issues regarding streaming of a City Council meeting.

Approved By

City Administrator

Jack Yates

Date: February 7, 2019

p. 128

TEXAS OPEN MEETINGS ACT LAWS MADE EASY



2017 Editor

Zindia Thomas
Assistant General Counsel
Texas Municipal League
www.tml.org

Updated August 2017

p. 2 of 8

38. May members of a governing body enter their votes by proxy on an item without attending the meeting?

Though the Act does not address voting by proxy, the attorney general has opined that a member of a governing body may not vote by proxy.⁸⁴ A member of a governing body must be present at a meeting in order to deliberate and to vote.⁸⁵

39. May a governing body hold an open meeting by teleconference?

A meeting of a governing body may be held by teleconference call only if:

1. An emergency or public necessity exists; and
2. It is difficult or impossible to convene a quorum at one location, or
3. The meeting is held by an advisory board.⁸⁶

When holding such a meeting, there are several procedural requirements that must be met:

1. The meeting must be posted and open to the public in the same manner as a regular meeting.⁸⁷ The governmental body is not required to state in the agenda that the meeting will be held by telephone conference call pursuant to the Act.⁸⁸
2. The meeting must be held in the same place where meetings of the governing body are usually held.⁸⁹
3. The identity of each speaker must be clearly stated prior to that person speaking.⁹⁰
4. The meeting must be set up to provide two-way communications throughout the entire meeting.
5. All portions of the meeting (other than executive sessions) must be audible to the public, including the entire conference call.⁹¹
6. The meeting must be recorded and a copy of the recording must be made available to the public.

⁸⁴ Tex. Att'y Gen. LO-94-028.

⁸⁵ Op. Tex. Att'y Gen. Nos. DM-207 (1993); JM-584 (1986).

⁸⁶ Tex. Gov't Code Ann. § 551.125(b). (Note: There are specific governing bodies that have specific statutes within the Act regarding teleconferencing. The governing body will want to check with its legal counsel to make sure the right statute is being used for your governing body. See Tex. Gov't Code Ann. §§ 551.121, .122, .123, .124.)

⁸⁷ *Id.* § 551.125(c).

⁸⁸ Tex. Att'y Gen. Op. No. JC-352 (2001).

⁸⁹ Tex. Gov't Code Ann. § 551.125(d).

⁹⁰ *Id.* § 551.125(f).

⁹¹ *Id.* § 551.125(e).

Since extraordinary circumstances are needed to hold a meeting by telephone conference call, governmental bodies cannot have an open meeting by teleconference merely because attending a meeting on short notice would inconvenience members of the governmental body. If a quorum of the governmental body convenes at the meeting location, absent members will not be allowed to participate from other locations by telephone conference call.⁹² Further, it would be questionable to allow participation of a third party by teleconference in a meeting due to the strict requirements in this section. Legal counsel should be consulted if such a situation arises.

40. Does the Open Meetings Act (Act) allow a city councilmember or city employee to participate in a city council meeting via videoconference call⁹³?

Yes. Government Code Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body by means of a videoconference.⁹⁴

41. ~~What procedures must a city that lies in either one or two counties follow when a councilmember or employee will participate in a meeting via videoconference call?~~

- ~~1. A quorum of the city council must be present at one physical location.⁹⁵~~
- ~~2. The video and audio feed of the member's or employee's participation, as applicable, must be broadcast live at the meeting.⁹⁶~~
- ~~3. The meeting notice must specify where the quorum of the city council will be physically present and the intent to have a quorum present.⁹⁷~~
- ~~4. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the quorum is present.⁹⁸~~
- ~~5. The city council must make at least an audio recording of the meeting and the recording must be made available to the public.⁹⁹~~

N/A

N/A

⁹² Tex. Att'y Gen. Op. No. JC-352 (2001) at 4.

⁹³ See Tex. Gov't Code § 551.001(8) (definition of videoconference call).

⁹⁴ *Id.* § 551.127(a-1); see also *id.* § 551.127(a) (providing that the Act does not prohibit a governmental body from holding an open or closed meeting by videoconference call, except as provided by Section 551.127).

⁹⁵ *Id.* § 551.127(b).

⁹⁶ *Id.* § 551.127(a-1).

⁹⁷ *Id.* § 551.127(e).

