

**NOTICE OF PUBLIC HEARING and REGULAR MEETING**

**June 12, 2018**

**MONTGOMERY CITY COUNCIL**

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

NOTICE IS HEREBY GIVEN that a Public Hearing and a Regular Meeting of the Montgomery City Council will be held on Tuesday, June 12, 2018 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:**

Convene into a Public Hearing:

1. **Public Hearing** - regarding for the purpose of hearing public comments regarding a Proposed Budget Amendment to the 2017-2018 City General Fund Operating Budget.

Adjourn Public Hearing

**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:**

2. Matters related to the approval of minutes for the Regular Meeting held on May 22, 2018.
3. Consideration and possible action regarding adoption of a Banking Resolution for the City Bank Accounts changing the authorized signors for all accounts with First Financial Bank, N.A., Montgomery, Texas.
4. Consideration and possible action regarding completion of a one-year warranty period and release of maintenance bond for the Water and Sanitary Sewer to Serve Pizza Shack project.
5. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Star of Texas Seniors, Ltd.

6. Consideration and possible action regarding authorizing Jones|Carter to perform Utility and Economic Feasibility Study for the Star of Texas Seniors, Ltd. development.
7. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Ranier & Son Development Company, LLC.

**CONSIDERATION AND POSSIBLE ACTION:**

8. Consideration and possible action regarding Longview Greens Miniature Golf variance request to allow gravel to be used as a parking surface.
9. Consideration and possible action regarding authorizing Jones|Carter to perform annual water plant inspection.
10. Consideration and possible action regarding completion of a land swap by and between the City of Montgomery and Montgomery SH 105 Associates, LLC, per the 380 Agreement.
11. Report regarding the proposed Backflow Prevention Assembly Ordinance by the City Engineer.
12. Consideration and possible action regarding adoption of the following Ordinance:  
AN ORDINANCE BY THE CITY COUNCIL OF MONTGOMERY, TEXAS, AMENDING CHAPTER 78, "SUBDIVISIONS," OF THE MONTGOMERY CITY CODE OF ORDINANCES, BY AMENDING SECTION 78-61 OF ARTICLE III, "PLATS" AND SECTION 78-124 OF ARTICLE V, "ENGINEERING AND CONSTRUCTION STANDARDS; BY PROVIDING BENCHMARKS FOR THE FINAL PLATS AND ENGINEERING CONSTRUCTION PLANS OF PUBLIC FACILITIES; PROVIDING REPEALING AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION
13. Buffalo Springs Bridge Report by the City Engineer.
14. Consideration and possible action regarding Change Order No. 1 on the Buffalo Springs Drive Bridge Embankment Repair Contract.

**EXECUTIVE SESSION:**

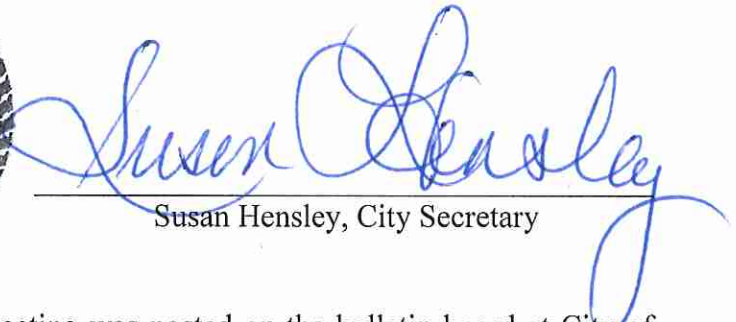
The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding 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. (*There are no items at this time.*)

**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 June 2018 at 5:10 o'clock p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

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*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.*

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Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits:</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to consider budget amendments to the General Fund.

**Description**

This is to recommend budget amendments. I will have the amendments ready Tuesday by noon. No one has asked to see the amendments.  
We will discuss the proposed amendments as tomorrow's Workshop.

**Recommendation**

Act as you deem appropriate

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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# MINUTES OF REGULAR MEETING

May 22, 2018

## MONTGOMERY CITY COUNCIL

### CALL TO ORDER

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present: Sara Countryman Mayor  
John Champagne, Jr. City Council Place # 2  
T.J. Wilkerson City Council Place # 3  
Rebecca Huss City Council Place # 4  
Dave McCorquodale City Council Place # 5

Absent: Jon Bickford City Council Place # 1

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

### INVOCATION

T.J. Wilkerson gave the Invocation.

### PLEDGE OF ALLEGIANCE TO FLAGS

### 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.

Mayor Countryman advised that Mr. L. A. Washington has requested to speak regarding Agenda Item 7, which is regarding the scheduling of a public hearing for rezoning of the property located at 1005

Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m. as requested by Robert L. Fisher.

Mr. Washington said that he did not know what type of business or endeavor is planned for this property, but currently this property is across the street from a primarily residential farm-like community. Mr. Washington said that the fear of anybody that lives in that area is what kind of industrial use they would be getting, will it be a junk yard, storage lot or a property that would be infested with mice, etc. Mr. Washington said that he wanted to address City Council so that they would know his concerns, because he intends on living in that area for a while. Mr. Washington said that he would like City Council to look closely at this situation before making a decision. Mr. Washington said that it was hard for him to say what he wants without knowing if this property is residential, and if it is residential then he has no requests, but if it becomes industrial then it will fall under a whole different zoning and would be right in the middle of three or four residential areas that are ranch or farm type neighborhoods. Mr. Washington said that right now there is just a metal building on the property with hardly any activity. Mr. Washington said that he was sure that City Council will listen to the residents that currently live there and the concerns that they have and he asked that they look at that and decide what kind of industrial business this is going to be so that the public will know. Mr. Washington said that there are some industrial applications that the residents might be able to live with and others they will have a problem with.

Mr. Mike Newman advised that he had two different items that he wanted to bring to City Council's attention. Mr. Newman said that the street lights that the City pays for are supposed to be repaired by the power company. Mr. Newman advised that there are two street lights on Caroline Street that have been going on, one in front of his house and the one at Louisa and Caroline goes on more than the traffic light at the corner. Mr. Newman said that in the past the power company was required to patrol the area to see what lights are on and off, mark them down and have them repaired. Mr. Newman said that the lights have been going on and off for about six to eight months, as said that he thought that it was the City's responsibility to push Entergy to do their job since the City is paying for it and the residents pay the City for the service. Mr. Newman said that the second thing is garbage collection. Mr. Newman said that the garbage company has gone to a two-truck pickup and one truck is a very large side loading truck, and the truck is very heavy. Mr. Newman said that the heavy truck has to make two trips since it only picks up the trash on one side of the street at a time, which he did not feel was a good fit, because he feels that the roads are too small and they are not in great condition because

of their age. Mr. Newman said that the way they are picking up the trash is efficient to the trash people, but he did not think that it was efficient for Montgomery.

Mrs. Julie Davis said that she agreed with Mr. Newman regarding the trash service, because she has exchanged numerous emails with Mr. Yates regarding the automated trash service. Mrs. Davis said that she wanted to talk about Agenda item 7, Old Plantersville Road and said that she is a neighbor of Mr. Washington, along with Mr. Potter and said that this is the same road that they just discussed two months ago regarding the young man that was severely injured and all the high school traffic and now they are going to zone the property for industrial use. Mrs. Davis stated that there was only one other property on the street that is zoned industrial on the entire Old Plantersville Road, and that property is a nuisance property that is full of roll off dumpsters that regularly house nasty trash with rodents. Mrs. Davis said that they are also storing two manufactured homes on the site and who knows if there are vagrants or squatters on the property and now City Council is asking the citizens to overlook a rezoning of a property that is across the street from their homes and within walking distance of her front door. Mrs. Davis asked City Council to please look into this matter before they zone the property industrial, because these are farm properties that have 10 plus acres, because they already have one that is a big nuisance that the City is not taking care of.

**CONSENT AGENDA:**

1. Matters related to the approval of minutes of the Regular Meeting held on May 8, 2018 and Special Meeting held on May 15, 2018.
2. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and the Lone Star Cowboy Church.

Dave McCorquodale moved to approve the Consent Agenda as presented. Rebecca Huss seconded the motion.

Discussion: John Champagne asked Mr. Yates to elaborate on the Escrow Agreement. Mr. Yates advised that the Church is planning on doing some building and dirt work that requires a site plan, so they need an Escrow Agreement to cover the costs. Mr. Yates said that the Escrow Agreement has been signed by the Lone Star Cowboy Church and they have paid their funds.

The motion carried unanimously. (4-0)

**CONSIDERATION AND POSSIBLE ACTION:**

3. Consideration and possible action electing the Mayor Pro Tem for the term of one (1) year as provided by Texas Local Government Code § 22.037(b).

Mayor Countryman called for a motion to open the floor up for nominations to elect the Mayor Pro Tem.

Dave McCorquodale moved to open the floor for nominations. John Champagne seconded the motion, the motion carried unanimously. (4-0)

John Champagne moved to nominate T.J. Wilkerson for Mayor Pro Tem.

Dave McCorquodale moved to close the nominations. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

Mayor Countryman announced that T.J. Wilkerson was elected, by general consent of the City Council, as Mayor Pro Tem.

4. Consideration and possible action on Department Reports.
  - A. Administrator's Report – Mr. Yates presented his report to City Council detailing his activities during the month. Mr. Yates stated that what he had just found out a couple of days ago, was that the City was denied the Texas A&M Program, however, the person that runs the program said that she liked the City's application and suggested that there were two other groups that possibly would work with the City. Mr. Yates said that he had met one person from one of the two groups, called the Texas Resiliency Program, which would be a no cost program and said that he would have more information at a future meeting. Mr. Yates said that they had also received the TxDOT plans for the FM 149 Project, which he has not yet seen, so he would ask City Council how they would like to proceed on this matter. Rebecca Huss asked if the plans were different than what is in the Engineer's Report. Mr. Yates said that he did not know because he has not seen the plans. Mr. Roznovsky said that they have received all the underground information, so from their point, that was what they needed to see, but



regarding the driveways and the overall plan, what is in the Council Pack is the most updated. Rebecca Huss said that she felt that it would be easiest to review the information in a small meeting that is not combined with other City Council business for the best use of time, because she is guessing that the meeting would run long. Mr. Yates stated that he would work on suggesting a date and time for that meeting. Mr. Yates said that he is also suggesting that they have a Saturday Workshop with just City Council, to review the current budget at this point, discuss the grant projects and the Water and Sewer Master Plan. Mr. Yates stated that the meeting would be open to the public with a specific agenda. Mr. Yates said that he is proposing that they conduct the meeting at Hodge Podge Lodge, just for a different atmosphere and the flow of the conversation. Rebecca Huss said that she was not opposed to that, but they are usually booked with weddings on Saturdays. John Champagne said that the Caroline House might be available. Mr. Yates said that he would also check with the churches. Mr. Yates said that he was proposing the first or second Saturday in June. Dave McCorquodale said that he would be gone the first Saturday in June.

John Champagne asked Mr. Yates if he had incorporated the new Escrow Policy and if they had incorporated the City of Conroe's procedures. Mr. Yates said that they do have a paragraph in the Escrow Agreement that puts a maximum to the Agreement, unless there is an extra inspection(s). Mr. Yates said that he has the City of Conroe's procedures, but has not reviewed the information at this time. Mr. Yates said that the paragraph that the Engineers had provided in the Development Pack last week, is a not to exceed figure. Mr. Yates said that he is working on the information. John Champagne asked if they could anticipate coming to some culmination this week or next. Mr. Yates said yes and said that he could propose it in the Emma's Way Escrow Agreement and he will get with the developer to see if they agree then it will come back to City Council probably at the next meeting. Rebecca Huss said that surely that would not mean that the City will bear the costs of any development expenses that go above a certain amount. Mr. Yates said that it is a set amount, unless there are circumstances and the developer would have to advance funds as needed.

John Champagne said that accessibility to our individuals for assessment and evaluation is an issue as well, and it has been in the past, also timely responses have

been an issue. John Champagne said that they are still in the customer service business and although developers are interested in their development, it has to be a happy medium. John Champagne said that the City has hired Jones & Carter to provide a service that should coincide with the mission statement and vision that the City has regarding serving our customers. John Champagne said that he was not saying that they haven't, he is just saying that it is a two way street. Rebecca Huss said that the Engineers provide specific bills for the services, whereas in other cities the tax payers are paying for the City Engineer on more of an amount and the charges may or may not cover the actual effort put into each development. John Champagne said that regarding Jones & Carter the City is not their only customer and our ability to respond to developers in a timely way is accessibility. John Champagne said that they could assume that Jones & Carter is doing everything that the City asks them to do and said that he is not sure that is taking place in a timely way. John Champagne said that he can't speak to specifics, he can only go by what he is hearing from their constituents, and in this particular case, developers. John Champagne said that he is looking to find a balance where everyone's concerns can be addressed. Rebecca Huss said that she did not feel that the taxpayers should bear the brunt of the write offs and if they commit to no more than a certain amount, the taxpayer should not bear the cost.

- B. Public Works Report – In the absence of Mr. Mike Muckleroy, Director of Public Works, Mr. Yates presented the report to City Council detailing the projects that had been completed during the month. Mr. Yates advised that Accurate Meter completed 15 miles of leak sounding and located six potential leaks. Rebecca Huss advised that at least one of the leaks is still leaking. Mr. Yates said that he thought that two or three were still leaking. Mr. Yates advised that there were four water leaks reported, 1 sewer stoppage, 10 water taps, nine sewer taps, they replaced the broken lights at Cedar Brake Park and Homecoming Park. Mr. Yates stated that the docents reported that they had a total of 1,145 visitors for the month and provided 66 tours. Mr. Yates said that the Technical and Operations Review Committee, City Engineer and Mr. Muckleroy recommended to him that Memory Park use the pond for irrigation, and the installation would be something that City staff can do at a cost of \$7,200. Mr. Yates said that the cost of a well would have been \$15,000 plus maintenance. Mr. Yates said that he has details that he can send out, as provided by Mr. Randy Burleigh. Mr. Yates said that

they have the funds in the budget to pay for this project. Rebecca Huss said that the project has a pretty quick payback period. John Champagne said that he thought it was a good plan. Rebecca Huss said that there was possibly some collateral benefits with the intake of the water for the irrigation system that will reduce the work for Public Works.

- C. Police Department Report – Chief of Police James Napolitano presented his report to City Council. Chief Napolitano stated that the Police Department welcomes the new Mayor and they are happy that she is here. Chief Napolitano reported that Old Plantersville Road has been patrolled by the Police Department, placing 3-4 officers out there, along with Constables from Precinct 1. Chief Napolitano advised that he also parked at the stop sign and stopped each student that drove up to the sign and asked if they knew the speed limit and if they did not he would advise them and he notified the ones driving pickup trucks that if they were caught driving off road they would be ticketed and arrested.

Chief Napolitano reported that two weeks ago they had a student overdose before school on Emma's Way. The Chief advised that the parking on Emma's Way is still an issue, and said that the students park over there even though they have passes so they can avoid getting their cars searched by the dogs, so they solved that by bringing their own dog. Chief Napolitano advised that one of the students smoked what he thought was marijuana and he did not even make it back to his car where he collapsed and fell in the middle of the road and could not be revived until two hours later at the hospital. Chief Napolitano said that they have a current investigation regarding that matter and the substance that the student was given.

Chief Napolitano advised that following the tragedy that occurred at Santa Fe, State Representative Will Metcalf came to his office to discuss school security, not just for our area but the surrounding area and they are developing a plan to go to the Governor to ask for funds. John Champagne asked if State Representative Metcalf went to visit every Police Chief. Chief Napolitano said no he did not. John Champagne asked why he came to Chief Napolitano. The Chief advised that State Representative had called and asked if he could meet with him because of his Secret Service experience. John

Champagne asked if the MISD Police have any jurisdiction over Emma's Way. Chief Napolitano advised that was the City's jurisdiction because it is outside of the School's property line. Chief Napolitano advised that if the vehicles are parked illegally they will ticket them, which is all they can do because it is a public street. Chief Napolitano advised that they did have a problem getting a fire truck into that location so they painted part of the curb red, and then if the student parks by the painted curb they will ticket and tow the vehicle. John Champagne asked if they could incorporate, as a City, an ordinance designating that as a tow away zone. Chief Napolitano said yes, they could put up no parking, but they would have to have an ordinance that designated that as a no parking zone. The Chief advised that what was done before the road was in place, the students would park over at Brookshire Bros. parking lot and have another student come and pick them up. Chief Napolitano said that the school is saying that once the new school opens off of FM 2854 this will eliminate the parking problem, except that the sophomores that are old enough to drive will still not be allowed to park on school property, per MISD regulations. The Chief advised that they had a meeting with the Superintendent of the schools and they asked if they could let students park on the school parking area by the stadium and they advised that it would be too much liability for them to allow the students to cross SH 105.

T.J. Wilkerson asked the Chief if he has floor plans of all the schools. Chief Napolitano advised that he has one from 2014 and since Chief Runnels has come on board he has requested an updated map, which he has not received yet. The Chief advised that he was supposed to meet with Chief Runnels yesterday, but he became ill and had to reschedule the meeting. T.J. Wilkerson said that if there is an incident where they require a lock down, who would handle that? Chief Napolitano advised that if it is in the City, his Department will take care of the initial set up of the arriving officers and then once it is all done then Chief Runnels should come to the command post and assume command at the school. Chief Napolitano advised that if Chief Runnels would be in contact with the shooter, then it would be left to whoever is next, which could be him and Chief Runnels. Chief Napolitano said that they want to organize these type of situations the best that they can.

- D. Court Department Report – Court Administrator Kimberly Duckett thanked City Council, Mr. Yates, Ms. Hensley and the Judge for bearing with her and giving her the opportunity to obtain her Level 1 Court Clerk Certification and to officially become the Court Administrator. Mrs. Duckett said that she is looking forward to the growth with the City and improving the efficiency of the Court, which is her number one project. Mrs. Duckett then presented her report to City Council. Mrs. Duckett said that for the month of April the Court funds were \$39,781. Mrs. Duckett said that they are going to be looking at new software to help with their warrants. Mrs. Duckett said that the company that the City currently has is not being utilized to the best of our ability. Rebecca Huss asked if Mrs. Duckett was talking about another software besides Incode. Mrs. Duckett said that it was Incode, but a higher version, Incode 10. Mrs. Duckett said that she has spoken with some other Courts, Brenham, Jersey Village and Spring Valley who use the latest version of Incode and they advised that it was making their Court a lot more efficient. Rebecca Huss asked if Mrs. Duckett thought that it would help with the Utility Billing. Mrs. Duckett said that the billing has a lot of different parts versus the Court, but as long as it is able to function with the different categories that Utility Billing has she thought that it would help.
- E. Utility/Development Report – Mr. Yates presented the report to City Council, advising that the Utility Billing receipts were \$127,373 for 651 accounts, which includes nine new accounts from last month. Mr. Yates said that the permits were \$19,084 for 50 permits, which is approximately 3-4 new homes, plumbing, mechanical and electrical permits. Mr. Yates advised that the Community Building only had \$300 in revenue, with 10 rentals that were all nonprofit groups. Mr. Yates said that except for the amount of work that was done in the kitchen of the Community Building they are pretty much staying close to revenue versus expenses. Dave McCorquodale asked where the \$300 revenue came from. Mr. Yates said that he was not sure, but he thought that it might be carryover from the previous month.
- F. Water Report – Mr. Michael Williams, with Gulf Utilities, presented his report to City Council. Mr. Williams advised that they had six district alerts, which the first three were due to power fluctuations on the evening of April 18 going into the morning of April 19, where they had power fluctuations of the Wastewater Plant 2 and Lift Station

6, which were reset and running normally. John Champagne asked what caused the power fluctuations. Mr. Williams said that it was most likely due to a storm in the area or issues with the incoming electricity. Rebecca Huss stated that if it was during the hail storm, there were two transformers that had blown out. John Champagne asked if it had anything to do with what they are experiencing at the wells. Mr. Williams said that it was the exact same thing. John Champagne said that this was a chronic issue at the wells. Mr. Williams said that they have not had any issues with the wells for a while now. Mr. Williams said that the alert on April 28 was due to a storm in the area, where they had two high wet wells at lift stations and a surge alarm at the Wastewater Treatment Plant. Mr. Williams advise that the effluent flow for the month was 4,096,000 gallons and the peak flow was on March 29 at 573,000 gallon, which is 143% percent of the permitted value. Mr. Williams advised that the daily average flow was 132,100 gallons that is 33% percent of the permitted value. Rebecca Huss asked about April 28 regarding the infiltrations and whether they had information on where the problem was. Mr. Williams said that they were compiling the information and will be getting with Public Works to determine the location. Mr. Williams advised that for the month of April they sourced a total of 7.61 million gallons, flushing 151,000 gallons and they sold 6,750,000 gallons for 91% accountability. Mr. Williams said the accountability was a little bit lower than they were used to, but they did have a high month last month, but they will continue to keep an eye on it. Mr. Williams said that last month they had a 61% percent return of sold water to the sewer treatment plant. John Champagne asked if that matched up with the irrigation that they anticipate. Dave McCorquodale said that 39% percent seemed like a lot of water going somewhere. Mr. Williams said that the City is trying to separate the irrigation meters in Incode and once they do that they will be able to have a better explanation on how much is being irrigated. Mr. Roznovsky advised that Incode setting up different classes has been an issue. Mr. Roznovsky said that Mr. Burleigh's spreadsheets has manually done the separation to breakout the irrigation meters. Mr. Roznovsky said that they can break out commercial and residential, but they can't break out irrigation. John Champagne said that is ridiculous, because they have expensive software that is separating everything and asked why they can't separate irrigation from residential. Mr. Roznovsky said that they were supposed to be working on that matter. John Champagne asked who was working on it and owns this project. Mr. Roznovsky

advised that Mike Muckleroy, Director of Public Works has been working on getting this matter resolved.

Rebecca Huss said that she appreciated the fact that they were staying within the City's permitted value ranges.

- G. Engineer's Report – Mr. Chris Roznovsky, Engineer for the City, presented his report to City Council. Mr. Roznovsky advised that he had handed out information regarding the FM 149 cleaning and televising to allow City Council to review the material for discussion at a future meeting. Mr. Roznovsky said that the quick summary of the information is there is a cost estimate of the repairs from north of FM 1097 to 149 downtown. Mr. Roznovsky said that what this will show is the items that are damaged that need to be repaired due to age, not because of the televising. Rebecca Huss asked, roughly, what percentage this accounts for the overall sewage mileage. Mr. Roznovsky said that he did not have an answer for that question right now. Mr. Roznovsky said that they televised a total of around 7,000 to 8,000 feet and he needs to look at the total miles in the system, which he thinks is in the range of 80,000 to 100,000 feet, which would be about 10% percent, but he will have to go back and check. Rebecca Huss said that if it is 10% percent that would be \$158,000. Mr. Roznovsky said that the repairs that need to be addressed which were picked out items, such as, the crossing at FM 149 and Lone Star Parkway intersection. Mr. Roznovsky advised that the Geographic Information System (GIS) Build should be complete in July.

Mr. Roznovsky said that all the water development projects are moving forward and they will have the Workshop Meeting to discuss those further in detail. Mr. Roznovsky reported that Baja Road CDBG improvements (waterline and drainage improvements) are expected to be completed in the next few weeks. Mr. Roznovsky said that the Baja Road FEMA paving project will be done after the completion of the Baja CDBG portion of Baja Road, which will be followed with the General Land Office (GLO) portion of Baja Road.

Mr. Roznovsky advised that the Montgomery Shoppes have a private bridge within their site and they returned their plans with comments yesterday. Mr. Roznovsky stated

that they returned the Spirit of Texas comments on the 18<sup>th</sup> of April, and Emma's Way plat comments on the 17<sup>th</sup> of April.

Mr. Roznovsky stated that the FM 149 plans, which they will go into detail during the Workshop Meeting, but they have included in the agenda pack are just the overall plan view of the street and have highlighted, from the original plan set to now the driveways that have changed and the turn lane that has been added. Rebecca Huss asked if they are ever going to give the City information about what the City is responsible for financially. Mr. Roznovsky said that they still need to answer what the City will be responsible for financially.

- H. Financial Report and Quarterly Investment Report – Mrs. Cathy Branco, Financial Consultant, presented her financial report and investment report to City Council. Mrs. Branco reviewed the Finance Report detailing all the different accounts for the benefit of the new Mayor.

Mrs. Branco advised that the General Fund has a net income of \$68,000, which is doing pretty well at this time. Rebecca Huss said that this is something that they have talked about repeatedly, the City is not, in fact, doing well because this does not include what the City owes on this year's revenues for Kroger. Mr. Yates said that he would be presenting that information with the budget amendments. Rebecca Huss said that she was noticing that the City collected some PID tax revenue, which is essentially a pass through, so \$35,000 of the \$68,000 is already gone and does not count as revenue. Rebecca Huss said that they should have a contra-revenue account for the Kroger funds, PID tax revenue and probably for permits and licenses, because they pay out a lot of that in fees, which shows up on a slightly more regular basis. Rebecca Huss said that without those three numbers the City is running significantly behind on revenues. Mr. Yates said that he thinks that he has an answer for that information that will be included in the budget amendments. Rebecca Huss said that was excellent, but she would also like to see it every month in the report, because fiscal restraint comes mentally when they don't feel like they have money to spend and they need to be cognizant of what they actually have to spend. Mr. Yates said that they do need to keep track of how much they have to spend versus how much has been accounted for.



Mr. Yates said that none of these funds will be spent until next year anyway, but as they go through the budget amendments he thinks that he can answer the questions. Rebecca Huss said that even if the funds don't actually flow out it has been accrued as an expenditure in this year and they will owe it early in the next fiscal year, so it should be in the account ready to write a check when we actually owe it and it should come from the year in which the money was earned. Rebecca Huss said that she feels that they need to be more conservative, because cities get themselves in trouble by pretending they have money that they don't have and then spending it, thinking that they will make it up later, but they don't. John Champagne said that he totally agreed with Rebecca Huss regarding the accounting clarity, but asked to confirm with Mr. Yates that he was aware of this information and it was not like he was flying blind. Mr. Yates said that he was aware of the information. Mrs. Branco said that Mr. Yates is getting information on the separation of the funds, so that they will have better information over the next couple of weeks.

