

NOTICE OF REGULAR MEETING

March 13, 2018

MONTGOMERY CITY COUNCIL

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

NOTICE IS HEREBY GIVEN that a Regular Meeting of the Montgomery City Council will be held on Tuesday, March 13, 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

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:

1. Matters related to the approval of minutes for the Public Hearing and Regular Meeting held on February 27, 2018.
2. Consideration and possible action regarding completion of one year warranty period and release of maintenance bond for Lake Creek Village Section 2.
3. Consideration and possible action regarding completion of one year warranty period and release of Letter of Credit for Terra Vista Section 1.
4. Consideration and possible action regarding completion of one year warranty period and release of maintenance bond for Waterstone Section 2.

CONSIDERATION AND POSSIBLE ACTION:

5. Report regarding LDC Recovery Charges.
6. Consideration and possible action regarding Samdana Investments, L.P. request for variance from 35 feet to 25 feet along SH 105 and from 15 feet to 10 feet along John A. Butler Street all within the property bounded by John A. Butler Street to the north and SH 105 to the south and Prairie Street to the east.
7. Consideration and possible action to scheduling a Public Hearing regarding the initial zoning of newly annexed 3.22 acres (*property located south of SH 105 across from Stewart Creek Road*) known as the Peter Hill property, to be zoned as District "B" Commercial, to be held on April 24, 2018 at City Hall at 6:00 p.m. in the Council Chambers.
8. Consideration and possible action regarding lease agreements with Mr. Larry Jacobs, Trustee and Betty Rose for parking lot improvements in north downtown, north of Jacobs Real Estate building and South of College Street.

9. Consideration and possible action regarding MEDC recommendation to pave the north downtown parking lot with asphalt.
10. Consideration and possible action regarding an Encroachment and Maintenance Agreement by and between the City of Montgomery and Montgomery SH 105 Associates, LLC regarding a storm sewer line easement located at FM 2854 and SH105.
11. Presentation of Reckless Driving Report.
12. Buffalo Springs Bridge Report by the City Engineer.

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.

13. Convene into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:
 - a) 551.071 (confidential consultation with the City Attorney); and
 - b) 551.072 (deliberation regarding real property).
14. Convene into Open Session.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

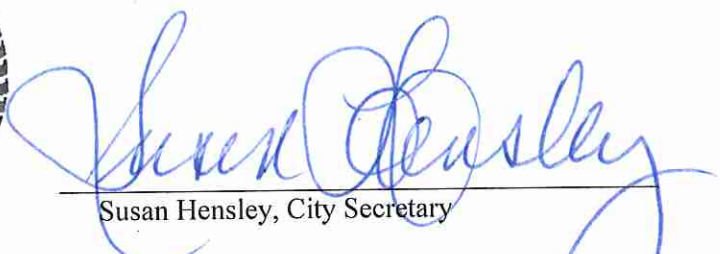
15. Consideration and possible action, if necessary, on matters deliberated on during Closed Executive Session with the City Attorney.

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 9th day of March 2018 at 2:50 o'clock p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

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

MINUTES OF PUBLIC HEARING and REGULAR MEETING

February 27, 2018

MONTGOMERY CITY COUNCIL

CALL TO ORDER

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

Present: Kirk Jones Mayor
 Jon Bickford City Council Place # 1
 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:

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

INVOCATION

John Champagne gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

PUBLIC HEARING(S):

Convene into Public Hearing:

Mayor Jones convened into the Public Hearing at 6:04 p.m.

1. **Public Hearing** - for the purpose of reviewing the need to continue City of Montgomery Ordinance 2015-03, Juvenile Curfew Ordinance, Codified in Division 2 of Chapter 62 of the

Code of Ordinances of the City of Montgomery, Texas in accordance with Section 370.002 of the Texas Local Government Code, and to determine whether the City shall abolished, continue or modify the ordinance.

Mr. Yates advised that this is related to the Curfew Ordinance with the hours presently set for, 11 p.m. – 6 a.m. Monday through Thursday and 12 midnight – 6 a.m. Saturday and Sunday. Jon Bickford asked what age determined a juvenile. Mr. Yates advised that a juvenile is under the age of 17.

There were no comments made by the public.

2. Adjourn Public Hearing

Mayor Jones adjourned the Public Hearing at 6:06 p.m. and reconvened into Regular Session.