⁹⁸ *Id.* § 551.127(f).

⁹⁹ *Id.* § 551.127(g).

- 6. The location where the quorum is present, and each remote location from which a member of the governmental body participates, must have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where a quorum is present, and at any other location of the meeting that is open to the public.¹⁰⁰
- 7. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.¹⁰¹
- 8. The audio and video signals perceptible by members of the public at the location where the quorum is present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.¹⁰²

N/A

N/A

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.¹⁰³

42. What happens in a city that lies in either one or two counties if the audio or video communication is disconnected or another problem occurs that causes the meeting to no longer be visible and audible to the public?

A recent amendment¹⁰⁴ to Section 551.127 provides that if a member of the city council participates by videoconference and the audio or video communication is lost or disconnected, that councilmember could simply be counted absent for the portion of the meeting during which the communication is lost but that the meeting could continue so long as a quorum of the city council remains present at the meeting location.¹⁰⁵ Section 551.127(f) arguably gives the city council the alternative option of recessing the meeting for up to six hours in order to fix the problem. Recessing the meeting appears to be the only option if an employee, rather than a councilmember, is participating by videoconference.

¹⁰⁰ *Id.* § 551.127(h).

¹⁰¹ *Id.* § 551.127(i).

¹⁰² *Id.* § 551.127(j).

¹⁰³ *See, e.g., id.* § 551.127(d).

¹⁰⁴ *See* House Bill 3047 of the 85th Legislature, R.S. Effective September 1, 2017.

¹⁰⁵ *Tex. Gov't Code* § 551.127(a-3).

43. What procedures must a city that lies in three or more counties follow when a councilmember or employee will participate in a meeting via videoconference call?

1. The member of the city council presiding over the meeting must be physically present at one location of the meeting that is open to the public during the open portions of the meeting.¹⁰⁶
2. The meeting notice must specify the location and the intent to have the presiding officer physically present at the physical space described in 1, above.¹⁰⁷
3. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the presiding officer is physically present.¹⁰⁸
4. The governmental body must make at least an audio recording of the meeting and the recording must be made available to the public.¹⁰⁹
5. The location where the presiding officer is physically present and each remote location from which a councilmember participates shall have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where the presiding officer is present, and at any other location of the meeting that is open to the public.¹¹⁰
6. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.¹¹¹
7. The audio and video signals perceptible by members of the public at the location where the presiding officer is physically present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.¹¹²

N/A

N/A

¹⁰⁶ *Id.* § 551.127(c), (e).
¹⁰⁷ *Id.* § 551.127(e).
¹⁰⁸ *Id.* § 551.127(f).
¹⁰⁹ *Id.* § 551.127(g).
¹¹⁰ *Id.* § 551.127(h).
¹¹¹ *Id.* § 551.127(i).
¹¹² *Id.* § 551.127(j).

P. 698

N/A

N/A

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.¹¹³

44. May a governing body broadcast its meetings over the Internet?

The governing body may broadcast its open meetings over the Internet.¹¹⁴ If it chooses to broadcast its meetings in this fashion, the entity must establish an Internet site and provide access to the broadcast from that site. In addition, the Internet site must provide the same 72-hour notice of any meeting as is required by the Act.¹¹⁵

45. Is a governing body required to make an audio and video recording of its open meetings?

The following governing bodies are required to make an audio and video recording of its open meetings:

1. Home rule cities with population of 50,000 or more.
2. County with population of 125,000 or more.
3. School District with student enrollment of 10,000 or more.
4. Transit Authority or Department subject to Chapters 451, 452, 453 or 460 of the Transportation Code.¹¹⁶

These governing bodies shall make an audio and video recording of each regularly scheduled open meeting.¹¹⁷ This does not include works sessions or special called meeting. The governing body shall make available an archived copy of the audio and video recording of those meetings on the Internet.¹¹⁸ The governing body is not required to establish a separate internet site.¹¹⁹ It may make the recordings available on an existing internet site, including a publicly available video-sharing or social network site. If the governing body maintains an internet site, then it shall make the archived recordings available on that internet site or an accessible link to the archived recording.¹²⁰ The archived recordings shall be made available on the internet not later than seven days after the date the recordings were made.¹²¹

¹¹³ See, e.g., *id.* § 551.127(d).