Mrs. Branco advised that they still have several escrow agreements that have outstanding funds of about \$53,000. Rebecca Huss said that also brings up the question of which they sort of touched on earlier, of how much the City has actually written off for escrow agreements just this year. Rebecca Huss said that there has been quite a bit of pressure to do so, and she would like to know how much they have outstanding that the City has paid for services that has not been collected through escrow agreements or otherwise from the developer who has incurred those expenses. Rebecca Huss asked Mrs. Branco if she had any information regarding that matter, because they had spoken about that last week and she was curious whether she had found out any information. Mrs. Branco said that she had some information regarding that, advising that there were some problems with one particular individual that feels that he should not have to pay for the escrow agreement, stating that she was not sure exactly why and she has not really discussed that information with Mr. Yates, but there was some \$4,400 outstanding on that account, which has never been paid and another account has \$2,000 outstanding. Mr. Yates advised that he could give City Council a line by line report on that information next week showing the status of the escrow accounts, where they have been, how much they have collected and how much is outstanding. John Champagne asked if Mr. Yates was actively involved with the issue of the escrow accounts. Mr.

Yates advised that was correct. Rebecca Huss said that she felt they held one particular developer to account and they actually did recently provide a check and she felt that they should hold everyone to that same standard with the same type of treatment, and the City should not be losing their leverage for writing things off. Rebecca Huss said that they have spending limits without Council approval and she thought that City Council should be involved in writing off payments if it goes over a certain amount in total. Mr. Yates said that information would be in his report to City Council. Mrs. Branco said that she has all the breakdowns for Mr. Yates whenever they go over the information.

Mrs. Branco reviewed the Capital Projects account, which includes the Texas Water Development Board Certificates of Obligation A and B and those funds in escrow and the draws are to be made from those escrow accounts. Mrs. Branco advised that so far they have drawn about \$6,000 out of one account and about \$23,000 out of the other account. Mrs. Branco advised that the Buffalo Springs Bridge Repair funds are coming from FEMA and the CDBG projects, so they have to wait for those funds once the estimates are sent to FEMA and CDBG, and in the process the General Fund will transfer over funds to cover the costs until the FEMA and CDBG funds have been received. Mrs. Branco said that the General Fund has fronted the Capital Projects \$125,000 for pay estimate #1 and just over \$50,000 for pay estimate #2, and pay estimates #3 and #4 are in the works and she has not seen any funds come in for 2, 3 or 4. Mrs. Branco advised that they did receive the funds for pay estimate #1, which was mostly from FEMA, but they received \$70,000 of the \$94,000 that they were expecting because they pay a certain percentage and wait for the approval on the other percentage, but they have received the CDBG funds. Mrs. Branco said that she just paid back the \$125,000 to the General Fund for pay estimate #1.

John Champagne asked if Mrs. Branco interacts with an individual at these government agencies. Mrs. Branco said that she does not, typically Mr. Yates and Mr. Roznovsky interact with them and she is copied on the emails.

Mrs. Branco advised that on the 2017A Texas Water Development Funds the City has earned interest totaling \$3,442 and made a draw on \$6,560. Mrs. Branco stated that

the interest on the 2017B Texas Water Development Funds has drawn interest of \$5,476 and the City has made a draw of \$28,633 on that account.

Mrs. Branco advised that as City Council goes through the budget they will find that all the funds are in a positive net position, except for the Utility Fund and that will correct itself during the summer, because there will be a lot more income during those months. Mrs. Branco said that \$50,000 was submitted from the Utility Fund to Capital Projects that is being put back, because it was not needed, so that will bring the deficit balance from \$76,000 deficit to a positive figure.

Mrs. Branco advised that they are talking about a budget revision on June 12, 2018, so in the meantime she and Mr. Yates will be working on those revisions. Mr. Yates asked Mrs. Branco to review the Investment Report. Mrs. Branco advised that the Quarterly Investment Report is a report that is done by Municipal Accounts and Consulting for the purpose of bringing City Council up to date on what the investments have been, how much interest has been earned during that period of time and where the money has been and interest rates. Mrs. Branco advised that the TexPool accounts have gone from 1.67% percent to about 2% percent. Mrs. Branco advised that each page of the Investment Report is a different fund, with the main page being completed by Mr. Mark Burton, Investment Officer for the City. Mrs. Branco reported that they start with the operating fund, which shows all the funds that are in TexPool, which has a balance of \$208,547.49 with the interest on those funds of \$710.15. Mrs. Branco said that the Capital Projects Fund TexPool accounts has \$577.00, debt service fund with TexPool has \$24,568.19, Montgomery EDC has \$236,787 with interest on those funds of \$808.31, and the Utility Fund has \$18,099 with \$61.73 in interest. Mrs. Branco said that the Debt Service has no investments in CD's, but the Montgomery EDC has two investments.

Mr. Yates said that the key point is that, in Mrs. Branco's opinion, all the investments are proper investments and the investment officials are acting correctly in their deposits and securities, because the City has to have certain types of securities that is called for in the State Law, and State Law requires a quarterly report of the investments.

Mrs. Branco said that the last page of the report is a summary of the pledged securities that shows what is pledged against the City's investments at each bank. Mrs. Branco said that anything over \$250,000 has to be pledged, and said that up to that amount is covered by the FDIC. Mrs. Branco said that the final item is the Debt Service payments that the City has on September 1, 2018, and the City will have an interest only Debt Service payment of \$114,000. Mrs. Branco said that in March of each year the City will have the Principal and Interest payments, so the City will have \$559,000 due in March of next year, which at the present time the City has plenty of money to make that payment. Rebecca Huss said that payment is due right after the City receives their property tax funds. Mrs. Branco said that was correct.

Rebecca Huss moved to approve the Departmental Reports as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

5. Consideration and possible action regarding a conflict of interest question from Jones and Carter regarding work with Star of Texas Seniors, Ltd.

Mr. Yates advised that this was to give Jones and Carter permission to do work with the Star of Texas Senior Development project. Mr. Yates said that while this action is not required, it is the ethical thing for Jones and Carter to do. Mr. Yates said that this will be one branch of Jones and Carter doing the design and presentation work with Mr. Roznovsky, with the City's representative of Jones and Carter reviewing the plans, specs and site plans, just as he would in any other case. Mr. Yates advised that this has come up and been allowed approximately three times during his tenure with the City. Mr. Yates said that it came up as a matter of conflict, when Jones and Carter designed Lone Star Bend Road for Montgomery County, reviewed the plans with the subdivider and inspected the project on behalf of the City. Mr. Yates said that the other projects had no issues at all with the design work or the quality of the completed project. Mr. Yates said that it was his opinion that Jones and Carter is a large enough firm to where the designer of the project will hardly be known by the reviewer. Mr. Yates said that Mr. Roznovsky is responsible for getting a quality project on behalf of the City, regardless of who is the designer. Mr. Yates said that it was his recommendation that City Council approve Jones and Carter to perform the work with the Lone Star Seniors group.

John Champagne asked who would be the representative within Jones and Carter that will be leading the work for the Star of Texas Seniors development. Mr. Roznovsky advised that it would be Jeremiah Kamerer. John Champagne said that the City had nothing to do with Jones and Carter obtaining the work with Star of Texas Seniors, Jones and Carter solicited the work. Mr. Roznovsky said that Jones and Carter was contacted by the developer, and the City had nothing to do with the transaction. John Champagne said that Mr. Yates opinion implies that the size of the company is proportional to the individuals' ability to know each other, which would give the City ease of any perception of impropriety. Mr. Yates said that he did not know if it was about knowing so much about each other and said that he wanted to expand on that statement saying that he thought that the person that does the design would be working distinct from Mr. Roznovsky and would do his own design for Lone Star Seniors. John Champagne said that he was uncomfortable with this, not to say that anything unethical would take place, he just feels that it exposes the City to be second guessed by others.

Rebecca Huss said that she feels differently than John Champagne. Rebecca Huss said that the City allowed the Milestone transaction, which has a much bigger economic impact on the City and potential for conflict because Milestone is a bigger development and there is a lot more potential for future business for Jones and Carter, whereas this is a small multi-family project that has very little economic impact on the City. Rebecca Huss said that if the City hates the project and the developer gets mad and goes away, Jones and Carter has to decide whether to follow the developer or the City. John Champagne asked Rebecca Huss whether her argument is that 1) because it has been done before in the past, there is no reason that they should not do it now, and 2) it would be foolhardy for Jones and Carter to do anything other than what is absolutely in the best interest of the City, because so much is at risk in regard to their contract and relationship that they have with the City. Rebecca Huss said that her statement was misinterpreted and said what she actually meant was that it would not be in Jones and Carter's best interest to act in a way that is not in the City's best interest and said that most people act in their best interest.

Dave McCorquodale said that he took no issue and said that he thinks a great deal of Jones and Carter and he believes that, as a design professional, he understood the responsibility that they have as a professional designer and certainly as engineers. Dave McCorquodale said that the idea that Jones and Carter would not be doing what they said they are going to do would be so

low in probability that he did not see any issues at all. Dave McCorquodale said that he would think differently if they were looking at two ongoing projects, where they were about to enter into an agreement with hundreds of thousands of dollars in engineering fees for years and years, as opposed to designing a small 10-12 home community.

John Champagne said that from a practical standpoint he agreed with Dave McCorquodale, it is the potential of being looked upon as being less than the best way to do these things. John Champagne said that it was projecting a less than transparent and potentially ethical relationship. John Champagne said that he agreed with both Rebecca Huss and Dave McCorquodale's premise. Dave McCorquodale asked what would be the solution for John Champagne, to back off of the City portion or the project portion. John Champagne said that anytime Jones and Carter is doing City work he would contract another to evaluate. Rebecca Huss said that a third party could ultimately cost the City more money, because it would lead to billable hours for them to get in touch with the City's Codes to know whether they were reviewing our plans properly. Rebecca Huss said that when Katherine Vu came on line she was billing for reviewing the Code of Ordinances to make sure all the requirements included, because they are different for each City. Rebecca Huss said that ultimately, the fact that Jones and Carter brought up the matter and we are discussing this is the transparent part. John Champagne said that it would be foolhardy for Jones and Carter not to bring the subject up to City Council.

Dave McCorquodale asked what type of action they were considering. Mr. Roznovsky advised that there is a letter included in the Agenda Pack from him, signed by the developer, which would acknowledge the disclosure of the potential conflict of interest. Mr. Yates said that the City Attorney has just advised that they make a motion that they do see a conflict, or that you do not see a conflict of interest. Rebecca Huss said that they do acknowledge the conflict of interest and accept the conflict. Mr. Forester said that the purpose of the letter was to advise the City Council of the conflict of interest, so obviously there is a conflict, but the question is, does the City Council feel that this conflict impairs their ability to serve the City as they have in all other matters. Mr. Foerster said that they have an obligation to notify both clients of this information. Mr. Foerster commented that in his experience upon other occasions, depending on the project, City Engineers have done work for both the developer and the City. Mr. Foerster said that the developer sometimes comes to the City Engineer, because they think it will get

done right when it is done by the City Engineer and they want it done right to the City's specifications, so that is the reasoning that some City Councils use. Mr. Foerster said that Jones and Carter's obligation, as he read their ethics requirements, are similar to those that an attorney has. Mr. Foerster said that for years he used to represent ESD #2 and then he became the City Attorney for the City of Montgomery, which he had to bring to the attention of both of his clients. Mr. Foerster said that at that time it did not make any difference until there was a sales tax issue and at that point, ESD #2 released him from his obligation and hired another law firm to do the work, otherwise he would have had to step back from representing both sides. John Champagne said a potential exists for a conflict. Mr. Foerster said the exposure is primarily on Jones and Carter, because if they do something that is perceived by either client to not be in the best interest of the client, then they have to be accountable to that client. John Champagne said that the City would be culpable as well because we have approved that relationship. Mr. Foerster said that the City did not approve Jones and Carter doing anything that is not in the best interest of the City. John Champagne said that City Council has approved the potential conflict relationship.

After discussion, Dave McCorquodale moved to acknowledge the potential conflict of interest with the Star of Texas Seniors Development and the work that Jones and Carter is doing and to authorize the City to sign Jones and Carter's letter. Rebecca Huss seconded the motion.

Discussion: Rebecca Huss added that that we are placing our faith in Jones and Carter to do their job with the utmost attention to integrity that they have shown on other matters.

The motion carried with 3-Aye votes and 1-Nay Vote by John Champagne. (3-1)

6. Consideration and possible action regarding the request for paving of Mason Street as submitted by Bob Peel.

Mr. Peel was present for the discussion and thanked City Council for their service and time spent governing the City of Montgomery. Mr. Peel advised that Mason Street is about 300 feet right behind the Community Building, with one resident residing on it. Mr. Peel said that the street has not been paved since 1984, which is 34 years ago, by County Commissioner Bo Calfee. Mr. Peel said that he has been requesting that something be done about paving the

street because it has become a funnel for all the water that is flowing this way, north to south and goes under a home that was built in 1897. Mr. Peel said that the other streets around it have been paved many times and are higher than Mason Street, which makes it like a funnel. Mr. Peel said that you can't do anything worse for an old home than to have water flowing under the house. Mr. Peel said that this is probably something that should not have to come to City Council, but he was forced to come because he was told that the road was going to be paved for eight months. Mr. Peel said that he was told numerous times that the work would be done and Commissioner Mike Meador would take care of the road when he gets time. Mr. Peel said that nothing has been done. Mr. Peel said that he is coming to City Council to see if they are going to do the project, and asked that they advise if they are or are not going to pave the street. Mr. Peel said that if there is any opposition to the project he would like to know what it is.

Mr. Yates said that he has some new information from Commissioner Meador. Mr. Yates said that Commissioner Meador has stated that he is not going to be able to do the project, until next summer. Mr. Peel said that it seems odd to him that they can pave a section that is way over 1,000 feet, which runs on the west side of the City Park to accommodate a parking lot, because this is a street that is traveled through. Mr. Peel said that there is more traffic that goes on Mason Street than goes on Houston Street. Mr. Yates said that the Montgomery EDC paid for that project.

John Champagne said that he thought there was a solution for this project, and said that he was not at liberty to engage in the matter. Mr. Peel said that he was hesitant to come to the City.

Rebecca Huss said that there were options that they could discuss with Montgomery County and it would be a benefit to let staff have some time to work things out. Mr. Yates said that he thought that they could work on the drainage. Rebecca Huss said that if Mr. Peel was worried about the water going from north to south, then paving would not really change that and the drainage improvements might do a better job. Mr. Yates said that they could do some drainage work. John Champagne said that he thought that there was a solution for this matter before next summer.



Mayor Countryman asked if a motion was required. Mr. Foerster stated that he did not know what the motion would be other than directing Mr. Yates and staff to continue looking for a solution that will resolve this problem before next summer. John Champagne said that it needs to be done in a timely way.

No motion was required for this item.

7. Consideration and possible action regarding scheduling a Public Hearing for rezoning of the property located at 1005 Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m. as requested by Robert L. Fisher.

Mr. Yates advised that Mr. Fisher had passed away and Mrs. Theresa Fisher, the actual occupant, is present. Mr. Yates advised that this is a situation where the original zoning of the City split this piece of property into one half Industrial Use and one half R1 – Single Family Residential Use. Mrs. Fisher is wanting to sell the property and the prospective buyer wants it for all Industrial Use. Mr. Yates said that the more recent 2017 Zoning Maps, he believed, are in error in their representation of this area, by not following the 2003 map, which is called a “scriveners error”, since there was no action since the 2003 map, that clearly had half of the property zoned Industrial, on the western side with the barn and the road that leads up to the barn, and the eastern half of the property zoned Residential. Mr. Yates said that Mrs. Fisher provided him a letter from the Mayor at that time, with a request from her husband to the Mayor about the use of the property. Mr. Yates said that the Mayor’s letter states that both uses would be within the Zoning Ordinance, but Mr. Yates said that he did not know what “both uses” meant, because it does not describe what the request was for both uses. Mr. Yates said that a clear way of resolving this matter is to either zone the property or they could do a Specific Use Permit, so that anyone that is concerned about the Industrial Use could get an answer by the Specific Use Permit. Mr. Yates said that they could use a Special Use Permit that is essentially an ordinance that specifies how the property can be used. Mr. Yates said that the most recent example is a Special Use Permit that they did for firewood sales on FM 149, which only had one allowable use for the sale of the firewood, along with specifying other requirements.

T. J. Wilkerson asked if the Special Use Permit would be seasonal. Mr. Yates said that it could be as long and the term of the Permit provides and could be tied to the specific person that

purchases the property or to a time frame, but he did not think that they would want to use a time frame. Dave McCorquodale said that Special Use Permits always seem to be cut out for uses other than a particular situation like this, because he did not see how a business owner could plan and said that it just needs to be the correct zone.

Mr. Yates said that they could go ahead and call the Public Hearing for Industrial Use and then City Council could change their mind in the course of their action and go to just Commercial Use.

Mrs. Fisher advised that she would like to say that she and her late husband purchased the property in 2003, when they thought that it was all Light Commercial, which was how it was on the deed as one tract, and how it got split, she had no clue. Mrs. Fisher said that she can't sell the property with Residential Use on it, because no one is going to purchase it. Mrs. Fisher said that she has been a Realtor for 38 years, and she did not think that anyone would build their dream home with a railroad in the backyard. Mrs. Fisher said that the Appraisal District is taxing her on all of it as Commercial Use. Mrs. Fisher said that she had put the property up for sale as Commercial property. Mrs. Fisher said that they always thought that the property was Commercial Use, which was why they built the barn so that her husband could restore old vehicles. Mrs. Fisher said that now that her husband is deceased she does not need or want the property and it is costing her a lot of money to keep the property. Mrs. Fisher said that she can sell the property if it is all Light Commercial, which is how she listed the property, until she found out the property was split.

John Champagne asked Mr. Foerster about the legal or actual description of the property. Mr. Foerster said that Mr. Yates advised that the property has the two uses. John Champagne asked if the information has been researched. Mr. Yates said that they have gone back to the original zoning map. Mr. Foerster said that what City Council has to do tonight is to determine if they want to call a Public Hearing on this issue, they are not being asked to vote on the matter, they are simply being asked to have a Public Hearing as part of the process.

John Champagne moved to schedule the Public Hearing to consider the rezoning of the property at 1005 Old Plantersville Road to be held on June 26, 2018 at 6 p.m. at City Hall. T.J. Wilkerson seconded the motion.

Discussion: Rebecca Huss said that she did not feel that they really needed to have a Public Hearing at all, because they have heard from residents in the area that having Industrial property in a Residential District does not do them any favors. Rebecca Huss said that basically the choices are to do nothing or zone it as Industrial and she did not think that the choice that the landowner is asking for does the City any favors and it does not do the neighbors any favors. Rebecca Huss said that if they are to do anything, she thought it was more along the lines of after the property sells, if the owner comes in and says they would like to do something with the property and they have an exact plan and we give them a Special Use Permit that keeps them within millimeters of the exact plan, that is something that they can live with. Rebecca Huss said that the use would have to be compatible with the Residential District. Rebecca Huss said that if they go with an Industrial Use, they have no control of what the property ends up with, because if the use is on the approved list of uses for an Industrial Zone, that is what you could have there in this Residential District, whether it is by a railroad track or not, so she felt that they were wasting money by setting a Public Hearing. Rebecca Huss said that it was not the governments business to rezone things to make people money, it is the governments business to try and figure out ways to make the community a place that the residents want to live. John Champagne asked if Rebecca Huss' premise was that two people speaking against is enough. John Champagne stated that Rebecca Huss said that a Public Hearing is unnecessary because we have already heard that it is not acceptable. Rebecca Huss said that she has also spoken to her other neighbors that have not spoken here today, because this is actually in her backyard and she is aware of the other Industrial Use property, of which was referenced by both of the people that spoke here, and again it is a public nuisance, a public nuisance legally and actually, that the City has not done a good job of regulating. Rebecca Huss said that they are wasting money. John Champagne asked what money they were wasting. Rebecca Huss said that the City has to send out legal notices. John Champagne asked what the cost was and was it burdensome. Mr. Yates advised the cost of the notices is borne by the requestor. John Champagne said then that goes away. Rebecca Huss said that she did not feel that it was necessary, when again the solution is something that is not potentially suitable for the neighborhood. John Champagne said that instead of filibustering why not vote on the motion.

Dave McCorquodale said that he would like to add one thing, he did not feel that Industrial Zoning has any place in a town that is one square mile and said that he is totally opposed to any new Industrial Zoning in the City, ever. Dave McCorquodale said that he did think that

the Public Hearing plays the part, because that is where people get to come back and make comments, even though it seems like it is being done tonight. Dave McCorquodale said that is the way that the items are set up, where all they are talking about tonight is setting the Public Hearing, they can't talk about the merits of whether or not it is good, bad or indifferent. Dave McCorquodale said that if the landowner is willing to pay for the Public Hearing that the public can come to, then he is confident that there are some public that would love to be given a few minutes to speak on more than what we have heard tonight. John Champagne said that his point is the person has every right to request the Public Hearing, and everyone else has a right to refute it, which is where he is at.

Mayor Countryman called for a vote regarding scheduling the Public Hearing for rezoning of the property located at 1005 Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m.

The motion carried with 3-Ayes and 1-Nay by Rebecca Huss. (3-1)

8. Consideration and possible action regarding scheduling a Public Hearing for a Special Use Permit to allow a multi-family development to be located on property zoned for Industrial Use, at 2500 Lone Star Parkway, Montgomery, to be held on June 26, 2018 at 6 p.m., as requested by Star of Texas Senior, Ltd. Property located on the northwest side of the Lone Star Community Center.)

Mr. Yates advised that this property is currently zoned Industrial but it does not list Multi-Family Use as a permitted use, and the last sentence of the schedule provides that any use that is not specifically listed could be applied for as a Special Use Permit. Mr. Yates stated that the owner of the property, Mr. Larry Jacobs was present at the meeting.

Mr. Matt Fuqua, Vice President of Blazer owner and operator of the Heritage Apartments located at 325 Flagship Blvd, advised that they have an application to the State for an award of tax credits for their Multi-Family development Heritage Seniors Development, Phase 2. Mr. Fuqua said that this item is on the agenda for another tax credit applicant, Star of Texas Senior, Ltd., for Multi-Family Use within an Industrial Use area. Mr. Fuqua said that the request was made on behalf of the proposed developer of the property and not the property owner. Mr.

Fuqua said that there were several reasons that he believed that a Special Use Permit is not the appropriate way to change the proposed land use of a tract of land. Mr. Fuqua said that his development faced a similar issue when Heritage Apartments was under development and at that time their site was zoned commercial, but the Zoning Ordinance allowed their proposed Multi-Family Use because of cumulative zoning. Mr. Fuqua advised that the Zoning Ordinance was changed in 2014 to disallow Multi-Family in that zone, so they went through the rezoning process, rather than be a nonconforming use. Mr. Fuqua said that the rezoning process is a public process with notice to nearby property owners, which provides sufficient time and notice to enable public consideration of the impact to surrounding properties. Mr. Fuqua said that a Special Use Permit is a conditional waiver of the zoning that is typically used for a specific use and length of time. Mr. Fuqua stated that the Zoning Ordinance requires that a landowner request a Special Use Permit and that the Planning and Zoning Commission conduct a study and present a report to City Council concerning the effect of the proposed use, character and development of the neighborhood. Mr. Fuqua stated that it appears that the tax credit applicant submitted the request for a Special Use Permit, but the ordinance requires the property owner to make the request and additionally it appears that if a Special Use Permit were to be issued, that in the event of a casualty of more than 50 percent of the value, the site would have to be restored in conformity with the regulations in the district in which it is located. Mr. Fuqua said that for Heritage Apartments it was clear that the Multi-Family Use of their project was permanent, so they went through the rezoning process. Mr. Fuqua said that he believes that for the Star of Texas or the proposed permanent use of the future owner is to be nonconforming and rezoning is the proper way for Multi-Family Use to be permitted in a zoning district where it is otherwise not allowed. Mr. Fuqua said that his request was that City Council stay consistent with established policy by requiring the current property owner to request a change to the zoning of the property so the proposed permanent use is permitted as opposed to proceeding with a Special Use Permit.

Mr. Yates stated that as to the ownership, he failed to include with the package, but he had received an email from the property owner, Larry Jacobs, who has given the applicant his permission to speak on his behalf regarding his property.

Mr. Emanuel Glockzin, Jr., Developer, advised that they are here requesting a Special Use Permit for a Multi-Family senior housing development where the property is currently zoned

as Industrial Use and he is requesting that City Council schedule a public hearing for a Special Use Permit, which is allowed in the City ordinance.

Rebecca Huss asked Mr. Yates to give an overview of the difference between the two possibilities, Special Use Permit and rezoning, in terms of City policy and value on the long term. Mr. Yates said that he would say that the value for the long term would be a zoning amendment because the Zoning Ordinance has a specific description of the Multi-Family Use. Mr. Yates said that the only reason they were using the Special Use Permit was because of the sentence in the Zoning Ordinance that states that if there is no listing of a specific description of a scheduled use, the Special Use Permit could be requested. Mr. Yates said that the zoning amendment would be clearer. Dave McCorquodale said that the Multi-Family classification exists so why would they do a Special Use Permit for a zoning that they already have established. Mr. Yates said that they probably asked for it because he pointed out that section of the ordinance and he might have thought that it would be harder to get a true zoning change. Mr. Yates said that he thought that it would be harder to do a Special Use Permit, because it is essentially a negotiated development, whereas the zoning would be specific in the description and the details are already in the Zoning Ordinance, so they know what they would be getting with Multi-Family Zoning.

Rebecca Huss asked if it was possible to get things done for a Public Hearing on the same date, but for a different reason, Multi-Family Use instead of the Special Use Permit. Mr. Foerster said that you have to track the language of the Agenda item, so he is not sure that it is broad enough to consider rezoning tonight, it is specific to a Special Use Permit to allow Multi-Family development to be located on the property. Rebecca Huss asked if they would have to have four weeks to do all the proper notices. Mr. Foerster stated that City Council is going to have to have a Public Hearing for either rezoning or a Special Use Permit. Rebecca Huss asked if they could direct staff to move forward with the proper notifications and go in the official direction at the next City Council Meeting to set the Public Hearing for June 26, 2018. Mr. Yates said that they could not do that because what is in the notice is that the Public Hearing date and time, which is not known until City Council actually sets the date and time. Mr. Yates said that he could have the item on the agenda for the next meeting in June, which would cost them two weeks' time. Rebecca Huss said that she would rather go with something that is

better, and especially if it does not cost more and does not cost the developer more time, and it seems like it is a good solution for everyone.