Convene into Regular Meeting

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 Jones stated that since there were a lot of people that wanted to speak on the same topic, he asked that the comments be brief, and if they are longer than three minutes, he might ask the speaker to conclude.

Mr. Jim Foster, with Style Craft Builders, advised that they were having a problem with parking at 103 Brock's Lane, which is directly across from the Montgomery High School. Mr. Foster advised that Emma's Way is at the entrance to their neighborhood, and they are having a problem with parking by the students along Emma's Way. Mr. Foster said that it is difficult for their customers, delivery vehicles, 18-wheelers, and cement trucks, which a lot of times can't get in and out of the neighborhood because of the vehicles parked by the intersection. Mr. Foster said they have spoken to the local police

about the matter, and they have done the best that they can, and asked if they could get some relief by way of “company parking only” sign or some sort of limitation for school parking at that location. Rebecca Huss asked if Mr. Foster was speaking of residents or tradesman. Mr. Foster said that it would be both, along with potential customers. Mr. Foster said that they have about 20 homeowner’s living at the location. Mr. Foster said he was concerned that the large trucks are going to hit the cars that are parked there and he will have students and their parents coming in saying that someone hit their car. Mr. Foster said that his answer is going to be that the trucks can’t get in and out, and they are having to drive over a culvert, and he is concerned that it will become damaged. Mayor Jones asked Mr. Foster to make an appointment with Mr. Jack Yates, City Administrator so that they can discuss the matter, and if there is something that City Council can do in the future, they will. Mr. Foster thanked City Council and said that he would make an appointment to see the City Administrator.

Mr. David Potter, a City resident who lives on Old Plantersville Road, said that he has been to City Council before with this same problem, regarding the high school kids speeding on Old Plantersville Road. Mr. Potter said that he has spoken to a number of the police officers, the Chief, and Officer Bauer, several different times. Mr. Potter advised that there was an accident Saturday morning and a kid was seriously injured. Mr. Potter talked about how the kids speed anywhere from 50 to 100 miles per hour, and they are drag racing on the other side of the City limits, where the City can’t do anything. Mr. Potter said that the reason the speed bumps are out here is because he came in complaining about the speeders. Mr. Potter said that they need some help from the City and somebody to do something or they are going to be burying some children, because it is terrible. Mr. Potter said that they are in and out of the ditches, and said that Mr. Muckleroy and his crew had put up posts to keep the kids out of the ditches, and they just go further down the road. Mr. Potter said that the boy that was in the accident had two other kids with him, but the boy that was driving was hurt the most, and said that he does not want to see this anymore. Mr. Potter said that he knows the City has a budget to meet, but he is talking about having an officer out there for 30 minutes in the morning and 30 minutes in the evening. Mr. Potter said that the Chief of Police feels that they have enough speed bumps, but said that they have two right here in front of City Hall together, and asked why they can’t put more out there, and have an officer out there patrolling there in the morning and afternoon. Mayor Jones thanked Mr. Potter for speaking regarding this matter. Mr. Potter said that they need to increase the fines for the tickets, because he does not want to see this happen again. Mayor Jones said that they were going to work on getting something done.

Mrs. Julie Davis, City resident, advised that she was a neighbor of Mr. Potter, and she has nine children, and her children all have to wait at that bus stop at the corner of Womack Cemetery Road and Old Plantersville. Mrs. Davis said that the kids driving in the ditch and running into the fences is a real problem.

Mrs. Davis said that she has some suggestions for solutions that she thinks might work. Mrs. Davis said that the speed bumps that are in front of City Hall have a much higher peak on them, but the three that are across the railroad tracks, are flat and does not slow them down. Mrs. Davis said that they should invest the same amount of money and time in building the other speed bumps in the back as they did with the ones in front of City Hall.

Mrs. Davis said that if the City retrenched the ditches and made them drain the water, then the kids could not run their cars through them without causing serious damage to their cars. Mrs. Davis said, furthermore, she thought that they could move the stop sign at Huffman by the mobile home park to Womack Cemetery and Old Plantersville, to force all of the traffic to come to a complete stop, and give an additional ticketing offense. Mrs. Davis said that moving that stop sign would force them to slow down before they hit the straight away. Mrs. Davis said that these are functional solutions that they have not tried, and she felt that they could do better as a City, not just for her kids, for the other kids at the bus stop.