¹¹⁴ *Id.* § 551.128(b). See *id.* § 551.128(a) (definition of Internet in this section.)

¹¹⁵ *Id.* § 551.128(c).

¹¹⁶ *Id.* § 551.128(b-1).

¹¹⁷ *Id.* § 551.128(b-1)(1)(A). See *id.* § 551.128(b-1)(1)(B) (special requirements for school districts as amended by H.B. 523 of the 85th Legislature, R.S. Effective September 1, 2017.)

¹¹⁸ *Id.* § 551.128(b-1)(2).

¹¹⁹ *Id.* § 551.128(b-2).

¹²⁰ *Id.* § 551.128(b-3).

¹²¹ *Id.* § 551.128(b-4)(1).

The archived recordings shall be maintained on the internet for not less than two years after the date the recordings were made first available.¹²² If there is a catastrophe¹²³ or technical breakdown, the governing body is exempt from having the recordings up no later than seven day and maintaining up on the internet for two years.¹²⁴ Once, the catastrophe or technical breakdown is over, the governing body must make all reasonable efforts to make the required recordings available in a timely manner. Finally, these governing bodies can broadcast its regularly open meetings on television.¹²⁵

46. May a governing body discuss public business over the Internet without it being considered a meeting?

Members of a governing body can communicate or exchange information concerning public business or public policy under their supervision or control without it being a meeting if.¹²⁶

1. The communication is in writing.
2. The writings have to be posted on an online message board or a similar internet application and viewable and searchable by the public.
3. The communications have to be displayed in real time and for no less than 30 days after it is first posted.
4. The governing body can only have one online message board that is displayed on its website and can only be one click away from the primary governing body's internet web page.¹²⁷
5. Only members of the governing body or staff member with authorization can post to the online message board. If a staff member posts a message, then staff member must post their name and title along with the message.¹²⁸
6. If governing body removes a post that has been up for 30 days, the governing body must maintain the posting for six years and the posting is considered public information.¹²⁹
7. The governing body may not vote or take any action by posting a communication to the online message board and a communication cannot be construed to be an action by the governing body.¹³⁰

¹²² *Id.* § 551.128(b-4)(2).

¹²³ *See id.* § 551.0411 (definition of catastrophe).

¹²⁴ *Id.* § 551.128(b-5).

¹²⁵ *Id.* § 551.128(b-6).

¹²⁶ *Id.* § 551.006(a).

¹²⁷ *Id.* § 551.006(b).

¹²⁸ *Id.* § 551.006(c).

¹²⁹ *Id.* § 551.006(d).

P. 878

Governing bodies should consult with their legal counsel when setting up an online message board.

47. *May a governing body use telephone conferencing, video conferencing or communication over the Internet to consult with its attorney?*

The Act does allow for the governing body to use telephone conferencing, video conferencing or communication over the Internet to consult with its attorney. The governing body can have a public consultation with its attorney in an open meeting or a private consultation in a closed meeting. The public consultation with the governing body's attorney must be audible to the public at the location specified in the notice of the meeting. This provision does not apply to a governing body whose attorney is an employee of the political subdivision.¹³¹

48. *What accommodations must a governing body provide at its open meetings for an attendee who has a disability?*

Generally, a governing body must make its meetings accessible to persons with disabilities. Title II of the Americans with Disabilities Act (ADA) provides that activities of state and local governing bodies, including meetings, are subject to the ADA.¹³² In most cases, such a requirement means that the facility holding the meeting must be physically accessible to individuals with disabilities. Entities may ask individuals with disabilities to provide the entity with reasonable notice on any accommodations they may need to attend the meeting. Also, entities must be ready to provide an accessible meeting site and provide alternative forms of communications that address the needs of individuals with disabilities. This may involve providing sign language interpreters, readers, or large print or Braille documents upon request.

Managing Discussions at an Open Meeting

49. *What right does the public have to speak on a particular agenda item?*

The Act allows the public to observe the open portion of a meeting. However, the attorney general has concluded that the Act does not give members of the public a right to speak on items considered at an open meeting.¹³³ Such a right exists only if a specific state law requires a public hearing on an item or if state law requires that public comment be allowed on an issue. If a local entity allows members of the public to speak on an item at a meeting, the governing body may adopt reasonable rules regulating the number of speakers on a particular subject and the length of time allowed

¹³⁰ *Id.* § 551.006(e).