Mr. Foerster said that one of the things to consider, as he understands the project, is that the Special Use Permit will be limiting the use to that particular project alone, if you rezone to a Multi-Family Residential project, that could in some time in the future be reconfigured as an apartment complex or some other duplex or triplex type of facility, that would still be within the scope and definition of Multi-Family Use. Mr. Foerster advised there would be more flexibility for the property owner in the future to change the definition of Multi-Family, but if you are targeting this a Special Use, they would know that is the only use that it can be used for and if some new property owner wants to change the use, such as a duplex or triplex, they would have to come back to City Council. Rebecca Huss said that the cumulative zoning was removed to protect the downtown area and some important corridors, but she did not think that anyone was thinking that apartment buildings in Industrial Use areas were what they were trying to cut out.

Dave McCorquodale asked Mr. Glockzin if his application to the State was for age or income restricted and asked if he could explain his project. Mr. Glockzin advised that this would be a restricted senior housing development, age 55 and older. Dave McCorquodale asked if that had to be recertified every year with the State. Mr. Glockzin said that they have to certify with the State every year for 30 years, and they have a compliance area for 15 years and after 15 years you can get a waiver. Dave McCorquodale asked if the Special Use Permit would be tied to that specific project and they lost their accreditation from the State, or they decided in 30 years that they want market rate apartments, then that would be the trigger for the Special Use Permit and it would basically no longer be allowed. Mr. Foerster said that the Special Use Permit is tied to that property and when that Special Use is no longer feasible because they lost their certification or whatever the reason might be, the next property owner would go back to the original use, Industrial Use, but if they want to do any other Multi-Family Use they would have to come back to the City. Rebecca Huss said that they already went through that with Blazer, in a currently more prominent area of the City, which has been a risk that the Planning and Zoning Commission and City Council has been willing to accept. Mr. Yates said that Montgomery County has a senior citizen housing place by the Lone Star Community Center.

John Champagne asked Mr. Fuqua why he would rather have a permanent rezoning as opposed to a Special Use Permit. Mr. Fuqua said that the reason he was here tonight was to state on record with the City the process that they went through from a zoning perspective. Mr. Fuqua said that the comment about a Special Use Permit, while the Special Use Permit would have a Public Hearing, he did not believe that the adjoining landowners are required to be notified. Mr. Yates advised that the adjoining property owners are required to be notified. Mr. Foerster said that whether it is the law or not, it has always been his recommendation to City staff that they notify any landowner, at least within 200 feet, about the affected property. John Champagne asked Mr. Fuqua why he would opt for a rezone as opposed to a Special Use Permit. Mr. Fuqua, speaking on behalf of Heritage Development, like Mr. Glockzin mentioned, as a developer and owner of the property, one of the benefits of this program is the long term ownership of the property. Mr. Fuqua said that every year you have to keep the property stable, through a Special Use Permit, if something were to happen to that property, as he mentioned if over 50 percent casualty to the building, based on the law of the ordinance, that property would revert back to Industrial. Mr. Fuqua said that the reason that they chose to rezone was because they have an obligation of long term ownership to investors and the State of Texas to receive an annual tax credit for a period of 10 years. Mr. Fuqua said the reason that they rezoned was a huge liability of having permanent control of the property.

Rebecca Huss asked Mr. Fuqua why he cared what Mr. Glockzin did, because that would be a risk that they are taking with their tax credit. Mr. Fuqua said that they are in the competitive process, as well, he has an application currently competing. Rebecca Huss asked if Mr. Fuqua thought that only one of them would receive the tax credits. Mr. Fuqua said that based on a report that has been published by the State, only one development will be funded.

Dave McCorquodale asked if the development behind the Lone Star Community Center, with the Senior Apartments, required rezoning, because presumably that would be in the same zone. Mr. Yates advised that property is zoned Multi-Family.

Rebecca Huss stated that she felt that rezoning the property to Multi-Family would be the best versus a Special Use Permit. John Champagne said that he agreed. Mr. Yates said that would require him to place an item on the next City Council Meeting Agenda.



Mr. Foerster said that he would suggest, since that is the feeling of the majority of City Council, that City Council decline to schedule the Public Hearing for the Special Use Permit.

Dave McCorquodale moved to decline to schedule the Public Hearing for the Special Use Permit. John Champagne seconded the motion.

Discussion: T.J. Wilkerson stated that at the next meeting they will have an agenda item listing it as scheduling a rezoning Public Hearing versus the Special Use Permit. Mr. Yates said that was the direction that he was getting from City Council to place on the agenda as a rezoning item.

The motion carried unanimously. (4-0)

9. Consideration and possible action regarding reappointment of Municipal Court Judge Robert Rosenquist and Associate Municipal Court Judge Gary Scott.

Mr. Yates advised that both of the Municipal Court Judges were in attendance. Judge Rosenquist requested that City Council reappoint both himself and Associate Judge Gary Scott. Mr. Foerster asked how long Judge Rosenquist has served as the Municipal Court Judge. Judge Rosenquist advised that he has served as Judge for the City of Montgomery for four years, and before that he was the Prosecutor.

John Champagne moved to reappoint Robert Rosenquist as Municipal Court Judge and Gary Scott as the Associate Municipal Court Judge. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

10. Consideration and possible action regarding appointment of a member of City Council to serve on the Montgomery Economic Development Corporation to fill the position held by past Mayor Kirk Jones, for the term expiring January 1, 2019.

T.J. Wilkerson moved to nominate Rebecca Huss to serve on the Montgomery Economic Development Corporation to fill the position held by past Mayor Kirk Jones, for the term

expiring January 1, 2019. John Champagne seconded the motion, the motion carried unanimously. (4-0)

Mayor Countryman congratulated Rebecca Huss on her appointment to the Montgomery Economic Development Corporation.

11. Report regarding backflow prevention assembly by City Engineer.

Mr. Roznovsky advised that he distributed packets this evening to City Council for their review. Mr. Roznovsky said that his goal is to introduce the topic to City Council and to have them review the information for discussion at the next City Council Meeting and potentially at a Workshop and then action to follow later.

Rebecca Huss asked if there was a possible way to make this affordable to home owners if they do adopt the ordinance. Rebecca Huss said that she has seen them before, and they are ridiculously expensive, so if they decide that it is something that they want to do it would be nice if it was not so expensive. Mr. Roznovsky advised that this applies to non-single family home owners. Mr. Roznovsky said that the main point of all this is that what the State defines as high health hazard has protection from backflow for potential contamination. Rebecca Huss asked if leaving a hose in her pool was not a big risk. Mr. Roznovsky stated that a hose in a swimming pool, typically has backflow preventers on the hose bibs and irrigation systems also do too. Mr. Roznovsky said this is intended for multi-family, commercial and industrial and those users that have a risk. Mr. Roznovsky said that it is common that municipalities have codes and rules like this. Mr. Roznovsky said that in recent years all new development has been required to install them, so it is not anything new, but the main difference is addressing existing development, which there is about 65 connections that do not have backflow prevention devices that could be considered a high health hazard.

Mr. Roznovsky said that the second part of this is not only the installation, but the annual testing certification and said that right now there is not a plan in place for testing and certification being performed on an annual basis. Mr. Roznovsky said that typically municipalities will put that on the property owner, either the City does it as part of their service and charges them similar to a grease trap inspection, or the property owner is required to submit

the testing records and the City keeps record of it. Mr. Roznovsky said that it is easier for the City if the City handles the process and puts the testing charge onto the customer based on the size and type of the pipe and is around \$80.

Mr. Roznovsky said that he has provided a summary memo describing the ordinance and a handout from TCEQ that is an excerpt from their rules regarding cross-connections and backflow prevention devices. Mr. Roznovsky said that the City already does cross-connections as part of the Building Code Inspections. Mr. Roznovsky said that the next tab is a sample information handout to provide to customers, and the last item is a draft ordinance for review. Mr. Roznovsky said that the customer's initial cost is going to be around \$1,000 to install a backflow prevention device and there is an annual cost of approximately \$80 for the inspection. Rebecca Huss asked if there was a list of names of people that are expected to have to install the backflow prevention device. Mr. Roznovsky said that most of the shops downtown do not have backflow prevention devices, but the antique stores and quilt shops are not on the list, it is the restaurants, auto repair and those types of businesses.

12. Buffalo Springs Bridge Report by City Engineer.

Mr. Roznovsky advised that the rain over the weekend was a big hindrance to the contractor, so on Friday when they had the last section of the wall formed up and ready for the Tuesday morning pour, as of this afternoon, only about eight inches of the top of the wall was showing and all the rest of the wall was under water. Mr. Roznovsky said that the contractor had pumps out there and they were trying to pump out the water.

Mr. Roznovsky said that overall, as they discussed at the last meeting, they are 37 impact days where the contractor was unable to work due to weather. Mr. Roznovsky said that some of those days are assumed and included, based on the time of year, but they are still looking at about 20 additional days that will be recommended to be added to the contract as a Change Order. Mr. Roznovsky said that at the last meeting they had discussed the bridge and the July 10<sup>th</sup> timeframe was when they had the striping and things going, which has most likely been moved back to the middle or end of July with the recent setback. Mr. Roznovsky said that they continually have conversations with the contractor and they are seeing if there are ways to get

the road opened for use, but not risk the quality of construction. Rebecca Huss said that she would rather have people upset because of the delay and have the bridge last for 50 years.

Mr. Roznovsky said that one question that they asked was if they could use stabilized fill to get the road up and running while the contactor is working around the road, but the stabilized fill costs \$85 more a yard and the amount is 1,600 yards, so they would be looking at \$100,000 for that option. Rebecca Huss said that seems like a lot of money. Mr. Roznovsky said that as of right now they are scheduled for Thursday morning, so hopefully they can get the water pumped out and the area dried.

**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. (There are no items at this time.)

**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**

Dave McCorquodale moved to adjourn the meeting at 8:39 p.m. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date Approved: \_\_\_\_\_  
Susan Hensley, City Secretary

\_\_\_\_\_  
Mayor Sara Countryman

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits:</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to approve a new banking resolution that allows Sara Countryman to sign checks in behalf of the city.

**Description**

This is a requirement of the banking laws. The one resolution covers all the banking accounts.

**Recommendation**

Motion to approve the banking resolution as part of the Consent Item Agenda

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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# Corporate Authorization Resolution

First Financial Bank, N.A.  
14125 Liberty St  
Montgomery, TX 77316

By: City Of Montgomery  
PO Box 708  
Montgomery TX 77356-0708

*Referred to in this document as "Financial Institution"*

*Referred to in this document as "Corporation"*

I, Susan Hensley, certify that I am <sup>City</sup> Secretary (clerk) of the above named <sup>municipality</sup> ~~corporation~~ organized under the laws of Texas, Federal Employer I.D. Number 74-2063592, engaged in business under the trade name of City Of Montgomery, and that the resolutions on this document are a correct copy of the resolutions adopted at a Regular meeting of the Montgomery City Council duly and properly called and held on June 12, 2018 (date). These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

**Agents.** Any Agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

Name and Title or Position	Signature	Facsimile Signature (if used)
A. <u>Sara Countryman, Mayor</u>	X _____	X _____
B. <u>Rebecca Huss, Council Member</u>	X _____	X _____
C. <u>David McCorquodale, Council Member</u>	X _____	X _____
D. <u>Jackie Ray Yates, City Admin</u>	X _____	X _____
E. _____	X _____	X _____
F. _____	X _____	X _____

**Powers Granted.** (Attach one or more Agents to each power by placing the letter corresponding to their name in the area before each power. Following each power indicate the number of Agent signatures required to exercise the power.)

Indicate A, B, C, D, E, and/or F	Description of Power	Indicate number of signatures required
ABCD _____	(1) Exercise all of the powers listed in this resolution.	1 _____
_____	(2) Open any deposit or share account(s) in the name of the Corporation.	_____
_____	(3) Endorse checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with this Financial Institution.	_____
_____	(4) Borrow money on behalf and in the name of the Corporation, sign, execute and deliver promissory notes or other evidences of indebtedness.	_____
_____	(5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by the Corporation as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.	_____
_____	(6) Enter into a written lease for the purpose of renting, maintaining, accessing and terminating a Safe Deposit Box in this Financial Institution.	_____
_____	(7) Other:	_____

**Limitations on Powers.** The following are the Corporation's express limitations on the powers granted under this resolution. For City Accts ending in: 7375, 2895, 5675, 8544, 4730, 0580, 8361, 5253, 7745, 7383, 9104, 8479

**Resolutions**

The Corporation named on this resolution resolves that,

- (1) The Financial Institution is designated as a depository for the funds of the Corporation and to provide other financial accommodations indicated in this resolution.
- (2) This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by the Financial Institution. Any and all prior resolutions adopted by the Board of Directors of the Corporation and certified to the Financial Institution as governing the operation of this corporation's account(s), are in full force and effect, until the Financial Institution receives and acknowledges an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of a resolution must be accompanied by documentation, satisfactory to the Financial Institution, establishing the authority for the changes.
- (3) The signature of an Agent on this resolution is conclusive evidence of their authority to act on behalf of the Corporation. Any Agent, so long as they act in a representative capacity as an Agent of the Corporation, is authorized to make any and all other contracts, agreements, stipulations and orders which they may deem advisable for the effective exercise of the powers indicated on page one, from time to time with the Financial Institution, subject to any restrictions on this resolution or otherwise agreed to in writing.

- (4) All transactions, if any, with respect to any deposits, withdrawals, rediscounts and borrowings by or on behalf of the Corporation with the Financial Institution prior to the adoption of this resolution are hereby ratified, approved and confirmed.
- (5) The Corporation agrees to the terms and conditions of any account agreement, properly opened by any Agent of the Corporation. The Corporation authorizes the Financial Institution, at any time, to charge the Corporation for all checks, drafts, or other orders, for the payment of money, that are drawn on the Financial Institution, so long as they contain the required number of signatures for this purpose.
- (6) The Corporation acknowledges and agrees that the Financial Institution may furnish at its discretion automated access devices to Agents of the Corporation to facilitate those powers authorized by this resolution or other resolutions in effect at the time of issuance. The term "automated access device" includes, but is not limited to, credit cards, automated teller machines (ATM), and debit cards.
- (7) The Corporation acknowledges and agrees that the Financial Institution may rely on alternative signature and verification codes issued to or obtained from the Agent named on this resolution. The term "alternative signature and verification codes" includes, but is not limited to, facsimile signatures on file with the Financial Institution, personal identification numbers (PIN), and digital signatures. If a facsimile signature specimen has been provided on this resolution, (or that are filed separately by the Corporation with the Financial Institution from time to time) the Financial Institution is authorized to treat the facsimile signature as the signature of the Agent(s) regardless of by whom or by what means the facsimile signature may have been affixed so long as it resembles the facsimile signature specimen on file. The Corporation authorizes each Agent to have custody of the Corporation's private key used to create a digital signature and to request issuance of a certificate listing the corresponding public key. The Financial Institution shall have no responsibility or liability for unauthorized use of alternative signature and verification codes unless otherwise agreed in writing.

**Pennsylvania.** The designation of an Agent does not create a power of attorney; therefore, Agents are not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code) unless the agency was created by a separate power of attorney. Any provision that assigns Financial Institution rights to act on behalf of any person or entity is not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code).



**Effect on Previous Resolutions.** This resolution supersedes resolution dated March 30, 2015 . If not completed, all resolutions remain in effect.

**Certification of Authority**

I further certify that the Board of Directors of the Corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions stated above and to confer the powers granted above to the persons named who have full power and lawful authority to exercise the same. (Apply seal below where appropriate.)

If checked, the Corporation is a non-profit corporation.

In Witness Whereof, I have subscribed my name to this document and affixed the seal of the City of Montgomery, Texas  
June 12, 2018 (date). ATTEST: ~~City of Montgomery, Texas~~

\_\_\_\_\_  
Mayor Sara Countryman

\_\_\_\_\_  
City Secretary Susan Hensley

(SEAL)

**For Financial Institution Use Only**

Acknowledged and received on \_\_\_\_\_ (date) by \_\_\_\_\_ (initials)

This resolution is superseded by resolution dated \_\_\_\_\_

**Comments:**

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: City Engineer memo</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to accept completion of the one year warranty. And to release the maintenance bond for the Pizza Shack project

**Description**

This is to accept the one year warranty and release of maintenance bond for the Pizza Shack project.  
City Engineer memo is attached.

**Recommendation**

Motion to approve the one-year warranty period and released maintenance bond for Pizza Shack project as a part of the Consent Item Agenda.

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

June 6, 2018

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

Re: Pizza Shack One Year Warranty Completion  
City of Montgomery

Dear Mayor and Council:

We completed the one-year warranty inspection of the work completed for Pizza Shack on June 1, 2018 in the presence of Mr. James McCain – Jones|Carter; Mr. Jim Gregg – Jones|Carter; Mr. Eric Standifer – City of Montgomery; and Mr. John Cantrell – Big State Excavation, Inc. No punch list items were identified at the inspection, and the work completed is in compliance with all City ordinances and standards, unless previously authorized by variance.

This letter also certifies that no liens are known against the project. We recommend the City release of all bonds issued for the project and officially end the one year maintenance period.

Should you have any questions or need any additional information, 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/jim

P:\PROJECTS\W5841 - City of Montgomery\W5841-0015-01 Pizza Shack-Public\Construction\Letters\One Year Warranty Letter.docx

Cc(via email): 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. John Cantrell – Big State Excavation, Inc.

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: Escrow Agreement</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to approve the escrow agreement with Star of Texas Seniors, Ltd.

**Description**

This is to approve the standard Escrow Agreement. Star of Texas Seniors has submitted their \$3000 check for payment.

**Recommendation**

Motion to approve the escrow agreement between the city and Star of Texas Seniors, Ltd as part of the Consent Item Agenda

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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**ESCROW AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF MONTGOMERY, TEXAS,**

**AND**

**Star of Texas Seniors, Ltd.**  
**Dev. No. 1805**

THE STATE OF TEXAS            Ϸ

COUNTY OF MONTGOMERY    Ϸ

This Escrow Agreement, is made and entered into as of the 17 day May, 2018 by and between the CITY OF MONTGOMERY, TEXAS, a body politic, and a municipal corporation created and operating under the general laws of the State of Texas (hereinafter called the "City"), and Star of Texas Seniors, Ltd., a Texas Corporation, (hereinafter called the "Developer").

**RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of a 5.00 acre tract of land located located in the B Rigsby survey, Abstract No. 31, Montgomery County, Texas, sometimes referred to as the Star of Texas Seniors Tract, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

WHEREAS, the City policy requires the Developer to establish an Escrow Fund with the City to reimburse the City for engineering costs, legal fees, consulting fees and administrative expenses incurred for plan reviews, the preparation of a feasibility study for the Tract, developer coordination, inspection services to be provided for during the construction phase, and one-year warranty services; and,

WHEREAS, City has determined that the estimated cost of providing such services will be approximately \$18,500.

AGREEMENT

ARTICLE I

SERVICES REQUIRED

Section 1.01 The development of the Star of Texas Seniors Tract will require the City to utilize its own personnel, its professionals and consultants; and the Escrow Fund will be used to reimburse the City its costs associated with these services.

Section 1.02 In the event other contract services are required related to the development from third parties, payment for such services will be made by the City and reimbursed by the Developer or paid directly by the Developer as the parties may agree.

ARTICLE II

FINANCING AND SERVICES

Section 2.01 All estimated costs and professional fees needed by City shall be financed by Developer. Developer agrees to advance funds to City for the purpose of funding such costs as herein set out:

Plan Review	\$ 2,500	- To be pd.
Feasibility Study	\$ 7,000	- Pd 5/17/18
Developer Coordination	\$ 2,000	} To be pd.
Construction Coordination	\$ 2,000	
Construction Inspection	\$ 3,500	
One-Year Warranty	\$ 1,500	
<hr/>		
TOTAL	\$18,500	

Section 2.02 Developer agrees to submit payment of the Escrow Fund to City no later

than ten (10) days after the execution of this Escrow Agreement.

Section 2.03 In the event the funds advanced are insufficient to cover the City's costs and expenses, Developer agrees to tender additional sums upon request to cover such costs and expenses. Any funds which may remain after the completion of the development described in this Escrow Agreement will be refunded to Developer.

### ARTICLE III,

#### MISCELLANEOUS

Section 3.01 City reserves the right to enter into additional contracts with other persons, corporations, or political subdivisions of the State of Texas; provided, however, that City covenants and agrees that it will not so contract with others to an extent as to impair City's ability to perform fully and punctually its obligations under this Escrow Agreement.

Section 3.02 If either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Escrow Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* relied upon to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil

or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents to machinery, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

Section 3.03 This Escrow Agreement is subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any regulatory agency having jurisdiction.

Section 3.04 No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstance.

Section 3.05 Any notice, communication, request, reply or advice (hereafter referred to as "notice") herein provided or permitted to be given, made, or accepted by either party to the other (except bills) must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail in the manner herein above described shall be conclusively deemed to be effective, unless otherwise stated in this Escrow Agreement, from and after the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:



If to City, to: City Administrator  
City of Montgomery  
101 Old Plantersville Rd.  
Montgomery, Texas 77316

If to Developer, to: Emanuel H. Glockzin, Jr.  
P.O. Box 3189  
Bryan, Texas 77805

The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party.

Section 3.06 This Escrow Agreement shall be subject to change or modification only in writing and with the mutual consent of the governing body of City and the management of Developer.

Section 3.07 This Escrow Agreement shall bind and benefit City and its legal successors and Developer and its legal successors but shall not otherwise be assignable, in whole or in part, by either party except as specifically provided herein between the parties or by supplemental agreement.

Section 3.08 This Escrow Agreement shall be for the sole and exclusive benefit of City and Developer and is not for the benefit of any third party. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing.

Section 3.09 The provisions of this Escrow Agreement are severable, and if any provision or part of this Escrow Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Escrow Agreement and the application of

such provision or part of this Escrow Agreement to other person circumstances shall not be affected thereby.

Section 3.10 This Escrow Agreement and any amendments thereto, constitute all the agreements between the parties relative to the subject matter thereof, and may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original.

Section 3.11 This Agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas without regard to the principles of conflict of laws. This Agreement is performable in Montgomery County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement in three (3) copies, each of which shall be deemed to be an original, as of the date and year first written in this Escrow Agreement.

CITY OF MONTGOMERY, TEXAS

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
Susan Hensley, City Secretary

Star of Texas Seniors, Ltd.  
Developer

By: *[Signature]*  
Signature

Title: *Developer*

STATE OF TEXAS {

COUNTY OF MONTGOMERY {

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, Mayor of the City of Montgomery, Texas, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 2018

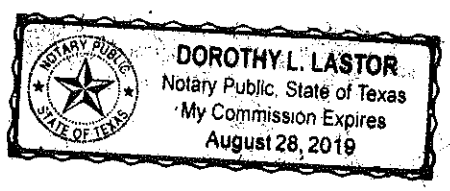
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF BRAZOS {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared E.N. Gleckler JR, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated and as the act and deed of said organization.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17 day of MAY, 2018.



Dorothy L. Lastor  
Notary Public, State of Texas

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Star of Texas Seniors, Ltd.  
Bryan, TX United States

Certificate Number:  
2018-355452

Date Filed:  
05/17/2018

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Montgomery

Date Acknowledged:

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

1805  
Proposed Senior Housing Development

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	City of Montgomery	Montgomery, TX United States		X

5 Check only if there is NO Interested Party.

**6 UNSWORN DECLARATION**

My name is Emanuel H. Glockzin, Jr., and my date of birth is 8/1/1948.

My address is 6855 Glockzin Ranch Rd. Bryan TX 77808 USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Brazos County, State of Texas, on the 17 day of May, 20 18.  
(month) (year)

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

## Prohibition on Boycotting Israel Verification

This Verification is hereby incorporated into the terms of the contract by and between Star of Texas Seniors, Ltd. and Brazos Valley Construction, Inc. entered into this the 17 day of May, 2018.

1. Brazos Valley Construction, Inc., in conjunction with the execution of the above referenced contract and in accordance with Chapter 2270 of the Texas Government Code, effective September 1, 2017, does hereby agree, confirm, and verify that it:
  - A. Does not Boycott Israel; and
  - B. Will not Boycott Israel during the term of the contract.

"Boycott Israel" has the meaning given to it in Chapter 808 of Subtitle A, Title 8 of the Texas Government Code. As of the effective date of the statute, the term means "refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes."

2. Contractor hereby acknowledges and agrees that this verification is a material term of the contract and Owner is expressly relying on this verification in agreeing to enter into the contract with Contractor.
3. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM ALL CLAIMS, CAUSES OF ACTION, LEGAL PROCEEDINGS, DAMAGES, COSTS, FEES AND EXPENSES ARISING OUT OF OR RELATED TO AN ACTUAL OR ALLEGED MISREPRESENTATION BY CONTRACTOR PROVIDED HEREUNDER.**

[Signatures on Following Page]

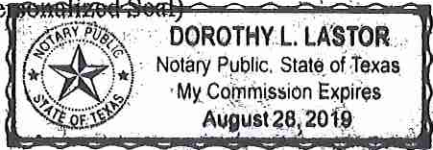
Prohibition on Boycotting Israel Verification [Continued]

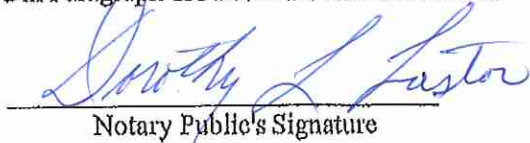
  
Contractor

State of Texas  
County of Brazos

Before me, a notary public, on this day personally appeared Elaine Glockzin, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained in Paragraph 1A and B are true and correct.

(Personalized Seal)



  
Notary Public's Signature

Receipt and incorporation into the above referenced contract hereby agreed to and acknowledged by:

  
Owner

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits:</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to approve the authorization for Jones and Carter to perform a utility and economic feasibility study for the Star of Texas Seniors Ltd. development.