Mr. Michael J. Kammerer, who resides on Womack Cemetery Road, advised that his property borders Old Plantersville Road, from the Ag Barn to Womack Cemetery Road, and down Womack Cemetery Road, and he is here to support the last two speakers. Mr. Kammerer said that the wreck with the young boy happened in front of his gate, and he is very familiar with what the high school kids do between 3:00 – 3:30 p.m., and he is not sure what the solution is because he knows it is County property. Mr. Kammerer said that he would encourage the traffic control department of the City of Montgomery to get with the traffic control department of Montgomery County and see if something can be done. Mr. Kammerer said that if they want contributions to put up speed bumps, call him, he would be happy to contribute, because that is probably the only thing that will slow them down. Mr. Kammerer said that any ideas that the two groups could put together would help that situation and thanked City Council for their time.

Mayor Jones thanked everyone for their comments and suggestions and said that City Council and City staff take this very seriously and will come to a resolution. Mayor Jones said that it might be inconvenient for everyone, but they have got to slow the kids down.

CONSENT AGENDA:

3. Matters related to the approval of minutes for the Regular Meeting held on February 13, 2018.
4. Consideration and possible action regarding road closures for the Antiques Festival from 12:00 noon on May 3rd through Sunday at 10:00 p.m.

Rebecca Huss moved to approve the Consent Agenda as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

5. Consideration and possible action on Department Reports.
 - A. Administrator's Report – Mr. Yates presented his report to City Council. Mr. Yates reviewed his activities for last month. Mr. Yates advised that he is now working on the line item budget review.

Mr. Yates spoke about the reckless driving issue and said that writing citations has not worked as a deterrent. Mr. Yates said that he believed that an effective method of deterrent would be the loss of parking and driving privileges by the school. Mr. Yates said that this would require agreement from the school. Mr. Yates advised that this could be structured so that after two tickets the student would lose their parking privileges for one month, and after three tickets they would lose their parking privileges for that semester, plus any reckless driving that resulted in an accident, the parking privileges would be lost for the semester. Mr. Yates said that the school would administer this policy, not the City. Mr. Yates also reported that he had reviewed traffic calming books, and how other cities have faced these issues. Mr. Yates said that he also spoke with the Police Department and the Montgomery ISD Police Department, and they all agreed that these would temporarily alleviate the problem, but would not solve the issue until the students are motivated to drive within the law. Mr. Yates said that he had also spoke to the Municipal Judge about raising the fines, and the Judge

advised that he could not do that according to the law. Mr. Yates said that he also asked the Judge about requiring traffic safety school for each citation issued, but that is not possible because if the person pays for the citation they would not come before the Judge. Mr. Yates said that it was his recommendation to strengthen with our existing forces the areas involved to include substantial citation writing and to formally write the school a letter requesting the parking privileges withdrawal and pointing out the safety of the student involved, and inviting them to a City Council Meeting to discuss the matter.

John Champagne said that he appreciated the passion of the City Administrator and said that he was not sure of some of the suggestions that were made, which he felt was something for the City Attorney and Chief of Police to discuss in terms of the law. John Champagne said that as far as he was concerned, having raised six children, the elephant in the room is government is not in charge of raising children, so he can only harken back to the way he raised his six children and the way that he was raised, and the last thing that he wanted was a speeding ticket, because when he got home it was not going to be fun. John Champagne said the problem that they are having right now, in his opinion, is that they are not getting support from the families of individuals that are breaking the law. John Champagne said that it was very easy to throw money and government at the problem, but that is not the answer. John Champagne said that they could make Old Plantersville a washboard and place a speed bump every five feet, but it all boils down to respect for authority and respect for doing what is right, which they can't instill, as a government. John Champagne said that they can hire more police officers, they could do a lot of things, but then the next meeting they will have is how the budget is busted. John Champagne said that before they jump out and start doing all these things, let's and think about how we can do this effectively, and no one is better able to do this than the Police Department, so he would put the onus on them along with, staff, City Council and the citizens. Mayor Jones stated that the school could do a lot.