¹³¹ *Id.* § 551.129.

¹³² 42 U.S.C.A. §§ 12131 – 12165.

¹³³ Tex. Att'y Gen. Op. Nos. JC-169 (2000), H-188 (1973).

This Article is only regarding videoconferencing

9.1.2

by: David Klein and Maris Chambers

February 1, 2018

Have any of you used Skype or FaceTime to communicate with a friend or family member, such as with your child when you are out of town? These twenty-first century videoconferencing innovations have broken down logistical barriers, where everyone can be “present,” even when they are not physically there. The scope of use of these videoconferencing applications has been spanning beyond casual conversations. In particular, over the past year, the question we have been hearing more and more is, “Can a governmental entity use videoconferencing at an open meeting of board of directors or city council?”

While the short answer is that the Texas Open Meetings Act (“TOMA”), Texas Government Code, Chapter 551, permits a governmental body to hold an open (or closed) meeting by videoconference, the TOMA and Attorney General’s regulations implementing such laws establish rigid requirements for the instances and manner in which videoconferencing can be used. Before trying to hold an open meeting by videoconference, a governmental entity should evaluate these requirements and determine whether videoconferencing is practical or just too onerous. In other words, what’s good for the small governmental entity isn’t always good for the larger one, and vice versa. This article highlights some of these glaring legal requirements, but if you are considering whether to implement videoconferencing at your open meeting, a closer look at these laws and regulations is a must, as violations of the TOMA could result in making the action taken by a governmental body voidable, or, as to an official, committing a misdemeanor.

A governmental body seeking to add videoconferencing capabilities to its open meetings repertoire need to look no further for statutory guidance than Subchapter F of the TOMA. As a threshold issue, § 551.127(b) dictates that an open meeting may be held by videoconference only if a quorum of the governmental body is physically present at one location of the meeting. Thus, videoconferencing is not a vehicle for all officials to stay at home, but rather for an official who cannot attend the meeting at the usual location.

Next, both the video and audio feed of the remote official’s participation must be broadcasted live at the meeting location of the quorum. In the case of the open portion of a meeting, the videoconference stream must be visible and audible to the public at the location of the quorum at all times. The Texas Department of Information’s rules (1 Tex. Admin. Code, Chapter 209) also place regulations on the minimum size of the video equipment and quality of the audio/video stream. So, in a large auditorium or meeting room where there is no suitable audio and video equipment, complying with the TOMA can require a large expenditure of public funds.

At its core, videoconferencing for governmental entities is about two-way audio and video communication. For example, the face of each participant in the videoconference, while that participant is speaking, must be clearly visible, and the voice audible, to the other participants, and during any open portion of the meeting, to the members of the public in attendance at the physical location of the meeting where the quorum is present. In fact, the audio and video signals perceptible by members of the public must be of sufficient quality for one to observe the

P 2 of 2

demeanor and hear the voice of each participant in the open portion of the meeting. The technical standards necessary to achieve this quality of two-way communication have been implemented by the Department of Information Resources ("DIR"), and such standards are robust.

Perhaps the biggest risk a governmental entity takes in utilizing videoconferencing is managing the situation when the audio or visual signal is lost, when the officials have important, time-sensitive matters to discuss and potentially act on at that meeting. Under the TOMA, if the audio or visual signal is lost, then the meeting must be recessed until the problem is resolved. So, if there is an open meeting where a time-sensitive matter must be addressed, a glitch in the videoconference stream can bring the meeting to a halt and the item is never addressed.

Procedurally, a meeting held by videoconference call is substantially similar to any other public meeting. For example, the remotely participating party is to be counted as present at the meeting for all purposes and the meeting is subject to the same notice requirements applicable to other public meetings. That being said, the notice of a meeting to be held by videoconference call must also specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location. Additionally, a remotely participating party must be considered absent from any portion of the meeting during which audio or video communication with that party is lost or disconnected. Unlike a typical open meeting, the governmental body must also create (at the primary meeting site) and make available to the public an audio recording of the meeting.