**Description**

This will get the feasibility study project underway for this development. \$3,000 has already been paid to go towards the cost of the study.

**Recommendation**

Motion to approve a feasibility study for the Star of Texas Seniors Ltd. development.as part of the Consent Item Agenda

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
--------------------	------------	--------------------

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: Escrow Agreement</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to approve the escrow agreement with Ranier & Son Development Company, LLC.

**Description**

This is to approve the standard Escrow Agreement. Ranier & Son Development Company, LLC has submitted their \$3000 check for payment.

**Recommendation**

Motion to approve the escrow agreement between the city and Ranier & Son Development Company, LLC as part of the Consent Item Agenda

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
--------------------	------------	--------------------



As 18110 5004 1505.02  
"City of Mont"

ESCROW AGREEMENT  
BY AND BETWEEN  
THE CITY OF MONTGOMERY, TEXAS,  
AND  
Ranier & Son Development Company, LLC

THE STATE OF TEXAS            ⊃  
COUNTY OF MONTGOMERY    ⊃

This Escrow Agreement, is made and entered into as of the 19<sup>th</sup> day April, 2018 by and between the CITY OF MONTGOMERY, TEXAS, a body politic, and a municipal corporation created and operating under the general laws of the State of Texas (hereinafter called the "City"), and Ranier & Son Development Company, LLC, a Texas Corporation, (hereinafter called the "Developer").

RECITALS

WHEREAS, the Developer desires to acquire and develop all or part of a 10.976 acre tract of land located Tract 61A1-C, within the John Rigsby Survey, A-31, sometimes referred to as the Hills of Town Creek Section 3 Tract, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

WHEREAS, the City policy requires the Developer to establish an Escrow Fund with the City to reimburse the City for engineering costs, legal fees, consulting fees and administrative expenses incurred during the preliminary and final platting phase and for construction management and inspection services to be provided for during the construction phase; and,

WHEREAS, City has determined that the estimated cost of providing such services will be approximately \$16,500.

AGREEMENT

ARTICLE I

SERVICES REQUIRED

Section 1.01 The development of the Hills of Town Creek Section 3 Tract will require the City to utilize its own personnel, its professionals and consultants; and the Escrow Fund will be used to reimburse the City its costs associated with these services.

Section 1.02 In the event other contract services are required related to the development from third parties, payment for such services will be made by the City and reimbursed by the Developer or paid directly by the Developer as the parties may agree.

ARTICLE II

FINANCING AND SERVICES

Section 2.01 All estimated costs and professional fees needed by City shall be financed by Developer. Developer agrees to advance funds to City for the purpose of funding such costs as herein set out:

Plan Review	\$ 3,000
Developer Coordination	\$ 2,000
Construction Coordination	\$ 3,000
Construction Inspection	\$ 8,000
Warranty	\$ 500
<hr/>	
TOTAL	\$16,500

Section 2.02 Developer agrees to submit payment of the Escrow Fund to City no later

than ten (10) days after the execution of this Escrow Agreement.

Section 2.03 In the event the funds advanced are insufficient to cover the City's costs and expenses, Developer agrees to tender additional sums upon request to cover such costs and expenses. Any funds which may remain after the completion of the development described in this Escrow Agreement will be refunded to Developer.

### ARTICLE III,

#### MISCELLANEOUS

Section 3.01 City reserves the right to enter into additional contracts with other persons, corporations, or political subdivisions of the State of Texas; provided, however, that City covenants and agrees that it will not so contract with others to an extent as to impair City's ability to perform fully and punctually its obligations under this Escrow Agreement.

Section 3.02 If either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Escrow Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* relied upon to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil

or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents to machinery, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

Section 3.03 This Escrow Agreement is subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any regulatory agency having jurisdiction.

Section 3.04 No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstance.

Section 3.05 Any notice, communication, request, reply or advice (hereafter referred to as "notice") herein provided or permitted to be given, made, or accepted by either party to the other (except bills) must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail in the manner herein above described shall be conclusively deemed to be effective, unless otherwise stated in this Escrow Agreement, from and after the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to City, to: City Administrator  
City of Montgomery  
101 Old Plantersville Rd.  
Montgomery, Texas 77316

If to Developer, to: Chris Burnett  
Ranier & Son Development  
4090 State Hwy 6, South  
College Station, TX 77845

The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party.

Section 3.06 This Escrow Agreement shall be subject to change or modification only in writing and with the mutual consent of the governing body of City and the management of Developer.

Section 3.07 This Escrow Agreement shall bind and benefit City and its legal successors and Developer and its legal successors but shall not otherwise be assignable, in whole or in part, by either party except as specifically provided herein between the parties or by supplemental agreement.

Section 3.08 This Escrow Agreement shall be for the sole and exclusive benefit of City and Developer and is not for the benefit of any third party. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing.

Section 3.09 The provisions of this Escrow Agreement are severable, and if any provision or part of this Escrow Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Escrow Agreement and the application of

such provision or part of this Escrow Agreement to other person circumstances shall not be affected thereby.

Section 3.10 This Escrow Agreement and any amendments thereto, constitute all the agreements between the parties relative to the subject matter thereof, and may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original.

Section 3.11 This Agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas without regard to the principles of conflict of laws. This Agreement is performable in Montgomery County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement in three (3) copies, each of which shall be deemed to be an original, as of the date and year first written in this Escrow Agreement.

CITY OF MONTGOMERY, TEXAS

By: \_\_\_\_\_  
~~KIM WATKINS~~, Mayor  
Sara Countryman, Mayor

ATTEST:

By: \_\_\_\_\_  
Susan Hensley, City Secretary

Ranier & Son Development Company, LLC  
Developer

By: \_\_\_\_\_ *Pres.*  
Signature

Title: President

STATE OF TEXAS {

COUNTY OF MONTGOMERY {

BEFORE ME, the undersigned authority, on this day personally appeared Sara Countryman ~~KIMM BOWEN~~, Mayor of the City of Montgomery, Texas, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Notary Public, State of Texas

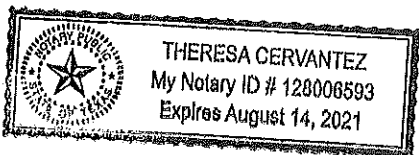
THE STATE OF TEXAS {

COUNTY OF Brazos {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Doug French, President of Kanier Son Development, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated and as the act and deed of said organization.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20 day of April, 2018.

[Signature]  
\_\_\_\_\_  
Notary Public, State of Texas



## Prohibition on Boycotting Israel Verification

This Verification is hereby incorporated into the terms of the contract by and between Ramirez & Son Development Company, LLC and Spartan Direct Solutions entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

1. \_\_\_\_\_, in conjunction with the execution of the above referenced contract and in accordance with Chapter 2270 of the Texas Government Code, effective September 1, 2017, does hereby agree, confirm, and verify that it:

- A. Does not Boycott Israel; and
- B. Will not Boycott Israel during the term of the contract.

"Boycott Israel" has the meaning given to it in Chapter 808 of Subtitle A, Title 8 of the Texas Government Code. As of the effective date of the statute, the term means "refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action make for ordinary business purposes."

2. Contractor hereby acknowledges and agrees that this verification is a material term of the contract and Owner is expressly relying on this verification in agreeing to enter into the contract with Contractor.

**3. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM ALL CLAIMS, CAUSES OF ACTION, LEGAL PROCEEDINGS, DAMAGES, COSTS, FEES AND EXPENSES ARISING OUT OF OR RELATED TO AN ACTUAL OR ALLEGED MISREPRESENTATION BY CONTRACTOR PROVIDED HEREUNDER.**

[Signatures on Following Page]



Prohibition on Boycotting Israel Verification [Continued]

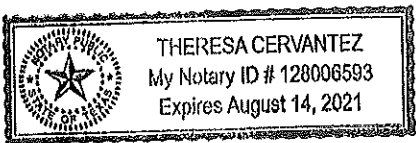
\_\_\_\_\_  
Contractor

State of Texas  
County of Brazos

Before me, a notary public, on this day personally appeared Douglas French, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained in Paragraph 1A and B are true and correct.

(Personalized Seal)

Douglas French  
\_\_\_\_\_  
Notary Public's Signature



Receipt and incorporation into the above referenced contract hereby agreed to and acknowledged by:

Douglas French  
\_\_\_\_\_  
Owner

**VENDOR CONTRACTS APPROVED BY CITY COUNCIL  
AND/OR IN EXCESS OF ONE MILLION DOLLARS**

Effective January 1, 2016 there is now a requirement for Certificates of Interested Persons (Form 1295) to be filed with the city secretaries and they in turn electronically file notice with the Texas Ethics Commission (TEC).

The TEC website is <https://www.ethics.state.tx.us/tec/1295-Info.htm>

***Summary of new law:***

1. All contracts that must be approved by the city council must be given a contract tracking number.
2. Vendors or business entities (but not other governmental entities) must be given the Form 1295 and directed to fill it out.
3. The Form 1295 must be signed by an authorized person from the business entity.
4. The Form 1295 must be submitted to the city secretary.
5. The city secretary must in turn electronically file the notice of the Form 1295 to the Texas Ethics Commission at its website:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
6. The city secretary must electronically file all such forms within 30 days of the contract approval.
7. Form 1295 will be executed by the Vendor and filed with the City Secretary prior to the Contract being executed.

---

# Vendor Training and Registration

## Form 1295:

### Step One - Set up Account

For a video detailing how you register your company for the first time with the Texas Ethics Commission go to:

<https://www.ethics.state.tx.us/filinginfo/videos/Form1295/FirstLogin-Business/Form1295Login-Business.html>

### Step Two - Create Certificate Form 1295

For a video detailing how to create a Form 1295, following registration go to:

<https://www.ethics.state.tx.us/filinginfo/videos/Form1295/CreateCertificate/CreateCertificate.html>

To complete your Form 1295 you will need to obtain a Contract Tracking Number from the City of Montgomery City Secretary at (936) 597-3288 or via email at [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us).

You will print out your completed Certificate – Form 1295 and have it signed. The Form 1295 will then be submitted to the City of Montgomery City Secretary for acknowledgment of the Certificate.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2018-348082

Date Filed:  
05/03/2018

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Ranier & Son Development Company, LLC  
Montgomery, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Montgomery, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

1019

Escrow agreement between the City of Montgomery, Texas and Ranier & Son Development Company, LLC.

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Ranier & Son Development Company, LLC	Montgomery, TX United States	X	

5 Check only if there is NO Interested Party.

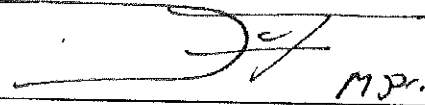
### 6 UNSWORN DECLARATION

My name is Doug French, and my date of birth is 5-12-83

My address is 4808 Milavistke Ct. Bryan TX 77802 Brazos  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Brazos County, State of TX, on the 8 day of May, 20 18.  
(month) (year)

  
M.D.

Signature of authorized agent of contracting business entity  
(Declarant)

HOTC 3

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates</b> <b>City Administrator</b>	<b>Exhibits:</b> June 6, 2018 request for extension of variance, June 4, 2018 letter to Mr. Long from Jack Yates, Minutes of January 9, 2018, Background information from January 9, 2018 meeting (provides full background on the matter)
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is a request from Jason Long, owner of Longview Greens Miniature Golf business in the city for a time extension to pave his parking area, in place of the present gravel parking area.

**Description**

This is a continuation from the original variance granted March 14, 2017 to Mr. Long regarding his parking area.  
Mr. Long has submitted information requested at the January 9, 2018 meeting, if you were to come back for another variance extension

**Recommendation**

Motion to approve the variance for \_\_\_\_\_ period of time.

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
--------------------	------------	--------------------

June 6th, 2018

**Re: Parking Lot Pavement Variance Longview Greens Miniature Golf Business**

Dear Mr. Yates,

Good day to you. I am writing you in response to a letter that was dropped off, by yourself, at my business on June 4th. The letter related to the parking lot variance that has been extended to my business, to date.

In your letter, you referenced the City Council's last commentary on the issue, from January 9<sup>th</sup>, to the effect of, "...if Mr. Long intends to come back with a request for an extension of the variance, he is to provide pertinent numerical information, such as sales tax revenue to the city, attendance, etc. to help them make their decision." This letter is an attempt to provide the City Council with the numerical information they are seeking, to help with their decision making.

Firstly, I was asked to provide the sales tax revenue. That information is provided in the table below:

<b>Sales Tax For The Month of:</b>	<b>Sales Tax Filed On:</b>	<b>Total 8.25% Sales Tax Amount:</b>	<b>\$ To State of Texas</b>	<b>\$ to City of Montgomery</b>
May-17	June-17	\$ 1,304.86	\$ 988.53	\$ 316.33
June-17	July-17	\$ 1,920.68	\$1,455.06	\$ 465.62
July-17	August-17	\$ 1,587.90	\$1,202.95	\$ 384.95
August-17	September-17	\$ 1,037.43	\$ 785.93	\$ 251.50
September-17	October-17	\$ 988.92	\$ 749.18	\$ 239.74
October-17	November-17	\$ 732.96	\$ 555.27	\$ 177.69
November-17	December-17	\$ 1,056.71	\$ 800.54	\$ 256.17
December-17	January-18	\$ 312.84	\$ 237.00	\$ 75.84
January-18	February-18	\$ 461.83	\$ 349.87	\$ 111.96
February-18	March-18	\$ 325.31	\$ 246.45	\$ 78.86
March-18	April-18	\$ 1,972.48	\$1,494.30	\$ 478.18
April-18	May-18	\$ 786.89	\$ 596.13	\$ 190.76
<b>Total:</b>		<b>\$ 12,488.81</b>	<b>\$9,461.21</b>	<b>\$ 3,027.60</b>

Since we opened on May 5<sup>th</sup>, 2017, we have sold 18,371 tickets to customers to play mini golf. Some of those folks are locals, but some of those are from neighboring municipalities, such as The Woodlands, Conroe, Magnolia, Spring, Cypress, etc. We've had people drive over an hour, just to play mini golf in

Montgomery. I've personally spoken to customers that have driven from Galveston, Huntsville, College Station and beyond, just to play our course.

A good percentage of those people are doing something else in the neighboring area, besides play mini golf. They likely eat at a Montgomery restaurant. They pump gas at a Montgomery gas station. They shop at the historic district, etc. All of that residual tax revenue, which I cannot calculate, is going to the City.

We hosted a mini golf tournament this past April 28<sup>th</sup> and 29<sup>th</sup>, for a pro putters tour. They enjoyed playing our course so much that they are going to attempt to host the State of Texas Pro Putters Championship in 2019, at our course.

We have provided numerous donations to local charities, churches and the like. We have provided a lot of local kids an opportunity at a first job and earn some spending money. We have done a lot to give folks another reason to go into Montgomery, whereas, they may have not had the need to do so, previously. We are the only 5-star reviewed business/attraction in the City (source Facebook). People nowadays, in large part, make decisions on where to spend discretionary income based on reviews. They are willing to travel further, if an establishment/business has an exceptional review rating.

I'd also like to take this time to mention a more personal side of our story – something that sales tax and ticket sales only partially explain. Most of you know that I worked very hard to bring this business to the community. My wife and I put a large part of our financial savings/retirement to make this a reality. We had never owned a mini golf course, but we've done the absolute best we can do. Not one day of this has never been easy. We constantly spend a lot of time over there to make sure it is looking/performing at its best. Even to this day, we still put in our own money into it, to when we have no other alternatives to pay for some replacement/upgrade.

City Council probably doesn't know this, but I personally pitched this to nineteen different banks. They all said "no". The twentieth bank agreed to loan us the money for construction. But, they would only advance the loan limit to a point. Money that was set aside for working capital, to fund rainy/cold days, etc. was largely compromised to complete the construction. So, when someone says, "*The City has very clear ordinances on the matter of paving parking lots. Those should have been taken into account when the funding was in place at the time of construction*", I believe they need to hear additional information to arrive at a just decision. It is true that the ordinances are very black and white. But, I'm here to state that I have put everything I possibly can to get this business open and keep it open.

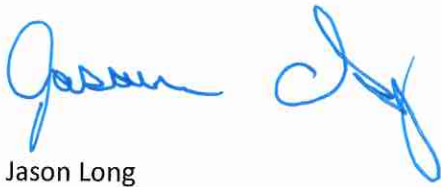
If I would have had an extra \$16,910 (the amount I was quoted to pave the parking lot), I would have. Money that is left over is used to either pay our SBA construction loan and/or replant massive swaths of dead landscaping, courtesy of our unusually frigid winter and/or overcome hardships caused by Hurricane Harvey and/or plant new flowers and/or add umbrellas/benches to provide shade to our customers and/or make investments in our business to make it more attractive to customers long term (e.g. we started selling shaved ices in April '18) is how we spend our resources. The money we make in the business goes back into the business. We are not just pulling from the business to pay ourselves, even though I wish we could.

In short, we believe we have been a tremendous asset to the community. We are very thankful for how the City has helped us, with this variance, on the parking lot. I ask that you continue to extend the

variance to our business. To date, I have never received a single complaint from any of our customers or neighbors, about our parking lot.

Even so, I am currently exploring other loans to complete this work, but I do not have that ready, at this time. I'm waiting on our accounting firm (Crowl & Associates) to complete our 2017 taxes, etc., so that I can have the necessary financial paperwork to present to banks for the loan, to do the work you are asking to have done to comply with the City's ordinances. I need more time. I understand you will want to assign a follow up date/deadline, but I'm not in position to offer any guidance on what that should be.

Regards,

A handwritten signature in blue ink, appearing to read "Jason Long". The signature is written in a cursive, flowing style.

Jason Long

Owner, Longview Greens Mini Golf





# CITY OF MONTGOMERY

P. O. BOX 708 MONTGOMERY, TEXAS 77356

Telephone: (936) 597-6434 / 597-6866

June 4, 2018

Mr. Jason Long  
735 Clepper  
Montgomery Texas

Re: Parking Lot Pavement Variance  
Longview Greens Miniature Golfing Business

Dear Mr. Long;

On January 9, 2018 you appeared before the City Council and received a six-month variance to allow gravel to be used as your parking surface. At that meeting the approved motion was "that they provide a six-month variance dated from the time of the expiration of the previous variance, and if Mr. Long intends to come back with a request for an extension of the variance, he is to provide pertinent numerical information, such as sales tax revenue to the city, attendance, etc., to help them make their decision." Also, specifically said in the meeting was that the variance deadline would be June 6, 2018.

As of today, in my observance of your property, you have not placed a hard surface on your parking area. Pursuant to the building permit terms and the variance terms, your Certificate of Occupancy is withdrawn as of June 7, 2018 and you are required to cease operation of the business at the above referenced address. In the alternative, you may ask the City Council for an extension to the variance. If you desire to make such a request you will need to write me a letter asking for the City Council to consider the issue. To be on the June 12th Council meeting, I would need a request from you on or before June 6, 2018. Further, I would recommend that in your request you provide the information requested in the January 9th motion that extended the variance to June 6, 2018.

Feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Jack Yates".

Jack Yates  
City Administrator

Jon Bickford moved to reappoint MEDC Board members Cheryl Fox and Bill Hanover. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

12. Consideration and possible action regarding a Beverage Permit Application for Cork This! Winery located at 21123 Eva Street, Suite 100, Montgomery, Texas, and if necessary schedule a Public Hearing to be held on February 13, 2018 at 6 p.m. at City Hall.

Mr. Yates said that City Council will need to take action to approve the application. Jon Bickford asked if this was the same type of license as the previous permit. Mr. Yates advised that was correct, it was just a new owner.

Jon Bickford moved to approve the Beverage Permit Application for Cork This! Winery Montgomery, Texas. John Champagne seconded the

*Minutes of Jan. 9<sup>th</sup>*

previous owner, Karla Nash, who was present, very successful and has been a big part of the City. They have the new owners that are taking it over and going on as the previous business did and will be Mayor Jones extended a welcome to the new owners. They will carry on a great existing business.

13. Consideration and possible action regarding Longview Greens Miniature Golfing variance request to allow gravel to be used as a parking surface.

Mr. Yates advised that this was an extension to an existing parking surface variance given to Mr. Jason Long for Longview Greens Mini Golf on March 14, 2017 City Council Meeting, where he was granted a variance to pave the parking lot within six months of receiving his certificate of occupancy for the business. Mr. Yates stated the certificate of occupancy was issued June 7, 2017. Mr. Yates said that the business will lose its certificate of occupancy if it

is not paved. Mr. Yates said that he issued a letter to Mr. Long on December 29, 2017 stating that he had exceeded his six month time limit, Mr. Long said that he realized that but was asking for an extension. Mr. Yates said that he had advised Mr. Long that if he applied for the extension, then he would not remove his certificate of occupancy for his business until City Council had decided one way or another.

Mr. Long, who was present, advised that he was thankful that City Council has worked with him in the past to get his small business up and running, and for the variance that was issued. Mr. Long said that he does have the parking lot apron paved from Clepper to the parking lot, but the actual parking lot itself is not paved. Mr. Long asked City Council to consider extending the variance request so that he can have time to get that parking lot paved, because the cost is about \$25,000. Mayor Jones asked Mr. Long how much time he felt that he would need. Mr. Long said that he would like a full calendar year. John Champagne said that based on the past amount of business that Mr. Long has realized, he believes that 12 months would be a more appropriate request for this extension. John Champagne said that he passes by the business every day and there has not been a dust problem. Jon Biekford said that his concern was that it is not fair to do for one business and not the others, so where do they draw the line and say they are not going to give everybody 18 month extensions on paving, because then they could have a real mess. Mayor Jones said that if they do not extend the variance, then the business is shut down.

John Champagne said that this action was quite unusual for him, so he is directing this question to the City Attorney, and asked if it would be inappropriate to request an Executive Session to discuss this matter with Mr. Long at some point. Mr. Foerster said that it would be inappropriate.

Rebecca Huss said that the other item, which they had discussed before, was the discussion about possibly having MEDC partner with businesses to create a more pervious surface parking type of experience, which in some ways would be great for Mr. Long's setup, because it is a much more natural looking business. Rebecca Huss said that maybe there is another solution for the parking lot that would work really well for the City aesthetically as well as for water retention and dust elimination. Rebecca Huss said that regarding the variance, they either have to shut the business down or grant the variance, but this is a possible third variance. John

Champagne said that they have an ordinance in place that requires them to pave. Rebecca Huss said that the ordinances are in place to have minimum standards, but if someone comes in and says that they want to come in and do something that is better, but does not fit in the ordinance, that is the type of variance that she would love. John Champagne said that he was not against that, and said that there was certain technologies out there that provide a grid that contains sod and/or rock and other materials that would provide permeation for drainage.

Dave McCorquodale said that he would like a little more data and understanding about the business, and said that he was interested in the daily patrons, because that will tell them what the parking lot load is, and what he would propose is another six month extension, but that City Council would understand, prior to approval, and also said that he was not opposed to the calendar year extension, but he was thinking of it in two bites; whether there are issues with it and is there a solution where if the daily attendance is 25, don't pave 150 spaces, pave 40 or 30 spaces. Jon Bickford said that if that followed up with a change or a variance of the ordinance that would be fine. Dave McCorquodale said he did not want to pull the certificate of occupancy, but he did want a little more information about what the exact set of perimeters that they are trying to solve. John Champagne said they are opening Pandora's Box, which is one of Jon Bickford's concerns, which is legitimate. John Champagne said that he would consider a three month variance, and they look for ways to solve the problem. Mr. Yates said that regarding Dave McCorquodale's suggestion, he felt that it might require two set ups, and maybe they pave the front half of the parking lot in the first 3-6 months, and then the other half of the parking lot in the next six months. Dave McCorquodale said that he understood the timing of the 3-6 months, but his concern was the practicality of January, February and March, with the revenue cycle. John Champagne said that he was in line with Dave McCorquodale's thoughts, but said that he just did not want the sense of urgency to go away by allowing six months, and said that he would not have a problem going another three months. John Champagne said that City Council wants to see Mr. Long succeed, so his desire, is that they do everything that they can as a body, in the perimeters allowed, to help him succeed. Mayor Jones suggested Mr. Long pave half the parking lot within the first six months, and the other half in the six months following.

Rebecca Huss moved to extend the variance for six months, and if Mr. Long comes back with a request for an extension, then he needs to come back with attendance and sales tax records

to the City, including other pertinent numbers that will help them make a decision about where they go from there.

Mr. Foerster asked for a clarification, he stated that the variance concluded in December, 2017, and asked if they were talking about six months from today's meeting. Rebecca Huss said that it would be six months from the previous expiration of the variance. Mr. Yates said that the variance expired on December 6, 2017.

John Champagne asked Rebecca Huss if she would be acceptable to an amendment to the motion that Mr. Long come back in 60 days to give City Council an update on how it is looking for him to get into compliance, and an estimated amount of time, or advise the City Administrator. Rebecca Huss said if he met with the City Administrator that would keep his private information private.

Dave McCorquodale seconded the motion. John Champagne asked about his recommended amendment to the motion. Rebecca Huss rejected the amendment to the motion. Mayor Jones asked Rebecca Huss to restate her motion.

Rebecca Huss moved that they provide a six month variance dated from the time of the expiration of the previous variance, and if Mr. Long intends to come back with a request for an extension of the variance, he is to provide pertinent numerical information, such as sales tax revenue to the City, attendance, etc., to help them make their decision. Mr. Foerster stated that he would ask that the minutes reflect that would be six months from December 6, 2017, and the variance deadline would be June 6, 2018. Rebecca Huss asked that the City Secretary note for the record that the deadline for the variance would be June 6, 2018. The City Secretary noted the addition of the date of the deadline. Dave McCorquodale stated that he had seconded the motion.