Rebecca Huss said that they did get some good suggestions, such as moving a stop sign. Rebecca Huss said that her contention has always been that the biggest problem is the intersection at SH 105 and FM 149. Rebecca Huss said that if they can get an

improved traffic signal that can deal with the 15 to 20 minute intervals, there won't be a backup all the way to the High School and it will be quicker to stay on SH 105. John Champagne said that he felt that Rebecca Huss had a good idea, and said that there are a lot of good ideas, but he was just saying to look at the matter in balance, and said that there is more to it than the City not performing. John Champagne said that a citizen had recommended that all these busses take the loop as opposed to coming straight through the City, which would alleviate a lot of the traffic.

Jon Bickford asked if they needed a task force to look into this matter. John Champagne said that, in his opinion, they had a badged task force. Rebecca Huss said that they have lacked interaction with MISD, but they should make sure that it is a priority that they work together. Jon Bickford said that if they can put together a plan and recommend some options. Mr. Yates said that he thought that he could approach the MISD Superintendent. John Champagne asked if it would make more sense for the Chief of Police to contact MISD. Rebecca Huss said that if the MISD Superintendent is going to be contacted, it would be more the City Administrator as the City representative. John Champagne said that Mr. Yates has a lot on his plate, and asked for a good reason for the Police Chief, who is an expert on this matter, not to interface with MISD, because in his mind, it is a natural thing. Mr. Yates said that he thought that would be alright.

Rebecca Huss asked about the Home Grant, which has been approved, and asked about the timing and applications, and other related information. Mr. Yates said that the City received notification regarding the award of the Home Grant about 4-5 days ago, but said that the grant is not for a specific amount, it will allow the construction of 11 homes. Mr. Yates said that the intention is to have the press release by April 1, 2018 and by the end of April they will open it up for applications to be submitted. Rebecca Huss asked about the timing between the applications being submitted to award and build. Mr. Yates said that it would take about two months, because each application will be reviewed by Grantworks and as soon as someone qualifies, the building can begin.

Jon Bickford said that he would like to keep the discussion of the speeding on Old Plantersville on the agenda for the next two or three meetings, until there is a plan in place. Mr. Yates advised that they would place that item on the agenda.

Mr. Yates showed the plaque for the Employee of the Year and Police Officer of the Year, which will be posted in the front lobby of City Hall. Mr. Yates advised that the first recipient of Employee of the Year in 2016 was Joe Belmares, Police Lieutenant, and in 2017 City Secretary Susan Hensley. Mr. Yates advised that in 2016 the Police Officer of the Year was Chris Carswell, and in 2017 Lt. Miguel Rosario.

Mr. Yates spoke about the late payment Utility door hangers, and said that the subject was whether or not to continue to put the door hanger on each of the 40-50 late notices per month. Mr. Yates said that he reviewed the utility ordinance and it does not mention door hangers, therefore, he felt that it was something that the City Administrator could stop. Mr. Yates said that since the City has been doing this practice for so long, he wanted to speak to City Council before he took any action. Mr. Yates advised that presently 40-50 residents receive a door hanger, which is out of 620 utility customers, and according to the staff, approximately 35-45 of the late notices are to the same residents each month. Mr. Yates said that it takes eight hours of utility billing clerk's time to prepare the door hangers, and then approximately two hours of public works time to post the door hangers. Mr. Yates said that combining that monthly cost is approximately \$360, including gas for the vehicles. Mr. Yates said that of the 40-50 door hangers, only three - eight per month actually get turned off. Mr. Yates said that the City sends a late notice to everyone who has not paid their bill by the 23rd of the month. Mr. Yates said that he if they could stop sending out the door hangers, he would write a summary of this information in the City Newsletter, with the start date in April. Mr. Yates said that his question to City Council was whether they would want to continue the door hangers. The consensus of City Council was to discontinue the practice of the late notice door hangers.

- B. Public Works Report – Mr. Mike Muckleroy, Director of Public Works presented his report to City Council. Mr. Muckleroy stated that he was in favor of getting rid of the door hangers. Mr. Muckleroy advised that they had a pretty busy month, with the

removal of Christmas decorations and putting them in storage. Mr. Muckleroy advised that he had attended the Water and Sewer Facility Tour with members of City Council and the Planning and Zoning Commission, and Montgomery EDC. Mr. Muckleroy said that they had almost completed the fire hydrant tagging project. Mr. Muckleroy stated that he had attended the one year inspection walk through at Terra Vista and Waterstone Section Two. Mr. Muckleroy advised that for the month they had seven water taps, six sewer taps, 13 water leaks, which were mainly freeze related and zero sewer stoppages. Mr. Muckleroy stated that the docents reported that they had 489 visitors and they provided 32 tours of Fernland.