Given this regulatory framework, the feasibility of videoconferencing can vary greatly from one governmental entity to another. Videoconferencing may be a viable option for smaller entities whose open meetings are rarely or sparsely attended by the public. However, for open meetings widely attended by the public, videoconferencing may present more problems than solutions. Higher public attendance necessitates more energy and expense to allow audience members to observe the demeanor and hear the voice of each participant in the open portion of the meeting. Moreover, an entirely different set of rules exists under TOMA for large governmental bodies extending into three or more counties. It is therefore essential to explore whether or not implementing a videoconferencing procedure is truly in the best interests of each particular governmental body.

David Klein is a Principal and Maris Chambers is an Associate in the Firm's Water and Districts Practice Groups. If you or your governmental entity is considering the use of videoconferencing at its open meetings, do not hesitate to contact David at 512.322.5818 or dklein@lglawfirm.com, or Maris at 512.322.5804 or mchambers@lglawfirm.com.

Vide Conferencing Under the Open Meetings Act

Does the Open Meetings Act (Act) allow a city councilmember or city employee to participate in a city council meeting via videoconference call?

Yes. Government Code Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body by means of a videoconference. TEX. GOV'T CODE § 551.127(a-1); *see also id.* § 551.127(a) (providing that the Act does not prohibit a governmental body from holding an open or closed meeting by videoconference call, except as provided by Section 551.127).

What procedures must a city that lies in either one or two counties follow when a councilmember or employee will participate in a meeting via videoconference call?

1. A quorum of the city council must be present at one physical location. *Id.* § 551.127(b).
2. The video and audio feed of the member's or employee's participation, as applicable, must be broadcast live at the meeting. *Id.* § 551.127(a-1).
3. The meeting notice must specify where the quorum of the city council will be physically present and the intent to have a quorum present. *Id.* § 551.127(e).
4. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the quorum is present. *Id.* § 551.127(f).
5. The city council must make at least an audio recording of the meeting and the recording must be made available to the public. *Id.* § 551.127(g).
6. The location where the quorum is present, and each remote location from which a member of the governmental body participates, must have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where a quorum is present, and at any other location of the meeting that is open to the public. *Id.* § 551.127(h).
7. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules. *Id.* § 551.127(i).
8. The audio and video signals perceptible by members of the public at the location where the quorum is present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting. *Id.* § 551.127(j).

N/A

N/A

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act. *See, e.g., id.* § 551.127(d).

What happens in a city that lies in either one or two counties if the audio or video communication is disconnected or another problem occurs that causes the meeting to no longer be visible and audible to the public?

A recent amendment to Section 551.127 provides that if a member of the city council participates by videoconference and the audio or video communication is lost or disconnected, that councilmember could simply be counted absent for the portion of the meeting during which the communication is lost but that the meeting could continue so long as a quorum of the city council remains present at the meeting location. *Id.* § 551.127(a-3). Section 551.127(f) arguably gives the city council the alternative option of recessing the meeting for up to six hours in order to fix the problem. Recessing the meeting appears to be the only option if an employee, rather than a councilmember, is participating by videoconference.

What procedures must a city that lies in three or more counties follow when a councilmember or employee will participate in a meeting via videoconference call?

1. The member of the city council presiding over the meeting must be physically present at one location of the meeting that is open to the public during the open portions of the meeting. *Id.* § 551.127(c), (e).
2. The meeting notice must specify the location and the intent to have the presiding officer physically present at the physical space described in 1, above. *Id.* § 551.127(e).
3. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the presiding officer is physically present. *Id.* § 551.127(f).
4. The governmental body must make at least an audio recording of the meeting and the recording must be made available to the public. *Id.* § 551.127(g).
9. The location where the presiding officer is physically present and each remote location from which a councilmember participates shall have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where the presiding officer is present, and at any other location of the meeting that is open to the public. *Id.* § 551.127(h).
10. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules. *Id.* § 551.127(i).
11. The audio and video signals perceptible by members of the public at the location where the presiding officer is physically present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting. *Id.* § 551.127(j).

N/A

N/A

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act. *See, e.g., id.* § 551.127(d).

What type of Internet-based communication technologies meet the requirements for videoconferencing under the Act?