Discussion: Jon Bickford said that he would support the extension of the variance through April 6, 2018. Rebecca Huss said that if Mr. Long wants another extension, he will need to come back with numbers. Jon Bickford said that he would like to state, prior to the vote, that once again City Council should be prepared for other businesses to come in here to grant them a year to put their paving in after their building is done. Rebecca Huss said that she thought

that the time to deny the variance would have been at the very beginning as opposed to now, because she agrees, you never have more money than at the beginning. Jon Bickford said that he had tried back then, and they all said that they wanted to give him six months, and here we are again. Jon Bickford said that when Mr. Cheatham walks in and says that he doesn't want to pave his medical facility, he is going to support giving him a years' worth of mulch on it. Jon Bickford said that rules are rules, and said that builders come in to the City and say that they don't want their streets too wide, so they can't get two cars on them, and they want to keep amending things, eating away at the ordinances and the things that they are doing to try and keep the City clean and nice, but they keep making all these exceptions, so if they are doing it for one they have to do it for others, because it is not fair. Rebecca Huss said that Mr. Foerster has very specifically stated that nothing that they do here has set a precedent for the future in terms of what we are required to do. Jon Bickford said that might be the case legally, but morally he felt that it does, and he felt that they have an obligation to treat everyone fairly. Mayor Jones said that he would like to point out that the present situation is not causing a hardship or public nuisance or anything like that. Jon Bickford thanked the Mayor for the information, but said that was not his point. Mayor Jones said that Mr. Long also has to abide by the PDD. Rebecca Huss said that the variance will also have to be approved by Mr. LeFevre.

The motion carried with the following vote:

Rebecca Huss – Aye	John Champagne – Nay
Dave McCorquodale – Aye	Jon Bickford – Nay
T.J. Wilkerson - Aye	

14. Consideration and possible action regarding a Utility and Economic Feasibility Study for the 1.574 acre Walker Montgomery Community Development Corporation Baja Road Single Family Development.

Mr. Roznovsky presented the Utility and Economic Feasibility Study to City Council. Mr. Roznovsky advised that the development is currently comprised of four single family homes. Mr. Roznovsky stated that the property was already in the City limits and zoned residential. Mr. Roznovsky said that with four homes they are looking at 1,000 – 1,400 gallons of water per day, so that does not put any additional demand on the City's water system.

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: January 9, 2018</b>	<b>Budgeted Amount:</b>
<b>Department:</b>	
<p align="center"><i>Jan. 9<sup>th</sup> Information</i></p>	<p><b>Exhibits:</b></p> <ul style="list-style-type: none"> <li>-email from Mr. Long requesting an extension of variance,</li> <li>-Letter given to Mr. Long on December 29, 2017 notifying him that he had not paved the parking area and that he needs to stop his operation,</li> <li>-Building permit given to Mr. Long on March 15, 2017 with attached letter defining the terms of the occupancy,</li> <li>-The Certificate of Occupancy dated June 7, 2017,</li> <li>-March 14, 2017 minutes of Council discussion regarding the variance</li> <li>-Mr. Long's February 11, 2017 initial variance request letter,</li> <li>-Jones and Carter response regarding the initial request,</li> <li>-a proposal for the paving of the parking lot as is ( obtained by city administrator)</li> </ul>
<p><b>Prepared By: Jack Yates</b> City Administrator</p>	
<p><b>Date Prepared:</b> <i>January 4</i>, 2017</p>	

**Subject**

This is a request from Jason Long, owner of the Longview Greens Mini Golf business, for a extension of a six-month allowance of time to pave the parking lot business as required by ordinance.

**Description**

This is to discuss the requested and extension to a paving variance given to Mr. Long at the March 14, 2017 City Council meeting in which Mr. Long was granted a variance to pave the parking lot at his business within six months of receiving a Certificate of Occupancy. The motion by the Council at the March 14 meeting precisely was:

*“to allow a six month period following the granting of a temporary key certificate of occupancy for the paving of the parking lot in this development and at the parking lot is not paid in that time. The business will lose its right to hold a certificate of occupancy and that a dust control agent satisfactory to the city engineer be placed on the gravel of the parking area when completed in prior to opening of business.”*

When I gave the letter to Mr. Long on December 29 notifying them that he had not paved the parking lot, I also told him that I would not remove the Certificate of Occupancy if he applied to the City Council for a variance for extension. He did apply about an hour later.

Attached is the building permit given to Mr. Long on March 15, 2017, with the additional sheet (made a part of the building permit) that Mr. Long signed acknowledging the terms of the Certificate of Occupancy. Mr. Long is not saying that he is not broken the variance understanding, just that he cannot afford to pave the property.

The reason I obtained a proposal for the paving was just so that you, and Mr. Long, can know the real amount of the cost of paving the parking area, and not be discussing hypothetical cost.



Montgomery City Council  
**AGENDA REPORT**

**Recommendation**

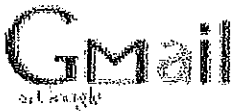
Motion to approve an additional \_\_\_\_\_ months of time to have the property paved, with no further expectation of approval by the Council and that a new treatment of dust retardant be placed on the parking area in the next thirty days with notice given to City Administrator at the time of retardant application.

**Approved By**

City Administrator

Jack Yates

Date: January 4, 2018



Yates, Jack &lt;jyates@ci.montgomery.tx.us&gt;

**Re: Extended Variance Request for Longview Greens Mini Golf**

1 message

Yates, Jack <jyates@ci.montgomery.tx.us>  
To: Jason Long <jason@longviewgreens.com>

Fri, Dec 29, 2017 at 2:11 PM

Jason,, I will place you on the January 9th City Council agenda so they can hear your request. Although not required, I suggest you attend to present your case.

Jack Yates

On Fri, Dec 29, 2017 at 2:07 PM, Jason Long &lt;jason@longviewgreens.com&gt; wrote:

Mr. Yates,

Good afternoon as well as Merry Christmas and Happy New Year wishes to you. As requested, I'm replying, via email, to the letter you just dropped off at my place of business, Longview Greens Mini Golf.

Previously, I was granted a variance for the asphalt mandate, for my parking lot. As I expressed to the City Council then, and still adhere to now, I'm very grateful that they have worked with me and my small business to temporarily defer the costs of a paved parking lot.

With that being said, I am aware that that six month variance has since ceased. I'm currently requesting another opportunity to revisit this with City Council and ask the variance be extended.

I'm certain I will be asked "why" and the reason is actually quite simple. Cost. While I have paved the entry to the parking lot, from Clepper Street, the remainder does need to be paved to be in full compliance. To pave the remainder of my parking lot, I'm looking at approximately \$28k. That is simply not something I currently have available to me at this time for a long list of reasons.

In turn, I would like to kindly request of City Council an extension of my variance.

Regards,

Jason Long

Longview Greens Miniature Golfing



# CITY OF MONTGOMERY

P. O. BOX 708 MONTGOMERY, TEXAS 77356

Telephone: (936) 597-6434 / 597-6866

December 29, 2017

Mr. Jason Long  
735 Clepper  
Montgomery, TX 77356

Re: Parking Lot Pavement Variance  
Longview Greens Miniature Golfing Business

Dear Mr. Long

On March 14, 2017 the City Council approved a variance request from you to allow gravel as a parking surface at your Longview Greens Miniature Golfing business located inside the city limits of Montgomery. The motion read to allow six months for you to pave the parking area with a temporary certificate of occupancy for six months. On March 13, 2017 you were granted a building permit (enclosed), with an accompanying letter dated March 15, 2017 in which the variance including the six months requirement is clearly stated (enclosed) and signed adjacent to the "Accepted by" line. As of today, the parking lot has not been paved by asphalt or concrete. The date of your Certificate of Occupancy (enclosed) was June 7, 2017, the six months time has expired.

Pursuant to the building permit terms and the variance terms, your certificate of occupancy is withdrawn and you are required to cease operation of the business at the above referenced address. In the alternative you may ask the City Council for an amendment to the Variance if you desire to make such a request you will need to write me a letter asking for the City Council to reconsider the issue. To be on the January 9<sup>th</sup> meeting, I would need the request from you on or before January 3, 2018.

If please feel free to contact me.

Sincerely,

Jack Yates  
City Administrator

*Hand delivered by:  
Jack Yates given to  
Jason Long at 1:50 p.m.  
December 29<sup>th</sup> at the  
735 Clepper address.  
Jack Yates*

**CITY OF MONTGOMERY**

P.O. BOX 708  
 MONTGOMERY, TX 77366  
 PHONE: 936-597-8434 |  
 Permits@ci.montgomery.tx.us  
 www.montgomerytexas.gov

<b>CONSTRUCTION/DEMO PERMIT APPLICATION</b> For the erection of buildings, accessories, repairs, demolition, moving, etc.	
Expires in 6 months (100 days) Non-Transferable	
DATE OF APPROVAL:	3-13-17
PERMIT NUMBER:	C031-1900

Owner: Jason Long | Owner Phone #: (815) 514-0420  
 Contractor: James Mullen Custom Home Cont. Phone #: (936) 760-4608  
 Contractor Mailing Address: 804 W. Dallas St. Ste #9  
 City: Conroe | State: TX | Zip: 77301  
 Job Site Address: 735 Clepper St

Residential or Commercial Project: Commercial | Zoned: \_\_\_\_\_

Section 1 / Buffalo Run Reserve B

LOT #: \_\_\_\_\_ | BLOCK#: \_\_\_\_\_ | LOT SIZE: 1.68 acres | BLDG. SIZE (SQ. FT.): 556 air conditioned  
289 Porch  
845 total

Description of work (Including Class & Construction Types):

This lot is zoned commercial. A miniature golf course, parking lot and a 845 sq-ft club house are to be constructed.

VALUE OF TOTAL WORK: \$ 80,000 (clubhouse)

\$0 - \$1000	\$60 FLAT FEE	260
\$1,001 - \$50,000	\$15.00 FOR FIRST \$1,000 + \$5.00 FOR EACH ADDTL \$1,000 OR FRACTION THEREOF	120
\$50,001 - \$100,000	\$260.00 FOR FIRST \$50,000 + \$4.00 FOR EACH ADDTL \$1,000 OR FRACTION THEREOF	380
\$100,001 - \$500,000	\$460.00 FOR FIRST \$100,000 + \$3.00 FOR EACH ADDTL \$1,000 OR FRACTION THEREOF	
OVER \$500,001	\$1,060.00 FOR FIRST \$500,000 + \$2.00 FOR EACH ADDTL \$1,000 OR FRACTION THEREOF	
PLAN REVIEW FEE	EQUAL TO ONE-HALF OF THE PERMIT FEE WHEN VALUATION EXCEEDS \$70,000.00	

89  
 120  
 14  
 2580  
 140  
 520

**NOTICE: SEPARATE PERMITS ARE REQUIRED FOR PUBLIC UTILITIES, ELECTRICAL, PLUMBING, HEATING, VENTILATION, AIR CONDITIONING, GRADING, ALARMS, ROOFING, LANDSCAPING, FIRE SPRINKLERS AND LAWN SPRINKLERS.**

I hereby certify that I have read and examined this application and know the same to be true & correct. All provisions of law and ordinances governing this type of work will be complied with whether or not specified herein. The granting of this permit does not presume to give authority to violate or cancel the provisions of any state or local law or ordinance regulating construction or the performance of construction.

Name of Applicant: Jason Long | Applicant Signature: Jason Long

OFFICE USE ONLY

Plan Review Fee: \$ 140.00  
 Permit Fee: \$ 380.00  
 PERMIT FEE TOTAL: \$ 520.00

Accepted By: [Signature]  
 Issued By: Jason Long w/ attached terms:

March 15, 2017

Mr. Jason Long;

This Building Permit approval for 735 Clepper for the Longview Miniature Golf Facility is subject to the following term: A variance was granted on March 14, 2017 by the City Council to allow a six month period following the granting of a Temporary Certificate of Occupancy for the paving of the parking lot in this development and if the parking lot is not paved in that time period the business will lose its right to hold a Certificate of Occupancy and that a dust control agent satisfactory to the city engineer be placed on the gravel of the parking area when completed and prior to opening for business.

Accepted by:

  
Jason Long

# CERTIFICATE OF OCCUPANCY

*This Certificate issued pursuant to the requirements of the International Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the Following:*

Group: B/A-5 Type of Construction: V

Owner of Building: JASON LONG Occupant: LONGVIEW MINI GOLF

Building Address: 735 CLEPPER

Locality: CITY OF MONTGOMERY Fire District: MONTGOMERY COUNTY ESD #2

By: RICK HANNA

Jack Yote 06/07/2017  
Building Official Date

POSTINA CONSPICUOUS PLACE

Mayor Jones asked if it was time to start thinking about water storage. Mr. Yates said that the short answer to the question was the TWDB work that the City will be doing at Well No. 3 and Well No. 2 should buy the City several more years of capacity. Mayor Jones said that the City has the volume and storage of water, they just can't get it out to the service. Mr. Yates said that was correct, but that is what the TWDB funds are for.

John Champagne asked to clarify that the hydro tank capacity maintains pressure in the system and currently it is too small. Mr. Roznovsky said that it meets the City's current demands, but based on projected development it is too small. Mayor Jones asked to confirm that the City did not need to be looking at elevated storage or another well. Mr. Yates said that was correct, plus the additional lines that will be laid, such as, the line connecting Jim's Hardware to the line west of Cedar Brake Park will increase the pressure. Mr. Yates said that the work they are going to be doing at Well No. 2 should increase the capacity of that well and the pressure on the west side of town.

Dave McCorquodale moved to accept this Utility and Economic Feasibility Study for KENROC Development. Jon Bickford seconded the motion, the motion carried unanimously. (4-0)

3. Consideration and possible action regarding Longview Greens Miniature Golfing variance request to allow gravel as a parking surface.

Mr. Yates advised that Mr. LeFevre had stated that Section 301 of the City Ordinance that conflicts with the Development Agreement would not be enforced by the City, however, he stated under the circumstances, he did not see where there would be anything that would prohibit the City from enforcing this current requirement for commercial parking.

John Champagne said that his question was, as he read the email from Mr. LeFevre, it seemed like, in the beginning, he had no jurisdiction. Mr. Foerster stated, for clarification, that the City, when the 2004 LeFevre Development Agreement was executed, did not require paving on commercial property. Mr. Foerster said that the current City ordinance

does require paving, but the question then is does the LeFevre Development Agreement require the City to be bound by Ordinances adopted in 2004. Mr. Foerster said that his reading of the Section 305 of the Development Agreement, indicates that the City is not bound by the 2004 Ordinance, because the Development Agreement, in Section 305, provides that "all private improvements must conform to City Ordinances." Mr. Foerster said that since this is a private improvement, he felt that the City has the option to granting or not granting the variance, and the option of deciding whether or not they place conditions on the action, such as, a temporary certificate of occupancy for a certain number of months, maybe even a performance bond. Mr. Foerster said that the performance bond might be cost prohibitive for the property owner.

Jon Bickford said that, in his mind, the challenge is if the parking lot is not paved now, and something happens with the business, then the parking lot will not be paved. John Champagne said that they could set parameters. Mr. Yates said that they could include in their motion to grant a six month variance that would grant a temporary certificate of occupancy, which could be withdrawn if the parking lot was not paved in six months. Jon Bickford asked what would happen if they started a business, things do not go the way they thought they would go, and by six months they have used all the cash, they can't pave the parking lot and they go out of business. Jon Bickford asked how the City can ensure that after six months the parking lot gets paved. Mr. Foerster said the only thing the City could do to make sure that was done, would be to have a performance bond. Mr. Foerster said that he did not know how much the paving was going to cost, but it will probably cost at least a few thousand for a performance bond. Mayor Jones said that he knew the City had a requirement for paving, and he thinks that is a good requirement, but the property that the City owns, at Fernland Park, is not paved, and the property north of the Community is not paved. Mayor Jones said that it would not be the end of the world if what Jon Bickford said happened and the parking lot was not paved.

John Champagne said, a couple of things, to use those two examples that the Mayor used is not apples and apples. The parking area north of the Community Center is rarely used and won't generate dust. The Fernland lot is mostly grass and does not generate a lot of



dust. John Champagne said that they are assuming that this enterprise will generate a lot of activity, parking and movement in the parking area. John Champagne said that his deal was, in this whole discussion, has there been a revenue forecast for the possible six month variance and as to where the money might come from. Mr. Yates said that he had only appeared before the Montgomery EDC Board.

John Champagne asked if the owner has presented a revenue forecast. Mr. Yates said that there was a revenue forecast presented at the Montgomery EDC Meeting. John Champagne said that obviously Montgomery EDC said it was adequate. Mr. Yates said that was correct. Mayor Jones said that they were not talking parking lots at the time. Mr. Yates said that the Montgomery EDC felt strongly enough to put \$15,000 toward the utilities for the project. John Champagne asked what the projected revenue would be for six months. Jon Bickford asked how much it is going to cost to pave the parking lot. Mr. Jason Long, owner, advised that it will cost \$30,000 to pave the parking lot. Mr. Long stated that he felt very confident that even before the six months is up, the parking lot will be paved. Mr. Long said that it was in the businesses best interest to get the lot paved, not only for the ordinance restriction, but they want customers to come and not have to deal with dust at their feet and kicking up onto cars.

Jon Bickford said that the restriction was in place when Mr. Long bought the property. Mr. Long said that at the time when he was going through construction for the site development, he was not aware of the City's Ordinance for paving the parking lot. Mr. Long said that when he created the numbers for the bank, this item was left out, because nobody caught it until it got to Jones and Carter's review. At that time, he went back to the bank to request the increase in funds for the parking lot and the bank refused the request several times.

Mayor Jones asked if the project goes belly up in four months, someone still owns the property, so somebody would still be liable to pay the amount. John Champagne said that would be the bank. Dave McCorquodale said that he did not think that the City would be granting a variance tied to the deed of the property, as much as the business itself. Jon

Bickford said that his only concern is that they have to be mindful and watch out for the City.

John Champagne moved to approve the variance for six months, with a temporary certificate of occupancy granted stating that if the parking lot is not paved in that time period the business will lose its certificate of occupancy, and a dust control agent, satisfactory to the City Engineer be placed on the gravel area when completed, and prior to business. T.J. Wilkerson seconded the motion.

Discussion: Dave McCorquodale said that he would like to use this as an example, as it feeds into some of the drainage issues that they are facing with the Buffalo Springs Bridge, and said if they can find a solution to impervious cover that is suitable for the City, which would reduce the impact of storm water runoff and would control dust and is suitable for the patrons of a business, he would be all ears. Mayor Jones said that if it would be affordable too. Dave McCorquodale said that if the owner came back in six months and said he has the data and a solution to back it up to say this is why I don't need to put asphalt or concrete down, that I can use this particular product and it is going to solve all of the issues that the pavement solved, he would be open to it.

John Champagne said that they could amend the motion, that in six months, if in fact, Mr. Jason Long comes back and gives the data that Dave McCorquodale indicates, that they would consider looking at it.

Jon Bickford said that he would like to propose one more amendment that he would be supportive of a variance extension, but it would make him feel better if there was some way that Mr. Long could deposit \$30,000 over time, within the six months, in an account, in case something does happen. John Champagne asked if Jon Bickford was thinking \$5,000 per month. Jon Bickford said maybe, or \$2,000 the first month and then build up. Mayor Jones said that was pretty tough for a startup business. Jon Bickford said that was part of starting up a business, and their job is to protect the City. Mayor Jones asked Jon Bickford if he was amending the motion. Jon Bickford said that he was asking to amend

the motion and throwing it out for conversation, otherwise, yes he would amend the motion that they collect up to \$30,000 in escrow in some way or another, prior to, and leading up to the six months. Jon Bickford said that he was not saying that it needed to be paid all at one lump sum, and then make the decision at the end of the six months.

The City Secretary, Susan Hensley, asked for clarification as to whether Jon Bickford was going to add that to the impervious cover consideration. Jon Bickford said that he was comfortable with that, if there is another way to solve the problem and they figure it out, give them the money back or whatever, in other words use the money for whatever and if he wants to pave it early, then pave it early. Jon Bickford said that all he wanted to try and do is cover the City in the event that something happens.

Mayor Jones said he wanted to address Dave McCorquodale's information, in his opinion, he did not think that it needed to be an amendment to the motion. Dave McCorquodale said that his information was just a point of discussion. Mayor Jones said that Jon Bickford is proposing an amendment to the motion. Jon Bickford said that was correct. Mayor Jones said that they were going to treat that amendment as a separate situation.

Ms. Hensley advised that John Champagne had also amended his motion. John Champagne said that he was not ready to unamend his motion. Mayor Jones said that John Champagne can propose an amendment. John Champagne advised that the Mayor was just going to do away with his amendment as suggested by Dave McCorquodale. Mayor Jones asked if they still wanted that information as part of the motion. John Champagne said that he might. Mayor Jones said that he did not know that John Champagne had amended the motion and that the amendment requires a second. Mayor Jones asked if there was a second to John Champagne's amendment. Ms. Hensley advised that there was no second. John Champagne pulled his amendment to the motion.

Mayor Jones asked to confirm that Jon Bickford was proposing an amendment to the motion. Jon Bickford stated "yes." Mayor Jones asked Jon Bickford to state the amendment.

Jon Bickford moved to amend the motion that the City collect up to \$30,000 over the six months in an escrow account to cover the cost of the paving in the event that it is not done within the period of time, grant the variance and the temporary certificate of occupancy for six months, and collect the \$30,000 in reasonable deposits on or before the six month deadline, they either have the parking lot or have an alternate solution.

Discussion: Dave McCorquodale said that he would like to ask a question. John Champagne stated that the amendment needed to be approved first. Mayor Jones said that if they want to continue to discuss the matter, they will need to get a second on the motion. Mayor Jones said if they don't want to talk about it and they don't get a second, the amendment dies for lack of second.

Dave McCorquodale said that he could not second the motion without asking his question. Mayor Jones told him to ask the question. Dave McCorquodale asked if a business would be able to get that parking lot funded any other way in six months, such as, going to a bank after six months and show them the books and ask for a loan to pave the parking lot. Dave McCorquodale said if the bank would say yes, then he did not see the need to have an escrow account if it is possible for the business to show what they have done in the last six months and ask for a loan. Dave McCorquodale said that if that is the only way to pay for a parking lot then he would second the motion. Jon Bickford said that he was not a bank professional, but he would offer that if the revenues are higher than your expenses, then a bank will be more than happy to lend you money, but if the expenses are higher than the revenue the bank probably won't loan you any more money. Jon Bickford said that the point is, you could get to the end of six months and not have any money to pave the parking lot, are they going to shut the business down, that would make a bad problem worse. Mayor Jones said that they are really trying to put two hammers on the developer. Jon Bickford said that he was not trying to put two hammers on them, he is trying to undo one and make sure that the City is covered. Dave Mc McCorquodale said that he is not seconding the amendment to the motion.

Mayor Jones asked if there was a second to the amendment to the motion. No second to the motion was stated. Mayor Jones said that the amendment to the motion dies for lack of second.

Mayor Jones said that they are now proceeding to the motion, which as stated, would allow six months with a temporary certificate of occupancy. Ms. Hensley asked if they were still doing the impervious cover. Mayor Jones said if Mr. Long shows up with that City Council will discuss that with him. Mayor Jones said that the original motion was seconded and asked if there was any further discussion or amendments. Mayor Jones then called for the vote.

The motion carried with 3-Ayes and 1-Nay vote by Jon Bickford.

4. Consideration and possible action regarding the City Engineer's Report on Buffalo Springs Road Bridge Repair.

Mr. Roznovsky presented his report to City Council. Mr. Roznovsky stated that the April and May events last year caused the Buffalo Springs Bridge to be closed. Shortly after the closure, the City had a structural engineering firm perform an analysis of the Bridge. Mr. Roznovsky said that they evaluated various options for stabilizing the slopes and protecting the bridge abutment under the bridge. Mr. Roznovsky said that the option that they are recommending is concrete slope paving, like is there today, but would be designed differently and constructed with better methods. This would also include a concrete bulkhead, instead of wood, to allow additional strength because all of the concrete slope paving was resting on the wood bulkhead. Concrete is also proposed to line the channel to provide additional strength and prevent erosion. Mr. Roznovsky said that everything will be dug out, lined and tied together. Jon Bickford asked if the channel would be lined just under the bridge. Mr. Roznovsky said that was correct, it would only be lined with concrete under the bridge, within the City's right of way.

Date: February 11, 2017

TO: Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77356

ATTN.: Mr. Jack Yates / Mr. Chris Roznovsky, P.E.

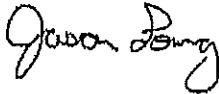
RE: Longview Greens Miniature Golfing Variance Request

Good day to you. The proposed site plan being submitted for the development of Longview Miniature Golf requires a variance due to a conflict of parking lot surface material. According to the City of Montgomery Ordinance Section 78-96 (b), the surface is required to be paved with asphalt or concrete; however, the owner is requesting a temporary allowance for his drive and parking to utilize crushed concrete. The variance justifications are as follows:

1. The property owner is proposing a family-owned small business miniature golf course. The owner is self-financing the majority of the project, and the added immediate cost of asphalt will put this project out of reach for the near future.
2. The owner will, in good faith, install the required asphalt as soon as it is feasible. The variance for a temporary allowance of this alternate surface will allow for the owner to open his business and begin to bring in revenue in order to pay for the resurfacing of the parking area.

If you have any questions or require further information prior to the meeting, please do not hesitate to call or email.

Thank you,



Jason Long

[Jason.long@commscope.com](mailto:Jason.long@commscope.com) / 815.514.0420



JONES | CARTER

8701 New Trails Drive, Suite 200  
The Woodlands, Texas 77381-4241  
Tel: 281.363.4039  
Fax: 281.363.3469  
www.jonescarter.com

February 21, 2017

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request – Parking Lot and Driveway Paving Requirement  
Longview Greens Miniature Golf  
City of Montgomery

Commission Members:

Section 78-96(b) of the City of Montgomery Code of Ordinances specifies any parking lots or driveways, excluding single family residential, shall be paved in concrete or asphalt.

- The Developer is requesting a variance from the requirement that the parking surface is to be paved with asphalt or concrete due to the cost of paving.

Enclosed you will find a request for variance as submitted by the property owner, Mr. Jason Long. We offer no objection to the requested variance. However, it is important to note the unpaved parking lot has the potential to produce dust during dry periods with heavy traffic. The owner should apply a dust control agent over the unpaved areas to reduce the amount of dust produced. We would also recommend the owner be required to pave the portion of the driveway located within the right-of-way of Clepper Street to reduce the chance of dust and rocks entering the roadway. Approval of the requested variance does not constitute plan approval and only allows the Developer to further refine the proposed site plan and construction drawings which will require the full review and approval of City Staff before any construction may commence.

If you have any questions or comments, please contact, Chris Roznovsky, and or myself.