Rebecca Huss asked if the water leaks were on the City side of the meter. Mr. Muckleroy advised that some were, and said that they had prepared a full winterization list for the parks after going through the freeze, so they have a written list of every facility that lists which ones to completely turn off and which ones to isolate the irrigation systems only, but even then they still lost a couple of back flow devices that still had a little bit of water still in them.

John Champagne asked if there was any revenue reported for Fernland. Mr. Muckleroy said that he did not know the answer to that question, because the revenue goes directly to Fernland, Inc. Mr. Yates advised that all the donations, accepted by the Park go to the Park. John Champagne asked about the fees being charged for the photographers. Mr. Yates said those fees go to the City.

- C. Police Department Report – Chief James Napolitano presented his report to City Council. Chief Napolitano advised that Lt. Belmares and he had looked at the tickets, and since last year they have generated 144 tickets in the area along Old Plantersville Road coming from the school, and of those 144 tickets, most were while school was in session.

Chief Napolitano reported that they have quarterly meetings with the Sheriff's Department and local law enforcement, where they talk about what issues they are dealing with, and overall in Montgomery County speeding is less than 20 percent compliant by the entire population. The Chief stated that SH 105 is less than 10 percent

compliant to the 55 mph speed limit, and said when the children see their parents speeding, they don't see why they should have to obey the law. Chief Napolitano said that the only problem they have is manpower, because they are talking about one officer on the shift writing tickets on Old Plantersville Road. The Chief stated that if the officer makes one stop, 20 cars will go by before he can finish generating that ticket.

John Champagne asked if that cost would be exorbitant for the additional coverage. Chief Napolitano said that he has asked the night officer to stay over an hour and a half, and then in the afternoon the supervisors and he go out and try to issue citations where they can. John Champagne said that the Chief indicated 20% obey the speed limit coming through Montgomery, so they are talking about breaking the speed limit, and if in fact 80% of the citizens chose to break theft, drug and domestic abuse laws, and asked if the Chief could handle that case load in the City. The Chief advised that he could not handle that amount. John Champagne asked what would be the next step. The Chief advised that it would be marshal law and a complete change of social obedience. Chief Napolitano said that he and the Lieutenant discussed blocking the traffic and then slowly driving them in a parade to SH 105, which will just make them go faster when they get to SH 105. Chief Napolitano said that there are a lot of other things that they have to protect the City from, other than just speeding, but they will concentrate on those two time periods.

Jon Bickford asked how they can stop the repeat offenders. The Chief advised that the police officers are on the front part of the process, and then it is how the judge and the prosecutors handle the case, because a lot of times they will come up with a way of dealing with the ticket.

Chief Napolitano said that two weeks ago in Florida there was an incident with an active shooter at a high school. The Chief stated that one week prior to the Florida incident, he received a phone call from one of our officers who had received a call from a detective with the Conroe Police Department about several messages on social media regarding a young man that was threatening Montgomery High School. Chief Napolitano said that he immediately contacted Chief Runnels at MISD, and they came up with a plan. The Chief said that they wanted to immediately act and go to the home

of the person making the threats to confront the parents and the child, but MISD decided not to, so they had to wait for him to board a bus and then take him from the bus. The Chief advised that they sent several of the Montgomery Police Officers over to the school that morning, just in case he was able to get to the school, and in the mean time they had four DPS troopers, three constables and two Sheriff's deputies, in addition to himself, to respond at the school as quickly as possible. Chief Napolitano said that they do work with MISD and they understand that this is a social problem. Chief Napolitano said that his department and MISD plan during Spring Break to do a table top exercise and learn from each other on where they can go and communication, because that is a large school to handle an active shooter on the school grounds. Chief Napolitano said that their MISD and Precinct 1 partners are very willing to get together. John Champagne asked if the Chief had given a conference in relation to this topic. Chief Napolitano said that he has given several conferences regarding this matter, which is what he and Chief Runnels want to do. John Champagne said he appreciates Chief Napolitano's experience.