The DIR is responsible for establishing the minimum standards for the audio and video signals related to videoconferencing. *Id.* § 551.127(i). Under current DIR rules a "governmental body holding an open or closed meeting by videoconference using compressed video shall use

equipment meeting the minimum technical standards for videoconferencing established by the International Telecommunications Union (www.itu.int). Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the governmental body has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds the specified standards." 1 TEX. ADMIN. CODE. § 209.10. DIR has also published videoconferencing guidelines that must be considered by a city conducting open or closed meetings by videoconference. *Id.* § 209.11; TEX. DEP'T OF INFO. RESOURCES, VIDEOCONFERENCING GUIDELINES (Nov. 2013), *available at* <http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Videoconferencing%20Guidelines.pdf>.

~~If a councilmember in a city that lies in three or more counties participates in a meeting by videoconference call is the councilmember counted for purposes of a quorum?~~

N/A

N/A

~~Yes. The Act expressly provides that a member of a governmental body who participates remotely in a meeting by means of a videoconference call must be counted present at the meeting for all purposes. TEX. GOV'T CODE § 551.127 (a-2).~~

May a member of the public testify at a meeting by videoconference call even when the entire council is physically present at its regular meeting location?

Yes. The Act provides that "[w]ithout regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call." *Id.* § 551.127(k). The Act does not expressly require any special notice of this type of remote participation by a member of the public.

Is a videoconference call the same thing as a telephone conference call?

No. The Act makes it clear that a videoconference call and a telephone conference call are alternative types of communication. *See, e.g., id.* § 551.129 (authorizing a governmental body to use a telephone conference call, videoconference call, *or* communications over the Internet to conduct certain consultations).

The Act defines a "videoconference call" to mean "a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet." *Id.* § 551.001(8); *see also* 1 TEX. ADMIN. CODE. § 209.1. The phrase "telephone conference call" is not defined in the Act, and there appears to be no reported case or opinion addressing its meaning. Nonetheless, one primary difference between a telephone conference and a video conference call is that a telephone conference call involves only audio communication.

When may a city council hold a meeting by telephone conference?

Like most governmental bodies, a city council may hold a meeting by telephone conference call only if (1) an emergency or public necessity exists; and (2) the convening at one location of a

quorum of the governmental body is difficult or impossible. TEX. GOV'T CODE § 551.125(a); *see also* Tex. Att'y Gen. Op. Nos. GA-0908 (2012), JC-352 (2001).

May a city council ever consult with its attorney at a meeting by telephone conference or videoconference?

Yes. Section 551.129 of the Act authorizes a governmental body to “use a telephone conference call, video conference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body.” TEX. GOV'T CODE § 551.129. This Section only applies to a consultation with an attorney who is not an employee of the city. *Id.* § 551.129(d). An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the governmental body, is an employee of the city for purposes of Section 551.129. *Id.* § 551.129(e).

If the attorney is an employee of the city, the city council may meet with the attorney by videoconference under the Section 551.127 procedures described above.

Updated July 2017

Montgomery City Council
AGENDA REPORT

Meeting Date: February 12, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Jack Yates	Exhibits: N/A
Date Prepared: February 8, 2019	

Subject

This item was requested by a City Council member, regarding equal enforcement of the requirement for grease traps for restaurants inside the City of Montgomery.

Description

The issue involves the new Little Acorn Restaurant, which has a new owner from the previous restaurant, The Skinny Pig, that had been in operation for more than four years. At some point in the past they were not required to have a grease trap. When the new owners came in to transfer the utilities I inquired about their grease trap and was told that there was not one in place. I then contacted Rick Hanna, City Building Inspector, to speak with the new owners about their operation, and the result was that Rick said they did need to install a grease trap in their restaurant. I was told that the owner was talked to and they were agreeable installing the grease trap. When I was given the Certificate of Occupancy to sign, I, incorrectly, assumed that the grease trap had been installed.

I rechecked on February 4th and found that the grease trap had not been installed. Mike Muckleroy spoke with the owner who said they would get the grease trap in place "as soon as possible." If the grease trap is not in place by February 12th, I will write the owner a letter with a one week deadline to install the grease trap or they will have their Certificate of Occupancy revoked.

Recommendation

No action, allow the City Administrator's process to go as far as necessary, which will result in the grease trap being installed.

Approved By

City Administrator

Jack Yates



Date: 2/8/19