Sincerely,

Ed Shackelford, P.E.  
Engineer for the City

EHS/cvr

P:\PROJECTS\W5841 - City of Montgomery\W5841-0900-00 General Consultation\2017\P&Z Reports\2.27.17\Longview Greens Mini Golf, Variance Request-P&Z Opinion.doc

Enclosures: Longview Greens Miniature Golf – Variance Request  
 Longview Greens Miniature Golf – Preliminary Site Plan

cc/enc: The Honorable Mayor and City Council, City of Montgomery  
 Mr. Jack Yates – City of Montgomery, City Administrator  
 Ms. Susan Hensley – City of Montgomery, City Secretary  
 Mr. Larry Foerster – Darden, Fowler & Creighton, City Attorney

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates</b> <b>City Administrator</b>	<b>Exhibits: Memo from City Engineer,</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is a question about the type of water plant inspection that needs to happen.

**Description**

This is an issue regarding water plant inspections.  
The estimated cost for the full mechanical and electrical inspection is \$7,500 as detailed in the attached memo.  
The minimum required inspection is a TCEQ checklist which is \$2,000.00.  
The reason we recommend just the full mechanical and electrical this year is because we do not have record of an electrical ever being done, and it has been since 2016 that a full mechanical inspection was done.  
I was not able, as I am writing this on Friday afternoon, to contact Mike Muckleroy regarding his opinion about which inspection is best--- he can give his opinion at the meeting.

The City Engineer can explain more at the meeting

**Recommendation**

Motion to approve the water plan inspections either with or without the \$7500 electrical and mechanical inspection.

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380-3795  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

June 6, 2018

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

Re: Completion of Annual Water Plant Inspections  
Water Plant Nos. 2 and 3  
City of Montgomery

Dear Mayor and Council:

The Texas Commission on Environmental Quality ("TCEQ") requires annual inspections to be performed on all operational water plants. As a reminder, last year we completed the minimum required TCEQ checklist inspection of Water Plant Nos. 2 and 3. This year, we recommend the City proceed with a full mechanical and electrical inspection of the City's water plant facilities. The inspection will include full facility inspection by a Jones|Carter Facilities and Treatment Engineer, Electrical Engineer, and a third party electrical contractor. The estimated cost to complete the mechanical and electrical inspection of Water Plant Nos. 2 & 3 is \$7,500 billed hourly.

The inspection will require the ground storage tank and hydropneumatic tank at Water Plant No. 2 to be taken out of service for an interior inspection. The inspections will be coordinated with Public Works to minimize the down time of the facilities. If Public Works or JC is not comfortable with taking the tanks down, the inspection will be postponed until the fall when the water demand is less.

We request the City authorize us to complete the mechanical and electrical inspection of the City's water plant facilities.

If you have any questions or comments, please contact me.

Sincerely,

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

Chris Roznovsky, P.E.  
Engineer for the City

CVR:kmv

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2018\Memo to Council RE Annual Water Plant Inspections.doc

Enclosure: N/A

Cc (via email): 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. Mike Muckleroy – City of Montgomery, Public Works Director

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates</b> City Administrator	<b>Exhibits: Special Warranty Deed</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to complete the land transaction contemplated in the 380 Agreement with First Hartford Realty Corporation

**Description**

This completes the land transaction contemplated in the 380 Agreement with First Hartford Realty Corporation. Attached are maps that comply with the 380 Agreement.

The Warranty Deed was prepared by the City Attorney, Mr. Forster and reviewed by City Engineer Chris Roznovski.

**Recommendation**

Motion to approve the Special Warranty Deed as presented.

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

**Date:** \_\_\_\_\_, 2018

**Grantor:** MONTGOMERY SH 105 ASSOCIATES, LLC

**Grantor's Mailing Address:**

% First Hartford Realty Corp.  
149 Colonial Road  
Manchester, Connecticut 06045-1270

**Grantee:** CITY OF MONTGOMERY, a political subdivision of the State of Texas

**Grantee's Mailing Address:**

101 Old Plantersville Road  
Montgomery County  
Montgomery, Texas 77356

**Consideration:** In accordance with the terms of "The Land Swap" in the *Economic Development Agreement* between and among Grantor and Grantee, dated December 15, 2017, Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**Property (including any improvements):**

**TRACT ONE:**

Being 0.0084 acres of land situated in the John Corner Survey, A-8, Montgomery County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto.

**TRACT TWO:**

Being 0.9128 acres of land situated in the John Corner Survey, A-8, Montgomery County, Texas, and being more particularly described by metes and bounds in Exhibit "B" attached hereto.

**Reservations from Conveyance:** None

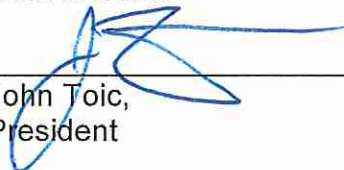
**Exceptions to Conveyance and Warranty:** Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, and mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; and any encroachments or overlapping of improvements; and taxes only for the year 2018 and prior years due to change in land usage, ownership, or both, the payment of which Grantor assumes and agrees to pay.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through, or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

MONTGOMERY SH 105 ASSOCIATES, LLC,  
a Texas limited liability company

By: FIRST HARTFORD REALTY  
CORPORATION,  
Its: Sole Member

By:   
John Toic,  
President

STATE OF CONNECTICUT       §  
                                          §  
COUNTY OF HARTFORD       §

SUBSCRIBED AND SWORN TO before me on the 30 day of May, 2018, by John Toic, President of First Hartford Realty Corporation, a Delaware corporation, sole Member of Montgomery SH 105 Associates, LLC, a Texas limited liability company, in such capacity.

  
Notary Public, State of Connecticut

**MARILYN E. ARNOLD**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES SEP. 30, 2022

**AFTER RECORDING RETURN TO:**  
CITY OF MONTGOMERY  
101 Old Plantersville Road  
Montgomery, Texas 77356

**METES AND BOUNDS DESCRIPTION**  
**0.0084 ACRES (365 SQUARE FEET)**  
**OUT OF THE REMAINDER OF A**  
**CALLED 26.43 ACRE TRACT OF LAND**  
**SITUATED IN THE JOHN CORNER SURVEY, A-8**  
**MONTGOMERY COUNTY, TEXAS**

Being 0.0084 acres (365 square feet) of land situated in the John Corner Survey, A-8, Montgomery County, Texas, and being out of the Remainder of a called 26.43 acres conveyed to Montgomery SH 105 Associates, LLC, by deed filed for record under Clerk's File Number (C.F.) 2017074546 of the Official Public Records of Real Property, Montgomery County, Texas (O.P.R.R.P. M.C.T.), said 0.0084 acre tract being more particularly described by metes and bounds as follows:

**BEGINNING** at a found 5/8 inch iron rod in the north line of a called 32.400 acres, conveyed to Randall, Risher ET AL, by deed recorded under C.F. 8816474 O.P.R.R.P. M.C.T., also being an angle point of said Remainder, marking the southwest corner of a called 1.252 acres, conveyed to the City of Montgomery, by deed recorded under C.F. 20080900957 O.P.R.R.P. M.C.T. and the southeast corner of the herein described tract;

**THENCE** South 87°04'58" West, along said north line, a distance of 18.72 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 101094172", marking the southwest corner of the herein described tract;

**THENCE** North 03°00'47" West, a distance of 38.95 feet to a found 1/2 inch iron rod, marking the an angle point of said 1.252 acres and the Remainder of said 26.43 acres, also being north corner of the herein described tract;

**THENCE** South 28°40'00" East, along the southwest line of said 1.252 acres, a distance of 43.24 feet to the **POINT OF BEGINNING** and containing a computed 0.0084 acres (365 square feet) of land.

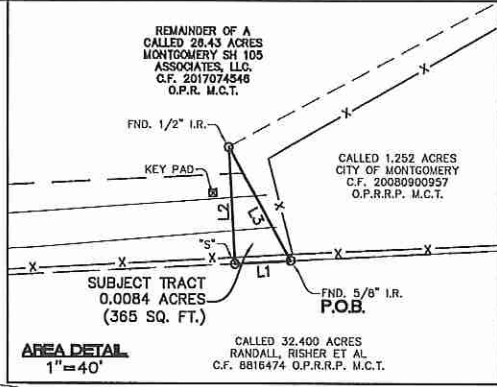
Landpoint  
TBPLS No. 10194172  
2219 Sawdust Road, Suite 2003  
The Woodlands, Texas 77380  
Phone – (281) 465-8730  
WWW.LANDPOINT.NET



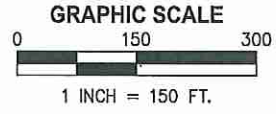
  
\_\_\_\_\_  
Jay Dean Canine  
Registered Professional  
Land Surveyor  
Texas Registration No. 4345  
Job No. 18-0639  
Date: 05-04-18

**LEGEND / ABBREVIATIONS**

A C.F. FND. I.R. O.P.R.R.P. M.C.T.	ABSTRACT CLERK'S FILE FOUND IRON ROD OPTIONAL PUBLIC RECORDS OF REAL PROPERTY MONTGOMERY COUNTY, TEXAS	GUARD RAIL BARBED WIRE POWER POLE OVERHEAD LINE UNDERGROUND CABLE	
P.O.B. P.O.C. "CI" "S"	POINT OF BEGINNING POINT OF COMMENCING CONCRETE MONUMENT SET 5/8 INCH FROM ROD WITH CAP STAMPED "LANDPOINT 10184172"	SANITARY MANHOLE SANITARY CLEANOUT WATER VALVE WATER METER TELEPHONE PEDESTAL PROPERTY MARKER UNDERGROUND CABLE	

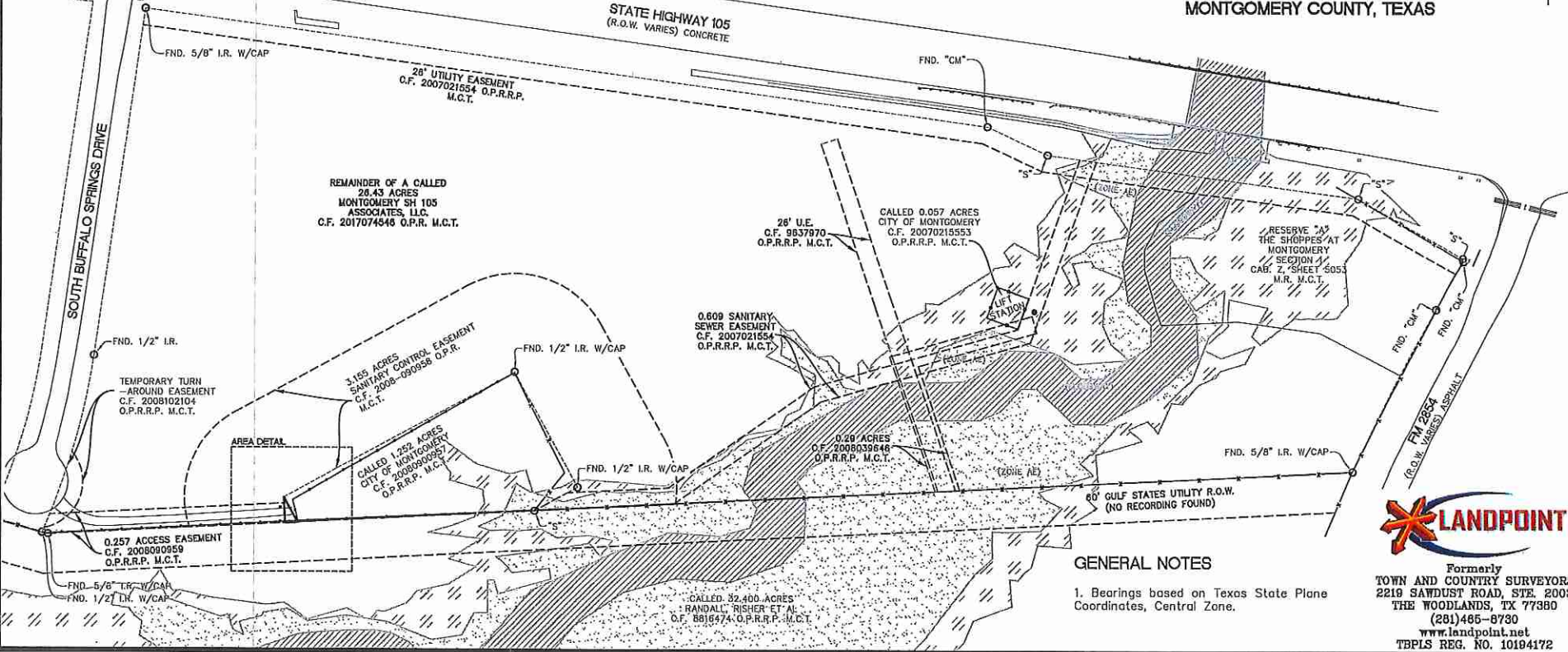


NO.	BEARING	LENGTH
L1	S 87°04'58" W	18.72
L2	N 03°00'47" W	38.95
L3	S 28°40'00" E	43.24



**EXHIBIT OF  
0.0084 ACRES (365 SQ. FT.)  
OUT OF THE REMAINDER  
A CALLED 26.43 ACRES  
TRACT OF LAND  
SITUATED IN THE JOHN CORNER SURVEY, A-8  
MONTGOMERY COUNTY, TEXAS**

HA 2018 Demisee\18-0839\DWG\18-0839 LAND SWAP SHOPPES AT MONT NO 1.dwg



**GENERAL NOTES**

1. Bearings based on Texas State Plane Coordinates, Central Zone.



Formerly  
**TOWN AND COUNTRY SURVEYORS**  
2219 SAWDUST ROAD, STE. 2003  
THE WOODLANDS, TX 77380  
(281) 465-8730  
[www.landpoint.net](http://www.landpoint.net)  
TBPLS REG. NO. 10184172

**METES AND BOUNDS DESCRIPTION**  
**0.9128 ACRES (39,763 SQUARE FEET)**  
**OUT OF THE REMAINDER OF A**  
**CALLED 26.43 ACRE TRACT OF LAND**  
**SITUATED IN THE JOHN CORNER SURVEY, A-8**  
**MONTGOMERY COUNTY, TEXAS**

Being 0.9128 acres (39,763 square feet) of land situated in the John Corner Survey, A-8, Montgomery County, Texas, and being out of the Remainder of a called 26.43 acres conveyed to Montgomery SH 105 Aassociates, LLC, by deed filed for record under Clerk's File Number (C.F.) 2017074546 of the Official Public Records of Real Property, Montgomery County, Texas (O.P.R.R.P. M.C.T.), said 0.9128 acre tract being more particularly described by metes and bounds as follows:

**COMMENCING** at a found 5/8 inch iron rod in the north line of a called 32.400 acres, conveyed to Randall, Risher ET AL, by deed recorded under C.F. 8816474 O.P.R.R.P. M.C.T., also being an angle point of said Remainder, marking the southwest corner of a called 1.252 acres, conveyed to the City of Montgomery, by deed recorded under C.F. 20080900957 O.P.R.R.P. M.C.T.;

**THENCE** North 28°40'00" West, along the common line of said Remainder and 1.252 acres, a distance of 43.24 feet to a found 1/2 inch iron rod, marking an angle point of said Remainder and 1.252 acres;

**THENCE** North 61°20'00" East, continuing along said common line of said Remainder and 1.252 acres, a distance of 400.00 feet to a found 1/2 inch iron rod with cap, marking an angle point of said Remainder and 1.252 acres;

**THENCE** South 28°40'00" East, continuing along said common line of said Remainder and 1.252 acres, a distance of 85.98 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172", marking the northwest corner of the herein described tract and the **POINT OF BEGINNING**;

**THENCE** South 86°28'38" East, a distance of 75.91 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172", marking an angle point of the herein described tract;

**THENCE** North 77°43'35" East, a distance of 118.34 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172", marking an angle point of the herein described tract;

**THENCE** South 86°28'38" East, a distance of 146.38 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172", marking the northeast corner of the herein described tract;

**THENCE** South 16°55'55" West, a distance of 137.77 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172" in the said north line of 32.400 acres, marking the southeast corner of the herein described tract;

**THENCE** South 87°04'58" West, along said north line, a distance of 308.88 feet to a set 5/8 inch iron rod with cap stamped "Landpoint 10194172", marking an angle point of said Remainder and 1.252 acres, marking the southwest corner of the herein described tract;

**THENCE** North 61°20'0" East, along said common line of said Remainder and 1.252 acres, a distance of 74.99 feet to a found 1/2 inch iron rod with cap, marking an angle point of said Remainder and 1.252 acres and the herein described tract;

**THENCE** North 28°40'0" West, continuing along said Remainder and 1.252 acres, a distance of 114.02 feet to the **POINT OF BEGINNING** and containing a computed 0.9128 acres (39,763 square feet) of land.

Landpoint  
TBPLS No. 10194172  
2219 Sawdust Road, Suite 2003  
The Woodlands, Texas 77380  
Phone – (281) 465-8730  
WWW.LANDPOINT.NET

Jay Dean Canine  
Registered Professional  
Land Surveyor  
Texas Registration No. 4345  
Job No. 18-0639  
Date: 05-07-18





**LEGEND / ABBREVIATIONS**

A	ABSTRACT	GUARD RAIL	
C.F.	CLERK'S FILE	BARRED WIRE	
LB	FOUND	POWER POLE	
O.P.R.R.P. M.C.T.	IRON ROD	OVERHEAD LINE	
	OFFICIAL PUBLIC RECORDS OF REAL PROPERTY	UNDERGROUND CABLE	
P.O.B.	MONTGOMERY COUNTY, TEXAS	SANITARY MANHOLE	
P.O.C.	POINT OF BEGINNING	SANITARY CLEANOUT	
"CM"	POINT OF COMMENCEMENT	WATER VALVE	
"S"	CONCRETE MONUMENT	TELEPHONE PEDestal	
	SET 5/8" DIAM IRON ROD WITH CAP STAMPED	PROPERTY MARKER	
	"LANDPOINT 10184172"	UNDERGROUND CABLE	

LINE TABLE		
NO.	BEARING	LENGTH
L1	S 86°28'38" E	75.91
L2	N 77°43'35" E	118.34
L3	S 86°28'38" E	146.38
L4	S 16°55'55" W	137.77
L5	S 87°04'58" W	308.88
L6	N 61°20'00" E	74.99
L7	N 28°40'00" W	114.02
L8	N 28°40'00" W	43.24

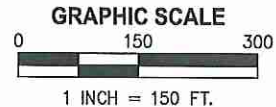
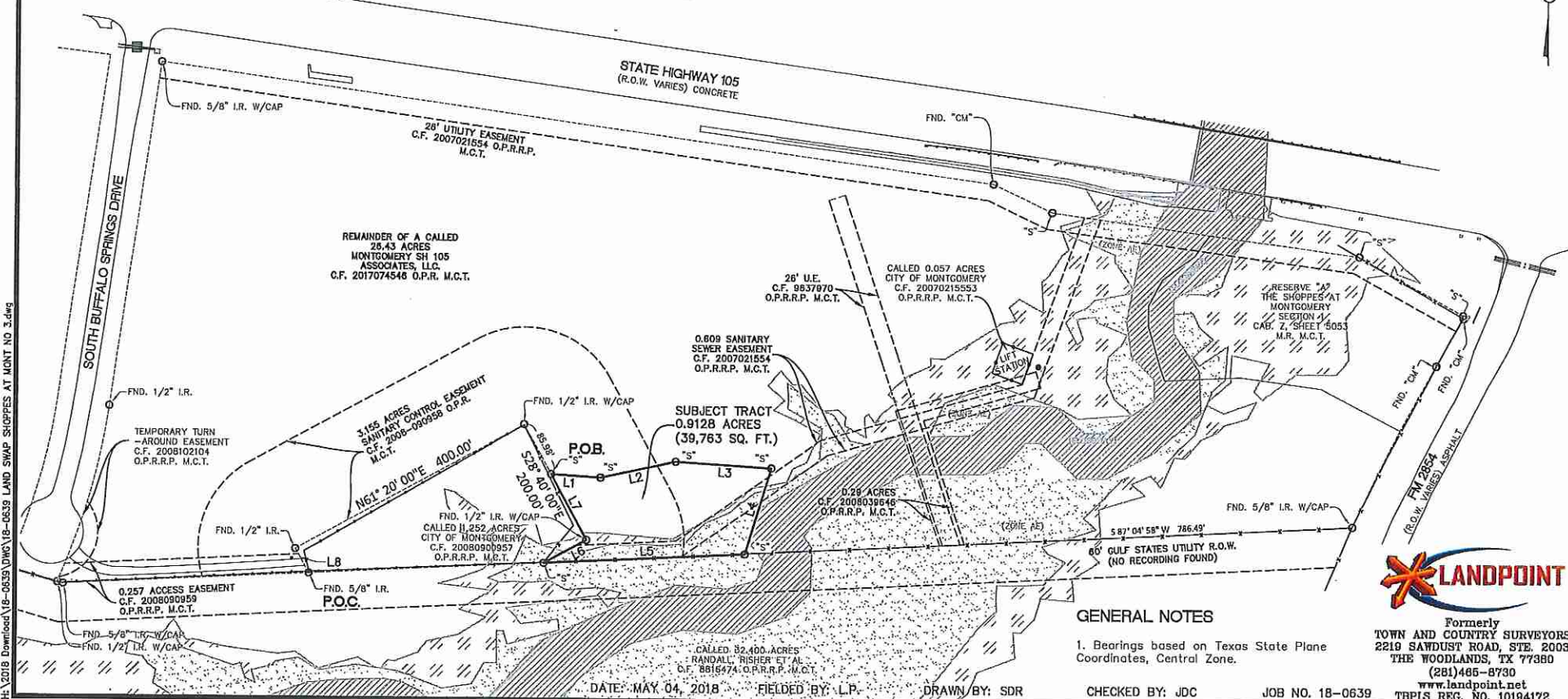


EXHIBIT OF  
 0.9128 ACRES (39,763 SQ. FT.)  
 OUT OF THE REMAINDER  
 A CALLED 26.43 ACRES  
 TRACT OF LAND  
 SITUATED IN THE JOHN CORNER SURVEY, A-8  
 MONTGOMERY COUNTY, TEXAS



**GENERAL NOTES**

1. Bearings based on Texas State Plane Coordinates, Central Zone.

**LANDPOINT**

Formerly  
 TOWN AND COUNTRY SURVEYORS  
 2219 SAWDUST ROAD, STE. 2003  
 THE WOODLANDS, TX 77380  
 (281) 485-8730  
 www.landpoint.net  
 TBPLS REG. NO. 10194172

DATE: MAY 04, 2018    FIELD BY: L.P.    DRAWN BY: SDR    CHECKED BY: JDC    JOB NO. 18-0639

H:\2018 Download\18-0639.DWG\18-0639 LAND SWAP SHOPPES AT MONT NO. 3.dwg

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: Memo and supporting information regarding backflow prevention, Backflow prevention proposed ordinance, Listing of businesses required to place the backflow prevention devices</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is a second report regarding the subject. There will be proposals regarding method of implementation at this meeting. Still listed as a report on the agenda—no action contemplated at this meeting.

**Description**

As shown in the information provided, backflow prevention is important to operating a safe water system for the public. Some of the proposal's law to follow and some is good management of the system. The brief on the proposal is: a listing of the individual businesses that are involved, a proposal to grant three months time to get the backflow prevention device is placed, to place on the water bills of the people required to get the prevention devices who choose to have the city placed the devices, and to in October of this year implement the annual testing that is required of the devices.

**Recommendation**

No action is recommended at this meeting

**Approved By**

City Administrator

Jack Yates

Date: June 8, 2018



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380-3795  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

May 17, 2018

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

Re: Proposed Backflow Prevention Ordinance  
The City of Montgomery

Dear Mayor and Council:

Over the last several months we have worked with Public Works and Gulf Utilities to prepare an ordinance mandating the installation and annual testing of backflow prevention assemblies for certain customers. A backflow prevention assembly is commonly required by a municipality to be installed at each user that is determined to be a "high health hazard" per Texas Administrative Code 290.44(h) in the interest of protecting the public water supply from potential sources of contamination. Examples of a "high health hazard" user include restaurants, car washes, auto repair shops, swimming pools, and doctor's offices. An excerpt of the referenced code and a listing of "high health hazard" users is included in your meeting packets.

While the City has not experienced a contamination issue in the recent past, the proposed ordinance is commonly accepted by municipalities as a proactive method of protecting the public water supply from potential contamination. Contamination, in general, is not a common occurrence, but can easily happen in the event of a loss of pressure within the water distribution system or in the event of greater water pressure on private property than is distributed in the public water supply. We recommend mandating the installation and annual testing of a backflow prevention assembly by all "high health hazard" users, as defined in TAC 290.44(h).

Currently, the City's Code of Ordinances does not specifically require a backflow prevention assembly to be installed at the point of connection for commercial users; however, over the past few years, commercial users within the City have been required to install a backflow prevention assembly. The proposed ordinance will require certain existing customers and future customers to install and begin annual testing and certification of backflow prevention assemblies, and establishes appropriate fees for installation, testing, and certification services if provided by the City. The backflow prevention assembly is installed on the private service line just behind the meter, and is the property of the private property owner. As detailed in the proposed ordinance, all installation, testing, and maintenance fees are the responsibility of the property owner, and will not be borne by the City. If testing and installation services are provided by the City, the cost of such services will be included on the customer's next water bill to reimburse the City.

We have also worked with Public Works to determine which existing customers within the City would be required to have a backflow prevention assembly but do not currently have one. We identified 65 customers that do not currently have a backflow prevention assembly and will be required to install and begin annual testing and certification of an assembly. Based on estimates provided by Gulf Utilities, the average expense to install an appropriate backflow prevention assembly is approximately \$1,000 per connection, and the average expense for annual testing and certification is approximately \$80 per assembly. Enclosed in your meeting packets is a sample notice that will be sent to each applicable user, explaining the need for such an assembly to be installed.