John Champagne said there was one other thing that has been on his mind ever since it came up during the budget. John Champagne said that they give department heads budgets to run their departments for the year, and they put department heads in place because they consider them to be, at the very least, somewhat effective and efficient at running their department. John Champagne said that he remembered the Chief requesting long rifles, and asked the Chief how many long rifles he had requested. The Chief advised that he had requested four long rifles. Chief Napolitano stated that the reason he had requested the long rifles was in case they had an incident where they are being shot at, it would keep them in a safer environment versus being within 25 yards of someone. John Champagne said that he was not a police officer, so for him to tell the Chief no, he would have to have a reason, which he has none, which is why they hired the Chief. John Champagne said he did not understand why when the Police Chief with 25 years of experience requested something, and asked if it was refused. Chief Napolitano said that his request went to the City Administrator, and it just kind of stopped there. John Champagne said that if they need a long rifle in a couple of weeks, and they don't have one, who would be accountable. Chief Napolitano said that right now all the officers are carrying their own personal rifle in their vehicle.

Chief Napolitano said that man power wise, they have Officer Hernandez out and they are not sure when he will be back on duty, and Officer Bauer went over to Court, so they are trying to put things into perspective and trying to get enough people to handle the kids out there, which is taxing on them to get done, but they are working on it as hard as they can.

Dave McCorquodale said that it sounds like the Chief has a good relationship with the MISD Chief of Police, but asked how the hierarchy works with regard to traffic control, if they are in the City limits. Dave McCorquodale asked if the Chief went to MISD and said they need to change how they are letting cars out or they need to adjust how they are doing the circulation of traffic, and asked if that would be something the City would request from MISD, or would the City have the ability to say how they want the process. Chief Napolitano said that they have some control, but they have to work with MISD because the students are coming out of private property and turning onto a City or County maintained road, so for the City to tell them that they can't make a right hand turn, we would have to give them a good reason.

Chief Napolitano advised that the part of the road where the young man had the accident was a straight away, and the City officers are the first ones to arrive. Officer Bracht performed life saving measures until the ambulance arrived. Mayor Jones asked if the accident was located outside the City. Chief Napolitano advised that the accident occurred just outside the City limits.

T. J. Wilkerson asked the Chief if he ever had to use the reserve officers. Chief Napolitano said that they do, but they work during the week at their regular jobs, so they mostly work on the weekends. John Champagne asked whether the City is utilizing all of their offices to the fullest extent. The Chief advised that all of their officers are being used, but Officer Bauer has been assigned to the Court and he is not part of the Police Department anymore. Chief Napolitano advised that today he worked it with the Court so Officer Bauer could work with Officer Thompson on traffic. John Champagne said that he is not a professional Police Officer, nor a City Administrator, but at first blush, it would seem that a fully accredited and professional Police Officer

would be better utilized on the street. Mr. Yates stated that he had instructed the Chief of Police before that he could use Officer Bauer. John Champagne said that secondly, he asked the Chief to explain to him how the Lieutenants work shifts and how they are utilized. Chief Napolitano advised that they are utilized to cover both sides of their shift, so each Lieutenant will have a day and night shift, and right now a swing shift. Chief Napolitano said that because Officer Hernandez is out, they just have the day and night shift and the Lieutenants become the swing shift officer, so they are out six hours with the day shift and six hours with the night shift.

- D. Court Department Report – Mrs. Kimberly Duckett, Interim Court Administrator, presented her report to City Council. Mrs. Duckett said that they had a large court night with 148 cases on the docket, but they were out by 10 p.m. Mrs. Duckett said that they have been implementing more court dates so citizens can get a speedy trial. Mrs. Duckett advised that she is in the process of auditing the warrant files to obtain a better result for the revenue, because warrants are collected several different ways, to make sure that all of the warrants are accounted for. Mrs. Duckett advised that this month and next month the court will be participating in a warrant roundup, and since the mail out of the notices, people have been calling and taking care of warrants they had forgotten about. Mrs. Duckett said that they have had calls on warrants from as far back as 2004. Mrs. Duckett said that the judge and the prosecutor have been very pleased with their success on court nights. Mayor Jones said that they have heard good things from the Judge.
- E. Utility/Development Report - Mr. Yates presented the report to City Council. Mr. Yates advised that they had \$119,665 collected in utilities, \$13,747 for permits, with six residential permits and five commercial permits. Mr. Yates reported that Memory Park used 15,000 gallons of water, which is an all-time low. Mr. Yates noted that there are 626 active water accounts. Mr. Yates said that the Community Center brought in \$600. Mr. Yates said that this is all handled by Autumn Redman who is doing an excellent job.

Jon Bickford said that he did not know what is happening at other homes, but he is looking at the water usage that shows 18,000 gallons at the Community Building,

15,000 at Memory Park, 15,000 gallons at City Hall, and he said that they have not had a dry day in months. Jon Bickford asked if the sprinklers are going off whether it is raining or not. Mr. Muckleroy advised that for City Hall, that is the entire building, not just irrigation. Jon Bickford said that he was looking at the one that states Community Center – Irrigation. Mr. Muckleroy advised that it feeds the Community Center rest rooms and the irrigation system, there are two meters at that location. Rebecca Huss said that also includes the building in the back of the Community Center. Jon Bickford asked if the sprinklers are going off whether it is raining or not. Mr. Muckleroy advised that they are not, they all have rain sensors. Jon Bickford said that the rest of the water is decimal points. Mr. Muckleroy said that the only meter that does not have an actual building associated with it, is Memory Park, but Memory Park does have water for the fountains so the pumps do not run dry and there are other factors. Mr. Muckleroy said that the entire irrigation system has been turned off at Memory Park for two weeks. John Champagne asked about the disparity between November, December and January for City Hall. Mr. Muckleroy advised that it was a lot less because during the first two months irrigation was involved. Rebecca Huss said that November was very dry.

- F. Water Report – Mr. Mike Williams, with Gulf Utility presented his report to City Council. Rebecca Huss commented that there were a lot of alerts for the month. Mr. Williams said some were due to rain storms and power issues, but nothing major. Mr. Williams said they did have one incident when a tree came down on Lift Station #4. Mr. Williams reported the daily effluent trend was 3.956 million gallons, and the daily peak flow was December 20, 2017 at 277,000 gallons, with an average daily flow of 127,600 gallons.

John Champagne asked about the break points. Mr. Roznovsky advised that at 75% percent they need to initiate engineering and financial planning, and at 90% percent they need to initiate approvals. Mr. Williams advised that at this past month the City was at 32% percent, which has gone down 2 million gallons since the leak was repaired. Mr. Williams reported that all effluent samples were compliant for the month of January.

Mr. Williams advised that they sourced a total of 5.943 million gallons of water and sold 5.369 million gallons of water, bringing them to 93% accountability. Mayor Jones asked why they were running Well #2 so light. Mr. Williams advised that they are running both Well #2 and Well #3 light to get their usage out of Well #4. Mr. Williams said that they had a 72% return of water to the treatment plant from water sold.

- G. Engineer's Report – Mr. Chris Roznovsky, City Engineer, presented his report to City Council. Mr. Roznovsky advised that they will be sending out the Joint Mobility Study in PDF form and updating the books. Mr. Roznovsky stated that CVS Pharmacy has their plans ready for approval, subject to the encroachment agreement that is on the agenda tonight. Mr. Roznovsky said that their meeting with TxDOT and HGAC regarding the possibility of including Lone Star Parkway on the Transportation Improvement Plan, was a good meeting and they will be following up with some planning numbers to come together and meet in six months with TxDOT. Rebecca Huss asked what good came of the meeting. Mr. Roznovsky advised that they are open to the idea of including Lone Star Parkway. Mr. Roznovsky said that TxDOT will continue on with a follow up meeting to discuss the information. Rebecca Huss asked about as they develop along Lone Star Parkway, does that mean that instead of having a driveway every 40 feet they might need it to be every 60 feet in order to be within what H-GAC or TxDOT wants to see. Mr. Yates said that it is more likely there would be an access to Lone Star Parkway about every 1,500 feet rather than every 60 feet, and there would be interior driveways to connect to serve the interior properties onto Lone Star Parkway, and is something that the Planning Commission will be hearing about. Mr. Yates said that the early thoughts is to use the Mobility Plan for all the accesses to Lone Star Parkway. Mr. Yates said that TxDOT pointed out that they did not want to build a bypass that would just become another commercial area. Mayor Jones said, as clarification, if TxDOT were to take over Lone Star Parkway, then they could direct the big truck traffic off of SH 105 and onto the Loop, which would really affect mobility. Mr. Yates said that there are roughly 2,000 trucks going through the City each day on SH 105.