Enclosed in your meeting packets you will find a draft copy of an ordinance prepared by the City Attorney to formally adopt the requirements. As always, should you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,



Chris Roznovsky, PE  
Engineer for the City

CVR/kmv

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2018\MEMO to Council RE Backflow Prevention Ordinance.doc

Enc: Texas Administrative Code 290.44 (h)  
SAMPLE Backflow Prevention Assembly Requirement Notice  
DRAFT Backflow Prevention Ordinance

Cc (via email): The Planning and Zoning Commission – The City of Montgomery  
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

## Appendix E: Rules Related to Cross-Connection Control and Backflow Prevention

The following rules have been extracted from the TAC and reformatted for ease of use. In the case of any discrepancy between this guide and the rules published at the Texas Secretary of State's website <[www.sos.state.tx.us](http://www.sos.state.tx.us)>, the SOS site shall apply.

### **§290.38. Definitions**

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Drinking Water Dictionary*, prepared by the American Water Works Association.

**§290.38(2) Air gap**—The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

...

**§290.38(16) Contamination**—The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

**§290.38(17) Cross-connection**—A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

...

**§290.38(20) Disinfection**—A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

**§290.38(21) Distribution system**—A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

**§290.38(22) Drinking water**—All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include

all water supplied for human consumption or used by any institution catering to the public.

**§290.38(23) Drinking water standards**—The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

**§290.38(31) Health hazard**—A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

**§290.38(32) Human consumption**—Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

**§290.38(53) Nonhealth hazard**—A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

**§290.38(57) Plumbing inspector**—Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

**§290.38(58) Plumbing ordinance**—A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

**§290.38(58)(A)** the International Plumbing Code; or

**§290.38(58)(B)** the Uniform Plumbing Code.

**§290.38(59) Potable water customer service line**—The sections of potable water pipe between the customer's meter and the customer's point of use.

**§290.38(60) Potable water service line**—The section of pipe between the potable water main to the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

**§290.38(61) Potable water main**—A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

**§290.38(62) Potential contamination hazard**—A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

**§290.38(62)(A)** bypass arrangements;

**§290.38(62)(B)** jumper connections;

**§290.38(62)(C)** removable sections or spools; and

**§290.38(62)(D)** swivel or changeover assemblies.

...

**§290.38(73) Service line**—A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

## **§290.42. Water Treatment**

**§290.42(d)(2)** All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

**§290.42(d)(2)(A)** Vacuum breakers must be provided on each hose bibb within the plant facility.

**§290.42(d)(2)(B)** No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

**§290.42(d)(2)(C)** Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

**§290.42(d)(2)(D)** Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clearwells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.



**§290.42(d)(2)(E)** Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

**§290.42(d)(2)(F)** Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

**§290.42(d)(11)(F)(vi)** When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow assembly in the supply line. If an atmospheric vacuum breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

**§290.42(d)(13)(A)** A plant that is built or repainted after October 1, 2000 must use the following color code. The color code to be used in labeling pipes is as follows:

<b>Letters</b>	<b>Color of Pipe</b>
Potable Water	Light Blue
Compressed Air	Light Green
Instrument Air	Light Green with Dark Green Bands
Chlorine (gas, liquid, or vent)	Yellow
Chlorine (solution)	Yellow with Red Bands
Liquid Alum	Yellow with Orange Bands
Alum (solution)	Yellow with Green Bands
Ammonia	Yellow with Brown Bands
Chlorine Dioxide (solution)	Yellow with Blue Bands
Ferric chloride	Brown with Red Bands
Ferric sulfate	Brown with Yellow Bands
Polymers	White with Green Bands
Liquid caustic	White with Red Bands
Caustic (solution)	White with Orange Bands
Fluoride	White with Yellow Bands
Ozone	Stainless Steel with White Bands
Settled Water	Green
Filter Effluent	Light Blue
Backwash Supply	Light Blue
Backwash Waste	Dark Gray
Drain	Dark Gray
Raw Water	Tan

**§290.42(d)(13)(B)** A plant that was repainted before October 1, 2000 may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

**§290.42(d)(13)(C)** The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

### **§290.43. Water Storage.**

**§290.43(c)(7)** Each clearwell or potable water storage tank shall be provided with a means of removing accumulated silt and deposits at all low points in the bottom of the tank. Drains shall not be connected to any waste or sewage disposal system and shall be constructed so that they are not a potential agent in the contamination of the stored water.

**§290.43(c)(9)** No tanks or containers shall be used to store potable water that have previously been used for any non-potable purpose. Where a used tank is proposed for use, a letter from the previous owner or owners must be submitted to the Commission which states the use of the tank.

### **§290.44. Water Distribution.**

**§290.44(b) Lead ban.** The following provisions apply to the use of lead in plumbing.

**§290.44(b)(1)** The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

**§290.44(b)(1)(A)** for installation or repair of any public water supply; and

**§290.44(b)(1)(B)** for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

**§290.44(b)(2)** This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

...

#### **§290.44(h) Backflow, siphonage.**

**§290.44(h)(1)** No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

**§290.44(h)(1)(A)** At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

**§290.44(h)(1)(B)** At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

**§290.44(h)(1)(B)(i)** An adequate internal cross-connection control program shall include an annual inspection and testing by a certified backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

**§290.44(h)(1)(B)(ii)** Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

**§290.44(h)(1)(B)(iii)** It will be the responsibility of the water purveyor to ensure that these requirements are met.

**§290.44(h)(2)** No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

**§290.44(h)(3)** Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

**§290.44(h)(4)** All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a recognized backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester.

**§290.44(h)(4)(A)** Recognized backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

**§290.44(h)(4)(A)(i)** Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

**§290.44(h)(4)(A)(ii)** Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

**§290.44(h)(4)(B)** Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the American Water Works Association Recommended Practice for Backflow

Prevention and Cross-Connection Control (Manual M14). Public water systems shall require testers to include test gauge serial numbers on “Test and Maintenance” report forms and ensure testers have gauges tested for accuracy.

**§290.44(h)(4)(C)** A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in commission Form No. 20700 must be approved by the executive director prior to being placed in use.

**§290.44(h)(5)** The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

**§290.44(h)(6)** At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

...

**§290.44(i) Water hauling.** When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

...

**§290.44(i)(2)(E)** Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

...

**§290.44(j)** If a structure is connected to a public water supply system and has a rainwater harvesting system, the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

**§290.44(j)(1)** A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system.

**§290.44(j)(2)** At each residence or facility where water from a rainwater harvesting system is used for potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

**§290.44(j)(3)** A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

**§290.44(j)(4)** The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

## **§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems**

**§290.46(f)(3)** All public water systems shall maintain a record of operations.

...

**§290.46(f)(3)(B)** The following records shall be retained for at least three years: ...

**§290.46(f)(3)(B)(v)** the records of backflow prevention device programs; ...

**§290.46(f)(3)(E)** The following records shall be retained for at least ten years: ...

**§290.46(f)(3)(E)(iv)** copies of the Customer Service Inspection reports required by subsection (j) of this section; ...

[CSI Certificate retention: The CSI Certificate requires that it be retained permanently, whereas the rule references 10 years; therefore, a discrepancy exists. The TCEQ recommends that CSI Reports be retained permanently, as long as the inspected facility is in existence.]

...

**§290.46(i) Plumbing ordinance.** Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

**§290.46(j) Customer service inspections.** A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections

or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form No. 20699 must be approved by the executive director prior to being placed in use.

**§290.46(j)(1)** Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

**§290.46(j)(1)(A)** Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

**§290.46(j)(1)(B)** Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

**§290.46(j)(2)** As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(i) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

**§290.46(j)(3)** These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

**§290.46(k) Interconnection.** No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

## Appendix F: Assessment of Hazard and Selection of Assemblies [from 30 TAC 290.47(f)]

The following table lists many common hazards. It is not an all-inclusive list of the hazards that may be found connected to public water systems.

<b>Premises Isolation: Description of Premises</b>	<b>Assessment of Hazard</b>	<b>Required Assembly</b>
Aircraft and missile plants	Health	RPBA or AG
Animal feedlots	Health	RPBA or AG
Automotive plants	Health	RPBA or AG
Breweries	Health	RPBA or AG
Canneries, packing houses and rendering plants	Health	RPBA or AG
Commercial car wash facilities	Health	RPBA or AG
Commercial laundries	Health	RPBA or AG
Cold storage facilities	Health	RPBA or AG
Connection to sewer pipe	Health	AG
Dairies	Health	RPBA or AG
Docks and dockside facilities	Health	RPBA or AG
Dye works	Health	RPBA or AG
Food and beverage processing plants	Health	RPBA or AG
Hospitals, morgues, mortuaries, medical clinics, dental clinics, veterinary clinics, autopsy facilities, sanitariums, and medical labs	Health	RPBA or AG
Metal manufacturing, cleaning, processing, and fabrication plants	Health	RPBA or AG
Microchip fabrication facilities	Health	RPBA or AG
Paper and paper products plants	Health	RPBA or AG
Petroleum processing or storage facilities	Health	RPBA or AG
Photo and film processing labs	Health	RPBA or AG
Plants using radioactive material	Health	RPBA or AG
Plating or chemical plants	Health	RPBA or AG
Pleasure-boat marinas	Health	RPBA or AG
Private/Individual/Unmonitored Wells	Health	RPBA or AG
Reclaimed water systems	Health	RPBA or AG
Restricted, classified or other closed facilities	Health	RPBA or AG
Rubber plants	Health	RPBA or AG
Sewage lift stations	Health	RPBA or AG
Sewage treatment plants	Health	RPBA or AG
Slaughter houses	Health	RPBA or AG
Steam plants	Health	RPBA or AG
Tall buildings or elevation differences where the highest outlet is 80 feet or more above the meter	Nonhealth	DCVA

<b>Internal Protection: Description of Cross Connection</b>	<b>Assessment of Hazard</b>	<b>Required Assembly</b>
Aspirators	Nonhealth†	AVB
Aspirator (medical)	Health	AVB or PVB
Autoclaves	Health	RPBA
Autopsy and mortuary equipment	Health	AVB or PVB
Bedpan washers	Health	AVB or PVB
Connection to industrial fluid systems	Health	RPBA
Connection to plating tanks	Health	RPBA
Connection to salt-water cooling systems	Health	RPBA
Connection to sewer pipe	Health	AG
Cooling towers with chemical additives	Health	AG
Cuspidors	Health	AVB or PVB
Degreasing equipment	Nonhealth†	DCVA
Domestic space-heating boiler	Nonhealth†	RPBA
Dye vats or machines	Health	RPBA
Fire-fighting system (toxic liquid foam concentrates)	Health	RPBA
Flexible shower heads	Nonhealth†	AVB or PVB
Heating equipment		
Commercial	Nonhealth†	RPBA
Domestic	Nonhealth†	DCVA
Hose bibbs	Nonhealth†	AVB
Irrigation systems		
with chemical additives	Health	RPBA
without chemical additives	Nonhealth†	DCVA, AVB, or PVB
Kitchen equipment—Commercial	Nonhealth†	AVB
Lab bench equipment	Health or Nonhealth†	AVB or PVB
Ornamental fountains	Health	AVB or PVB
Swimming pools		
Private	Nonhealth†	PVB or AG
Public	Nonhealth†	RPBA or AG
Sewage pump	Health	AG
Sewage ejectors	Health	AG
Shampoo basins	Nonhealth†	AVB
Specimen tanks	Health	AVB or PVB
Steam generators	Nonhealth†	RPBA
Steam tables	Nonhealth†	AVB
Sterilizers	Health	RPBA
Tank vats or other vessels containing toxic substances	Health	RPBA
Trap primers	Health	AG
Vending machines	Nonhealth†	RPBA or PVB
Watering troughs	Health	AG or PVB

NOTE: AG = air gap; AVB = atmospheric vacuum breaker; DCVA = double check valve backflow prevention assembly; PVB = pressure vacuum breaker; RPBA = reduced-pressure principle backflow prevention assembly

AVBs and PVBs may be used to isolate health hazards under certain conditions, that is, back-siphonage situations. Additional area of premises isolation may be required.

†Where a greater hazard exists (due to toxicity or other potential health impact) additional area protection with RPBA is required.





# City of Montgomery

## Backflow Prevention Assembly Requirements

### WHAT IS BACKFLOW?

In potable water supply systems, significant pressure is normally maintained to keep water flowing within the system which includes taps, showers or other internal fixtures. Maintaining pressure is critical for consistent water flow, but it is also important to prevent infiltration into the system. Water pressure may drop or fail when a water main breaks, pipes freeze or when there is unexpected high demand. For example, pressure may fluctuate when several fire hydrants are opened at the same time. Reduced pressure in the pipe may allow contaminated water from the soil, from a "cross-connection," or from other sources into the water system.

Points where a potable water system connects with a non-potable water system are called cross-connections. Cross-connections are household appliances such as washing machines and dishwashers. Appliances are normally designed and installed to prevent backwash or backflow. Another potential source of contamination would be an irrigation system.

### WHAT IS A BACKFLOW PREVENTER?

A backflow preventer does exactly what it sounds like. It prevents the backflow of water from our homes and businesses from returning into the main water system. One way to provide backflow prevention is to provide an air gap. An air gap is simply an open vertical space between any device that connects to a plumbing system like a valve or a faucet or any place where contaminated water can collect or pool. For instance, many plumbing codes specify a minimum air gap distance for the drain connection to a dishwasher.



Backflow devices are used where there is not sufficient vertical clearance or physical space to install an air gap or when pressurized operation or other issues eliminate the use of an air gap. Because the devices have valves with moving parts, they are required to be inspected or tested periodically. If you have an irrigation system for your landscaping, you are familiar with the upside down U shaped device with the metal bell-like object on the top. That is your backflow preventer for your irrigation system.



The Texas Commission on Environmental Quality (TCEQ) has specific requirements for the type of backflow prevention assembly to be installed, depending on the type of service your business or establishment provides. These guidelines, listed in Texas Administrative Code 290.44(h), serve as minimum requirements for the City to follow. The City may require a more stringent method of backflow prevention be installed, as deemed necessary.

## WHAT THE CITY DOES FOR YOU REGARDING BACKFLOW PREVENTERS

Our job is to make sure that backflow preventers are installed on commercial buildings and irrigation systems. When a commercial establishment is built, the City of Montgomery is responsible for ensuring the appropriate backflow prevention assembly is installed, tested, and certified.

If there is a backflow preventer installed on one of the commercial customers in the City, we will test it annually. Records on all backflow preventers are kept for three years. A licensed plumber or a licensed irrigator can install a backflow preventer, or the device can be installed by Public Works.

If a licensed third party inspector is used to perform the inspection, a copy of the approved inspection form must be submitted to the City of Montgomery Public Works for filing. Only a certified, licensed backflow preventer inspector can inspect a backflow preventer. Classes must be completed and a license must be issued by TCEQ to become a certified backflow preventer and assembly inspector. A license must be renewed thereafter. It is the responsibility of the commercial user to ensure that the backflow preventer is operational at all times and that they are tested annually.



## WHAT IS REQUIRED OF ME?

The City of Montgomery City Council adopted Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2018, which requires the installation a backflow prevention assembly at certain points of connection to the system. You are receiving this newsletter because you have been identified as a potential “high health hazard” user, as defined in TAC 290.44(h).

Per Ordinance No. \_\_\_\_\_, you are required to install a [insert backflow prevention device type] on your private water service line, immediately following the water meter. The City will perform annual testing on your device, and a fee will be placed on your water bill to cover the testing expenses. You will be responsible for all maintenance and repairs to the device. All maintenance performed on your backflow prevention assembly must be completed by a licensed backflow preventer inspector. The City of Montgomery Public Works Department can also provide these services, and will include the cost to do so in your water bill.

## CONTACT INFORMATION

We thank you for your cooperation to help protect the public water supply of the City of Montgomery. If you have any questions or would like to discuss how to install a backflow prevention assembly, please do not hesitate to contact Mike Muckleroy, Director of Public Works, at (936) 597-6434 or by email at [mmuckleroy@ci.montgomery.tx.us](mailto:mmuckleroy@ci.montgomery.tx.us).



ORDINANCE \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, REGARDING PUBLIC WATER SYSTEM BACKFLOW ASSEMBLY PREVENTION REQUIREMENTS FOR CERTAIN ESTABLISHMENTS IN THE CITY OF MONTGOMERY, TEXAS; ADDING NEW DIVISION VI, TO ARTICLE II, ENTITLED "BACKFLOW PREVENTION," TO CITY CODE OF ORDINANCES CHAPTER 90, ENTITLED "UTILITIES;" PROVIDING THE PURPOSE AND REGULATIONS FOR NEW AND EXISTING WATER CONNECTIONS; REQUIRING ANNUAL TESTING; PROVIDING A PENALTY CLAUSE FOR VIOLATING THE ORDINANCE; PROVIDING SEVERABILITY CLAUSE AND TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PUBLICATION.**

**WHEREAS**, the Texas Commission on Environmental Quality ("TCEQ") has issued a requirement in Section 290.44, "Water Distribution," of the Texas Administrative Code for backflow prevention assemblies to protect public water facilities from contamination; and

**WHEREAS**, the City Council for the City of Montgomery, Texas, desires to provide reasonable regulations concerning backflow prevention which will safeguard the public health, safety and general welfare of the City and its residents from contaminated public water;

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

**SECTION I. AMENDMENTS TO CITY CODE**

The City Code of Ordinances is hereby amended to add Division VI, "Backflow Prevention," to Article II, entitled "WATER AND SEWER SERVICE," of Chapter 90, "UTILITIES," to read as follows:

**Division VI – BACKFLOW PREVENTION**

**Sec. 90-351- Purpose.**

The purpose of this article is to:

1. Require the installation and annual testing of backflow prevention assemblies that will protect and ensure the quality of the City's potable public water system as required by the TCEQ in Section 290.44 (h) of the Texas Administrative Code.
2. Protect the public health, safety and general welfare.

**Sec. 90-352 – Applicability**

- a) This article applies to all connections that can be identified as potential health hazards, including all strip centers, establishments that prepare and/or sell food, auto repair and parts shops, industrial or manufacturing establishments, apartment buildings, irrigation systems, and as otherwise determined by the City Engineer.

**Sec. 90-353 - New Connections - Initial Testing and Certification**

- a) Irrigation systems will require a pressure vacuum breaker be installed immediately after the water meter.
- b) Domestic water connections will require a reduced pressure zone backflow prevention assembly to be installed immediately after the water meter.
- c) Fire water connections will require a double detector check backflow prevention assembly installed immediately after the connection to the public waterline.
- d) Customer shall be responsible for the initial installation and testing of all backflow prevention assemblies.
- e) Testing and certification must be completed within 7 days of the physical connection to the City's water system being made.
- f) Customers must submit a test report, completed by a licensed tester, to the City of Montgomery Public Works Director within seven (7) days of completing the test.

**Sec. 90-354 - Existing Connections - Initial Testing and Certification**

- a) Domestic water connections will require a reduced pressure zone backflow prevention assembly to be installed immediately after the water meter.
- b) Fire water connections will require a double detector check backflow prevention assembly installed immediately after the connection to the public waterline.
- c) Customers shall be notified by the City in writing that they are required to install an appropriate backflow prevention assembly within 90 days of the letter. If the

customer does not comply the City will install the backflow prevention assembly and back-charge the customer for the installation.

- d) After installation, testing and certification must be completed within 7 days at the expense of the Customer.
- e) Customers must submit the Test Report, completed by a licensed tester, to the City of Montgomery Public Works Director within seven (7) days of completing the test.

#### **Sec. 90-355 - Annual Testing and Certification**

- a) The City will have all backflow prevention assemblies tested and certified on an annual basis.
- b) The City will keep records of all certifications.
- c) A fee will be placed on the Customer's water bill during the month the testing is completed to cover the cost of the test and certification.
- d) If a Customer's backflow prevention assembly fails the test, the Customer will be notified that repairs are required and will be given 30 days to complete the repairs.
- e) After 30 days, the City will retest the backflow prevention assembly and a penalty fee will be placed on the Customer's water bill.
- f) If a Customer's backflow prevention assembly fails a second time, the Customer will be notified and given 7 days to complete the repairs. The City will retest the backflow prevention assembly and the corresponding fee will be placed on the Customer's water bill during the month the testing is completed.
- g) After a third failure, the City will cause the repairs to be made and the Customer will be charged the cost of the repairs plus 200%. The Customer will also be charged for an additional testing fee, to be placed on the Customer's water bill during the month the repairs and testing are completed.
- h) Any fees listed in this section shall be based on the most current revision of the Fee Schedule Resolution approved by the City of Montgomery City Council.

#### **Section 90-356 – Criminal Penalty**

Anyone charged with negligently, recklessly, knowingly, or intentionally violating any provisions of this Ordinance shall be fined by a penalty of not more than \$500, as provided for in Section 1-13 of the Code of Ordinances of the City of Montgomery. Each day that such violation continues shall constitute a separate offense and shall be punishable accordingly.

#### **SECTION II –CODIFICATION OF THIS ORDINANCE**

Whenever any provision of this Ordinance provides for the amendment of the Code of Ordinances of the 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 order of similar or related topics and to avoid the duplicative use of chapter, article or section numbers. Neither the codification nor any application of this 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 III. SEVERABILITY CLAUSE.**

If any provision, section, subsection, sentence, paragraph, sentence, clause or phrase of this Ordinance or the application of same to any person or set of circumstances, shall for any reason be held to be unconstitutional, void, or invalid or otherwise unenforceable, the invalidity or unenforceability shall not affect other provisions of this Ordinance or their application to other sets of circumstances and to this end all provisions of this Ordinance are declared to be severable.

**SECTION IV. TEXAS OPEN MEETINGS ACT.**

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 155, of the Texas Government Code.

**SECTION V. EFFECTIVE DATE.**

This Ordinance shall take effect and be in force immediately after its publication as provided by law.

PASSED AND APPROVED by the City Council of the City of Montgomery, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**THE CITY OF MONTGOMERY, TEXAS**

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Mayor

ATTEST:

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Susan Hensley, City Secretary

APPROVED AS TO FORM:

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Larry L. Foerster, City Attorney

City of Montgomery - Survey of Backflow Preventers

Acct #	Address	Name of account	Meter #	Device present? (Y/N)	Need device? (Y/N)	Device Type Needed	Meter Size	BFP Cost
01-8727	20212 Eva St.	Buffalo Springs Shop. Center	48818596	Y				
01-8727	20212 Eva St.	Buffalo Springs Shop. Center	48495852	Y				
01-8727	20212 Eva St.	Buffalo Springs Shop. Center	48495851	N	Y	RPZ	1.5"	\$568.56
01-8729	20168 Eva St.	Key Construction	16309375 (Compound)	Y				
01-0010	13755 Liberty St.	Montgomery Middle School	48414330	N	Y	RPZ	5/8"	\$568.56
01-0020	13900 Liberty St.	Montgomery Bus Barn	48316138	N	Y	RPZ	5/8"	\$568.56
01-0040	14030 Liberty St.	Survivalist Emporium	48199326	N (Commercial ice maker)	N			
01-0050	14058 Liberty St.	Gary Roth (Car Wash)	15063989	N	Y	RPZ	5/8"	\$568.56
01-0060	14080 Liberty St.	C&S Feed and Supply	48199281	N	Y	RPZ	5/8"	\$568.56
01-3631	21049 Eva St.	Israel Curtis Auctions	48199305	N	N			
01-0880	21001 Eva St.	Brookshire Bros. Fuel Center	48199304	N	Y	RPZ	5/8"	\$568.56
01-0080	20943 Eva	McDonald's	48414343 (Irrigation)	Y				
01-4610	20943 1/2 Eva St.	McDonald's	48128974 (Domestic)	N	Y	RPZ	5/8"	\$568.56
01-8741	20901 Eva St.	P.R. Infrastructure	48693796	N	Y	RPZ	1"	\$568.56
01-8741	20901 Eva St.	P.R. Infrastructure	48214923	N	Y	RPZ	2"	\$889.09
01-6250	20869 Eva St.	O'Reilly Auto Parts	48199306	Y				
01-4850	20821 Eva St. A (Woodforest)	Montgomery Trace	48414335	N	Y	RPZ	2"	\$889.09
01-4870	20821 Eva St. B-F	Montgomery Trace	48414344	N	Y	RPZ	2"	\$889.09
01-4860	20821 Eva St. G-L	Montgomery Trace	48414338	N	Y	RPZ	2"	\$889.09
01-5180	20873 Eva St. M	Montgomery Trace	48414334	N	Y	RPZ	2"	\$889.09
01-4890	20821 Eva St.	Montgomery Trace	48316093 (Irrigation)	Y				
01-4880	20821 Eva St. P	Montgomery Trace	48316096	N	Y	RPZ	2"	\$889.09
01-5020	20821 Eva St.	Montgomery Trace	48383087 (Irrigation)	Y				
01-5110	20873 Eva St. Pizza Shack	Montgomery Trace	48414340	N	Y	RPZ	2"	\$889.09
01-8860	325 Flagship Blvd.	Heritage Plaza Apartments	70309902 (Compound)	Y (Neptune Protectus)				
01-8860	325 Flagship Blvd. (Irrigation)	Heritage Plaza Apartments	48214912	Y				
01-4590	21005 Eva St.	Brookshire Bros. Grocery	48316094	N	Y	RPZ	5/8"	\$568.56
01-0090	20423 Eva St.	First Baptist Church	48316137	N	Y	RPZ	2"	\$889.09
01-8821	265 Buffalo Springs Dr.	Buffalo Springs Sewer Plant	48267653	Y				
01-8729	20168 Eva St.	Key Construction	48495850	Y				
01-8825	115 Lone Star Bend	Loal Holdings	48316095	N	Y	RPZ	5/8"	\$568.56
01-8825	115 Lone Star Bend (Irrigation)	Loal Holdings	47761708	Y				
01-8801	951 Lone Star Pkwy.	TEG Enterprises	48178831	N	N			
01-8801	951 Lone Star Pkwy. (Irrigation)	TEG Enterprises	48199312	Y				
01-6051	300 CB Stewart	Mara Moja/Ransom's	60393841	N	Y	RPZ	5/8"	\$568.56
01-7680	20590 Eva St.	Mont. Fire Dept.	48316100	N	N			
01-0340	20600 Eva St.	Masonic Lodge No. 25	48199340	N	N			
01-4130	20800 Eva St.	Amegy Bank	48316110	Y on irrigation only				
01-5740	20850 Eva St.	Sam Houston Funeral Home	60814688	Y on irrigation only				
01-8733	20900 Eva St.	Welcome Sign Irrigation	48199356	Y				
01-8734	20980 Eva St.	Welcome Flags Irrigation	48199357	Y				
01-3790	20998 Eva St.	Montgomery Barber Shop	48199320	N	Y	RPZ	5/8"	\$568.56
01-3630	21012 Eva St.	Ruthie Grace Boutique	48199321	N	N			
01-5690	21000 Eva St.	Dominion Pool Group	48199322	N	N			
01-2270	14264 Liberty St.	Mont. Historical Society	48199323	Y on irrigation only				
01-3550	14340 Liberty St.	Cozy Grape	48199325	N	Y	RPZ	5/8"	\$568.56
01-3980	204 McCown St.	Lloyd Ashbaker (Steakhouse)	48199267	N	Y	RPZ	5/8"	\$568.56
01-4970	202 McCown St.	Fare Thee Well	48199269	N	N			
01-0100	14348 Liberty St.	Small Town Sugar	48199265	N	Y	RPZ	5/8"	\$568.56



Acct #	Address	Name of account	Meter #	Device present? (Y/N)	Need device? (Y/N)	Device Type Needed	Meter Size	BFP Cost
01-0700	14356 Liberty St.	Modern Farmhouse	48199266	N	N			
01-2540	14364 Liberty St.	Jacobs Properties	48199263	N	N			
01-4010	208 McCown St.	Gary Wall	48199264	N	N			
01-5969	401 College	Kemifer Corporation	48414329	N	Y	RPZ	2"	\$889.09
01-6180	FM 149/College	Comm Center Stage Irrigation	15063962	Y				
01-8732	14420 Liberty St.	Comm Center Irrigation	48199066	Y				
01-0130	14420 Liberty St.	Comm Center Building	48199065	N	Y	RPZ	5/8"	\$568.56
01-0170	20774 Eva St.	Montgomery Elementary	70067274	N	Y	RPZ	5/8"	\$568.56
01-6150	780 Clepper	Buffalo Springs Trading	48316111	Y on irrigation only				
01-8737	770 Clepper	Ferland Park	15064013	Y on irrigation only				
01-5880	202 Bessie Price Owens	Mont. County Library	15063978 (irrigation)	Y				
01-5880	202 Bessie Price Owens	Mont. County Library	60820207	Y				
01-5885	202 Bessie Price Owens	Memory Park	48316108	Y				
01-2000	14460 Liberty St.	Jim's Hardware	48414339	N	Y	RPZ	2"	\$889.09
01-8830	14460A Liberty St.	Montgomery Orig. Snowcone	48198940	N	Y	RPZ	5/8"	\$568.56
01-7695	213 Prairie	Knight's Inspections	48199018	N	N			
01-7695	213 Prairie	Knight's Inspections	48199019 (irrigation)	Y				
01-3260	300 Prairie	Hodge Podge Lodge	48199327	N	Y	RPZ	5/8"	\$568.56
01-3260	300 John A Butler	Yo Mama's BBQ	48199328	N	Y	RPZ	5/8"	\$568.56
01-0892	304 Caroline	Cozy Supper Club	48199021	N	Y	RPZ	5/8"	\$568.56
01-0892	304 Caroline	Cozy Supper Club	48199020 (irrigation)	Y				
01-4710	301 Prairie	Lena's Attic	48199359	N	N			
01-5420	302 John A Butler	Vessel & Threads	48199360	N	N			
01-5423	306 John A Butler	Dominion Pool Group	48199358	N	Y	RPZ	5/8"	\$568.56
01-0241	308 Caroline	Cronin Group, LLC	48198942	N	Y	RPZ	5/8"	\$568.56
01-5190	310 John A Butler	Montgomery Washateria	48316104	N	Y	RPZ	5/8"	\$568.56
01-4490	401 Caroline	Garrett House Antiques	48198943	N	N			
01-0270	312 John A Butler	The Look Salon	48199361	N	Y	RPZ	5/8"	\$568.56
01-0251	314 John A Butler	K9 Kuts	48199363	N	Y	RPZ	5/8"	\$568.56
01-0330	14287 Liberty St.	Consolidated Communication	48198944	N	N			
01-0370	301 Pond St.	Mont. Historical Society	48199367	N	N			
01-5240	309 Pond St.	Living Savior Lutheran Church	48199365	N	Y	RPZ	5/8"	\$568.56
01-8736	901 Caroline	Cedar Brake Irrigation	48581067	Y				
01-8735	921 Caroline St.	Cedar Brake Restrooms	48198959	N	N			
01-6081	308 Louisa	Living Savior	48199051 (irrigation)	N	Y	PVB	5/8"	\$388.56
01-5640	14275 Liberty St.	Southern Roots Salon	48199277	N	Y	RPZ	5/8"	\$568.56
01-3420	308 Pond	Emily Jones(Pecan Hill)	48199048	N	N			
01-3130	21102 Eva St.	P&T Management	48199276	N	Y	RPZ	5/8"	\$568.56
01-4270	21100 Eva St.	Corner Stop Grocery	60810045	N	Y	RPZ	5/8"	\$568.56
01-1011	14351 Liberty St.	Montgomery Emporium	48199272	N	N			
01-1161	210 Pond	Nature's Select Houston	48199362	N	Y	RPZ	5/8"	\$568.56
01-0310	14343 Liberty St.	Petz	48199274	N	Y	RPZ	5/8"	\$568.56
01-4150	14335 Liberty St.	Ironclad Enterprises	48199273	N	N			
01-0300	14363 Liberty St.	Claudina Cook	48199270	N	N			
01-0290	14375 Liberty St.	MP Stultz Properties	48199271	N	N			
01-5960	14387 Liberty St.	The Ranchers Daughter	48199268	N	N			
01-5130	14409 Liberty St.	Burger Fresh	48199096	N	Y	RPZ	1"	\$568.56
01-5032	14427 Liberty St.	In Stitches Drapery	48199064	N	N			
01-1350	14740 Liberty St.	China Chapel Methodist	48199053	N	Y	RPZ	5/8"	\$568.56
01-8789	1950 Lone Star Pkwy.	Apache Well Control	46368996	Y				
01-1370	15030 Liberty St.	Old Ironworks	48266994	N	Y	RPZ	5/8"	\$568.56

Acct #	Address	Name of account	Meter #	Device present? (Y/N)	Need device? (Y/N)	Device Type Needed	Meter Size	BFP Cost
01-1380	15155 Liberty St.	Mt. Pleasant Baptist Church	48199052	N	Y	RPZ	5/8"	\$568.56
01-1500	611 Community Center Dr.	Mt Sinai Baptist Church	48199349	N	Y	RPZ	5/8"	\$568.56
01-3240	700 MLK Dr.	Montgomery Intermediate	75756043	N	Y	RPZ	5/8"	\$568.56
01-1510	700 MLK Dr.	Montgomery Intermediate	48316103	N	Y	RPZ	5/8"	\$568.56
01-8820	720 Community Center Dr.	Homecoming Park Restroom	48199245	N	N			
01-8738	718 Community Center Dr.	Homecoming Park Fountain	48199242	N	Y	PVB	5/8"	\$388.56
01-1800	22985 W FM 1097	Abundant Life Ministries	48199252	N	Y	RPZ	5/8"	\$568.56
01-8500	22465 W FM 1097	Riverhaven Shell	48199258	(Irrigation) Y				
01-8500	22465 W FM 1097	Riverhaven Shell	15063959	N	Y	RPZ	1"	\$568.56
01-6611	15349 Summit Park Dr.	Summit Universal	60890499	Y				
01-6612	15514 Summit Park Dr.	Summit Universal	60890503	Y				
01-6613	22394 FM 1097	Prestige Storage	60850860	Y				
01-8790	2500 Lone Star Pkwy.	Mont. County Comm Center	48414337	(Irrigation) Y				
01-8790	2500 Lone Star Pkwy.	Mont County Comm Center	48414333	N	Y	RPZ	2"	\$889.09
01-8800	2510 Lone Star Pkwy.	Tri-County Independence	70237595	(compound) Y				
01-8800	2510 Lone Star Pkwy.	Tri-County Independence	48414336	(Irrigation) Y				
01-6160	21574 Eva St.	Thomas Printing	15063988	N	Y	RPZ	1"	\$568.56
01-4230	21768 Eva St.	Solomon Electric	48199280	N	Y	RPZ	5/8"	\$568.56
01-1150	22016 Eva St.	Texas Country	48199338	N	Y	RPZ	5/8"	\$568.56
01-3571	22150 Eva St.	Wapco II/Napa	48199337	N	Y	RPZ	5/8"	\$568.56
01-2250	Hwy 105	Mid-South	48383081	N	N			
01-5010	22548 Eva St.	Mont. United Methodist	15063985	(Irrigation) Y				
01-5010	22548 Eva St.	Mont. United Methodist	94923465	Y				
01-4990	22628 Hwy 105/Stadium	Montgomery ISD	16279289	N	Y	RPZ	4"	\$3,140.01
01-8840	22870 Eva St.	Town Creek Village Apts.	70272328	Y				
01-8840	22870 Eva St.	Town Creek Village Apts.	48414331	(Irrigation) Y				
01-1180	22825 Hwy 105	Montgomery High School	70252650	(compound) N	Y	RPZ	6"	\$4,841.12
01-3480	21973 Eva St.	Spirit Industries	45235651	N	N			
01-4980	21627 Eva St.	Lone Star Cowboy Church	4980	N	Y	RPZ	2"	\$889.09
01-4980	21627 Eva St.	Lone Star Cowboy Church	70311525	(compound) Y (Neptune Protectus)				
01-7625	21587 Eva St.	Stowe's Wrecker Service	48199336	N	Y	RPZ	5/8"	\$568.56
01-1120	21499 Eva St.	Robert Kerr	48199339	N	N			
01-6190	101 Old Plantersville Rd.	City Hall	48414346	Y (On irrigation only)				
01-1110	407 Old Plantersville Rd.	City Cemetery	48199127	N	N			
01-4210	100 Rankin	Mont. Jehovah Witness	15063984	Y (On irrigation only)				
01-0860	21325 Eva St.	Chris Cheatham	48199207	N	N			
01-0850	20903 Eva St.	USPS Montgomery	48383080	N	N			
01-0840	21291 Eva St.	House Of Hair	48199301	N	Y	RPZ	5/8"	\$568.56
01-5860	21265 Eva St.	Little Angels Learning Acad.	48199303	N	Y	RPZ	5/8"	\$568.56
01-5530	21149 Eva St.	The Skinny Pig	48199294	N	Y	RPZ	5/8"	\$568.56
01-0720	21101 Eva St.	Valero Energy Corp.	48316055	Y				
01-0720	21101 Eva St.	Valero Energy Corp.	48199291	(Irrigation) Y				
01-5602	21105 Eva St.	Heritage Place	48414345	Y				
01-6171	21105 Eva St.	Heritage Place	48129070	(Irrigation) Y				
01-0730	14125 Eva St.	First Bank	48199292	Y (On irrigation only)				
01-8737	735 Clepper Dr.	Longview Mini Golf	49105781	Y (On irrigation only)				
01-8969	20042 Hwy. 105 W	Montgomery Retail Center	48214889	Y				
01-8970	20042 Hwy. 105 W	Montgomery Retail Center	49105775	(Irrigation) Y				
01-8968	20042 Hwy. 105 W	Montgomery Retail Center	48316101	Y				
<b>Total:</b>								<b>\$47,286.77</b>

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: Memo from City Engineer, Proposed ordinance</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to require all plats to be tied to the city of Montgomery Control System, and to require all construction plans and surveys to be based on the benchmark in the city monument system utilized in the final plat, and to be clearly indicated on the construction plans.

**Description**

This is a requested ordinance prepared by City Engineer, Chris Roznovski . having a benchmark based on a common methodology and noted on the plans and plat is an important element for the engineer—it is easy enough for the surveyor to accomplish as they do their survey prepare their plats.

This will require a surveyor for a plat to be found in the city to go to a common benchmark rather than having each surveyor use their own starting point for survey. An example of this, is where a surveyor may start at some corner point that is not a common benchmark and be off 2 or 3 inches in elevation , that can cause considerable review problems if our engineers are comparing it and using a common benchmark elevation.

The City Engineer can explain more at the meeting

**Recommendation**

Motion to approve the Benchmark Ordinance as presented

Montgomery City Council  
**AGENDA REPORT**

**Approved By**

City Administrator

Jack Yates

Date: June 8, 2018



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380-3795  
Tel: 281.363.4039  
Fax: 281.363.3459  
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May 23, 2018

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

Re: Proposed Subdivision Plat Benchmark Ordinance  
The City of Montgomery

Dear Mayor and Council:

As you are aware, Section 78-61 of the Code of Ordinances currently requires that "All plats shall be tied to two city monumentation control points and state which monuments were used." However, the current ordinance does not require the City of Montgomery Control System monuments to be recovered and any differential elevations greater than 0.1 foot to be reported to the City Engineer.

As you are also aware, Section 78-124 of the Code of Ordinances does not currently require construction plans to be tied to a specific control system to be used in construction. It has come to our attention that the plats and construction plans for a development have the ability to be based on different control systems, which can cause significant misunderstandings and elevation errors during construction and during any adjacent future development.

The enclosed draft ordinance proposes to require all plats to be tied to the City of Montgomery Control System, and for any variance in elevation within the System greater than 0.1 feet to be communicated to the City of Montgomery City Engineer. The ordinance also proposes to require all construction plans and surveys to be based on the benchmark and City monumentation utilized in the final plat, and to be clearly indicated on the construction plans.

As always, should you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

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

Chris Roznovsky, PE  
Engineer for the City

CVR/kmv

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Enc: DRAFT Subdivision Plat Benchmark Ordinance

Cc (via email): 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

ORDINANCE \_\_\_\_\_

AN ORDINANCE BY THE CITY COUNCIL OF MONTGOMERY, TEXAS, AMENDING CHAPTER 78, "SUBDIVISIONS," OF THE MONTGOMERY CITY CODE OF ORDINANCES, BY AMENDING SECTION 78-61 OF ARTICLE III, "PLATS" AND SECTION 78-124 OF ARTICLE V, "ENGINEERING AND CONSTRUCTION STANDARDS; BY PROVIDING BENCHMARKS FOR THE FINAL PLATS AND ENGINEERING CONSTRUCTION PLANS OF PUBLIC FACILITIES; PROVIDING REPEALING AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION

WHEREAS, the City Council of the City of Montgomery has determined that it is necessary to adopt rules and regulations for setting monument benchmarks for the development of subdivisions and standards for engineering construction plans of public facilities in the City in order to better protect property values and the interests of the City and its citizens; and

WHEREAS, City, Ordinance No. 2011-09, dated July 26, 2011, was passed to provide rules and regulations for subdivision plats and for engineering and construction standards in the City of Montgomery; and

WHEREAS, upon the advice of the City engineers, the City Council has determined that there needs to be specific benchmarks in subdivision plats as found in Section 78-61 of Article III, entitled "Final Plats," and for engineering construction plans of public facilities in Section 78-124 of Article V, entitled "Engineering and specifications for construction;"

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

**SECTION 1: AMENDMENTS TO CODE OF ORDINANCES**

A. The City Code of Ordinances at Chapter 78, "SUBDIVISIONS," is hereby amended by amending Section 78-61(c)(8), entitled "Monument and control points," in Article III, by adding subparagraphs (f) and (g), such that it reads as follows:

## 78-61 Final plat

### (c) Contents

#### (8) *Monument and control points.*

- a. State on the plat what was found/set at all boundary corners of the tract being subdivided
- b. All plats shall be tied to two city monumentation control points and state which monuments were used. Reference bearings to a city monument.
- c. No final plat may be approved until actually surveyed upon the ground by, or under the supervision of, a registered professional land surveyor. The surveyor shall set, or leave as found, sufficient, stable and reasonably permanent markers to represent or reference the property or boundary corner, angle points, and points of curvature or tangency of a tract being subdivided. All survey marks shall be shown and described with sufficient evidence of the location of such markers on the plat.
- d. One permanent monument with x, y, and z shall be placed within the boundaries of each new subdivision. Elevation benchmarks should be placed within a dedicated street right-of-way, but outside of the paved portion of the roadway, with the location of such benchmark reflected upon the plat. The benchmark shall consist of a three-inch brass disk set in a concrete column six inches in diameter and three feet deep and buried with the top flush with the natural grade. The disc shall be stamped with the surface elevation as determined from a known benchmark based on city monumentation and shall also bear the subdivision name and section number, if any.
- e. Lot corners, street intersections, angle points, and street alignment monumentation must be installed prior to final acceptance of the subdivision.
- f. Benchmarks shall be based on the City of Montgomery Control System and related to at least two of those published monuments. The plat shall indicate which City of Montgomery Control monuments were recovered and which one was used to set the plat benchmark elevation. Measured elevation differentials between specific City of Montgomery Control monuments that are greater than 0.1 foot relative to the differential in the published elevations of those monuments shall be communicated to the City of Montgomery City Engineer
- g. The requirement to set a new subdivision elevation benchmark is waived if a Texas Department of Transportation elevation benchmark, a City of Montgomery elevation benchmark or a previously set elevation benchmark within an existing recorded subdivision is located within 500 feet of the proposed subdivision plat boundary and the stamped elevation of the existing benchmark is referenced to the City's published datum. The location and description, including the elevation and datum of the existing benchmark to be used shall be reflected upon the plat.

B. The City Code of Ordinances at Chapter 78, "SUBDIVISIONS," is further amended by amending Section 78-124, entitled "Engineering and specifications for construction," in Article V, such that it reads as follows:

## **78-124 Engineering and specifications for construction**

- (a) The city will reserve the right to approve all professional engineers that provide services to developers on public drainage, roads, streets, sewer and water facilities within the plat for utilities that will be dedicated to the public and operated and maintained by the city. The developer may retain an engineer of his choice registered in the state whose seal shall be placed on the drawings for the design of all private facilities for the purpose of drainage, roads, streets, sanitary sewers and water facilities within his plat.
- (b) All engineering construction plans, surveys, and standard specifications for construction of streets, drainage, and storm sewers or sanitary sewer lines shall be approved prior to commencement of construction of such facilities. The professional engineering services required of the developer for public utility work shall be done by an engineer approved by the city and shall be as designated in the current issue of the manual entitled "Professional Practice General Engineering Service," published by the state society of professional engineers, and shall include both design and construction monitoring as defined therein. Platting shall be done by the developer's engineer or surveyor.
- (c) The city has adopted the city design criteria manual. The current version of the design criteria manual is incorporated herein by reference and shall remain on file at the office of the city secretary.
- (d) Elevations included in all engineering construction plans and surveys must be based upon the benchmark and known City monumentation utilized in the final plat and must be clearly displayed on the construction plans and survey.

### **SECTION 2: SAVING/REPEALING CLAUSE**

All other ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance.

### **SECTION 3: SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court or competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the



fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION 4: TEXAS OPEN MEETINGS ACT**

The City Council hereby officially finds and determines that the meeting at which this Ordinance was passed 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. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**SECTION 5: EFFECTIVE DATE UPON PUBLICATION**

The provisions of this Ordinance will become effective immediately upon adoption by the City Council and publication as provided by law. It is the intent of the Council that the Ordinance apply to every property within the City on which it may apply without violating any state or federal law.

PASSED AND APROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS ON THIS THE \_\_\_\_\_ DAY OF JUNE 2018.

\_\_\_\_\_  
Sara Countryman, Mayor

ATTEST:

\_\_\_\_\_  
Susan Hensley, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry L. Foerster, City Attorney

Montgomery City Council  
**AGENDA REPORT**

Meeting Date:	June 19, 2018	Budgeted Amount:	N/A
Department:		Exhibits:	
Date Prepared:	June 8, 2018		

**Subject**

This is a report regarding the Buffalo Springs Bridge repair.

**Description**

The construction is coming along, with about two weeks added to the construction deadline due to wet weather. The City Engineer will explain more at the meeting.

**Recommendation**

Make comments as you feel appropriate.

**Approved By**

Department Manager		Date:
City Administrator	Jack Yates	Date: June 8, 2018

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: June 12, 2018</b>	<b>Budgeted Amount:</b>
<b>Prepared By: Jack Yates City Administrator</b>	<b>Exhibits: Memo from City Engineer, Change order form</b>
<b>Date Prepared: June 8, 2018</b>	

**Subject**

This is to approve Change Order #1 for the Buffalo Springs Drive bridge Repair contract.

**Description**

This is to consider approval of Change Order #1 for the Buffalo Springs Bridge Repair project. As stated in this City Engineer memo, the change order includes a \$14,430 increase to the contract amount due to additional excavation of the channel bottom due to additional materials entering the excavation area due to heavy rains in the area and adding 22 additional days add to the time of the contract with a new end date for the contract of July 24, 2018.

The increase in the contract amount will be covered by FEMA funds and CDBG – DR grant funds.

The City Engineer can explain more at the meeting

**Recommendation**

Motion to approve Change Order #1 for the Buffalo Springs Bridge Repair project as presented.

**Approved By**

City Administrator	Jack Yates	Date: June 8, 2018
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1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

June 7, 2018

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

Re: Change Order No. 1  
Buffalo Springs Drive Bridge Embankment Repair

Dear Mayor and Council:

We received and recommend approval of Change Order No. 1 to the Buffalo Springs Drive Bridge Embankment Repair contract. As we have previously discussed, the contractor has experienced 35 days of ice or rain that have caused him to be delayed in the project. It is the understanding of both the Engineer and the Contractor that there are a certain number of days each month that should be planned for as inclement weather. Therefore, out of the 35 impact days we recommend granting the contractor 22 additional days to the contract period of performance. Additionally, the change order includes additional days for bypass pumping of the channel and dewatering of the excavation due to the mentioned rains.

The change order also includes additional excavation of the channel bottom due to additional materials entering the excavation area due to the heavy rains in the area.

The change order will result in a \$14,430.00 increase to the contract amount and the addition of 22 additional days. The new contract amount is \$1,023,747.90 and new contract end date is July 24, 2018.

As always, should you have any questions or need any additional information, please do not hesitate to contact Katherine Vu or myself.

Sincerely,

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

Chris Roznovsky, PE  
Engineer for the City

CVR

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Enc: A505 Form

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



# Construction Contract Change Order

A505

Grant Recipient: City of Montgomery      Select:  City     County  
 Contract No.: 7215112      Change Order No.: 1      Region: HGAC

**Contractor:**

Glenn Fuqua, Inc.  
 P.O. Box 589  
 Navasota, TX 77868

**Engineer:**

Jones & Carter, Inc.  
 1575 Sawdust Road, Suite 400  
 The Woodlands, TX 77380

Select Change Order Type(s):  Change to Existing Line Items     New Items Requested     Change in Contract Duration

Grant recipient is requesting Texas Department of Agriculture review to determine eligibility of change order expenses.

**Changes to Existing Line Items (Items from original bid or added in previous change order ONLY)**

Bid Item #	Item Description	Original Qty.	Proposed Qty.	UOM	Unit Price	Δ Qty.	Change in Contract Price	+
49	Channel Bypass Pumping	30	45	Days	\$250.00	15	\$3,750.00	-
51	Embankment Dewatering	30	35	Days	\$250.00	5	\$1,250.00	-
6	Excavation of Channel Bottom	1,557	2,500	C.Y.	\$10.00	943	\$9,430.00	-
			0		\$0.00	0	\$0.00	-
<b>Contract Change Sub-Total:</b>							<b>\$14,430.00</b>	

**Change in Contract Duration**

Provide explanation below (attach separate documentation as necessary).

January had 6 days of ice which made the project site unsafe to work in. February had 7 due to rain. March had 12 days due to rain and multiple upstream river embankment failures that caused large amounts of water and debris to enter the stream from abutting ponds which exceeded the coffer dam banks and caused it to completely fail. April had 7 days most of which were due to the coffer dam failures. May had 3 days due to rain. It is the understanding of the Engineer and contractor that there are certain days in a month that should be accounted for when scheduling construction. Therefore out of the 35 days we will be granting 22 days as an extension to the contract.

Original Contract End Date: 7/2/2018  
 Net change of previous Change Orders (days): 0  
 Increase/Decrease of this Change Order (days): 22  
 Change Order Contract End Date 7/24/2018

**Justification for Change**

	Increase	Decrease	No Change
1. Effect of this change on scope of work:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Effect on operation and maintenance costs:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Yes	No	Not Applicable
3. Will this Change Order change the number of beneficiaries or TxCDBG contract Performance Statement Exhibit A?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Has this change created new circumstances or environmental conditions which may affect the project's impact, such as concealed or unexpected conditions discovered during actual construction?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Is the TCEQ clearance still valid?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Are other TxCDBG contractual special condition clearances still valid?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Grant Recipient: City of Montgomery      Contract No.: 7215112      Change Order No.: 1

This form required as of September 1, 2016.  
 All previous versions no longer valid.

7. If new Items are included that were not included in the competitive bid, have the prices been determined to be reasonable?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
-------------------------------------------------------------------------------------------------------------------------------	--------------------------	--------------------------	-------------------------------------

## Change Order Summary

Original Contract Price:	\$1,023,747.90	Original Contract End Date:	7/2/2018
Net Previous Change Order(s):	\$0.00	Net change of previous Change Orders (days):	0
This Net Change Order:	\$14,430.00	Increase/Decrease of this Change Order (days):	22
New Contract Price:	\$1,038,177.90	Change Order Contract End Date	7/24/2018
Cumulative % Change:	1.410%		

**NOTE:** Change orders for an increase of more than 25% will be rejected. The State of Texas considers a change in the construction contract price of greater than 25% to be non-competitive, as other potential bidders did not have the opportunity to bid on the true scope of the project during the procurement process. Grant Recipient must rebid project in the event of an increase of 25% or more.

**Grant Recipient Approval (REQUIRED)**

Authorized Signature	Date
Authorized Signatory's Name and Title	

**Engineer's Recommendation**

<i>Katherine A. Campbell</i>	6-7-18
Engineer's Signature	Date
Engineer's Name	

**Contractor's Authorization**

Contractor's Signature	Date
Contractor's Name and Title	

To receive an email copy of the TDA response, provide contact information below

Name	Email	+
		-

**For TDA office use only**

This Net Change Order:	\$14,430.00	Increase/decrease of this Change Order (days):	22
Net Change Order Approved:		Increase/decrease of this Change Order Approved:	
Approved Contract Amount:		Approved Contract Time:	

Notes:

Contract Specialist Signature	Date

Director Signature (optional)	Date