John Champagne asked about the FM 149 sanitary sewer cleaning, and whether the contractor was assumed to have damaged Lift Station #3. Mr. Roznovsky said that was

correct, in the time that they were working and during the process they were cleaning sludge and debris out of the lines and at that same time, and immediately after the work, the lift pump failed due to debris entering the pump. Mr. Roznovsky said that Lift Station #3 was in an area that they were not supposed to be working, and it was not in their scope of work, they had picked up a wrong map. Mr. Roznovsky said that there were a lot of red flags, and said that the damages, if they are found liable, is \$8,000 and their contract amount is around \$18,000. Mr. Roznovsky advised that they have not been paid anything. Jon Bickford asked if it was not normal that when they are televising that they would dislodge things. Mr. Roznovsky said that it was normal to dislodge things, but they are supposed to have strainer baskets at the end so that they are pulling all the debris and they have a vacuum truck. Mr. Roznovsky advised that when they get to the last section before the Lift Station, they are supposed to shut down the pumps, pull everything in and then clean it out and then turn the pumps back on so they are not sucking in debris.

Rebecca Huss said that something that came up during the Facility Tour was that they need to approve the Lift Station requirements that are built by developers, and asked if that was something that they need to formally put through as a process to have compatible equipment. Mr. Roznovsky advised that they have discussed that information and the idea right now is that since they are already putting in the specifications for Lift Station #1, they will just use that information as the model.

- H. Financial Report – Mr. Yates presented the financial report to City Council. Mr. Yates advised the following balances: General Fund - \$158,000, Construction Fund - \$2.8 million dollars (\$2.2 of that amount is the Texas Water Development Board Funds), Debt Service Fund - \$691,000, which they paid \$250,000 of bonds during this past month, so next month it will be less, MEDC - \$613,000, Utility Fund - \$276,000. Mr. Yates advised that the total of all funds is \$5,570,826, but most of that is already spoken for by the budget.

Mr. Yates said that General Fund is over in revenues and has a surplus of \$167,497, which is very good considering they are just entering the property tax season. Mr. Yates said that part of that surplus of funds is because sales tax is doing quite well, and said that they are approximately \$250,000 for the entirety of the City for the General

Fund and the MEDC Fund. Mr. Yates said that they have collected \$1,095,000 for the year, and last year they were at \$750,000.

Rebecca Huss asked if they were setting aside money that we owe Kroger for the 380 Agreement, because we owe them after one year has passed, but they are going to do that in arrears, so she would assume that they will want a lump sum, so it is premature to be happy about the revenues when it is already promised. Mr. Yates said that they are setting it aside by not spending the funds, but they did not have a line item, which they might want to do in the future by amending the budget. Rebecca Huss said that right now while they have the bridge construction going on they have a lot of money that they are trying to avoid borrowing, but once that is all paid for then they might need to set up a special account for both the City and MEDC to start setting that money aside in an unrestricted account. Mr. Yates said that the funds won't be spent until next November, but they should still be setting it aside. Mayor Jones said that they can be accounting for the funds as they go, then they will always know where we stand with them and our own General Fund. Jon Bickford said that it would be easy with two line items. Mayor Jones asked if Mr. Yates could make that happen. Mr. Yates said he would take care of that.

Mr. Yates said that the Utility Fund was over in revenues and down in expenses and has \$78,578, which is down considerably from last month, because the GRP and the utility projects maintenance was transferred to Capital Projects this past month, so the Utility Fund should be back up next month to over \$100,000.

Jon Bickford moved to accept the Departmental Reports as presented. John Champagne seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, RENEWING THE JUVENILE CURFEW ORDINANCE CODIFIED IN DIVISION 2 OF CHAPTER 62 OF THE CODE OF ORDINANCES OF THE CITY OF MONTGOMERY, TEXAS, IN ACCORDANCE WITH SECTION 370.002, OF THE TEXAS LOCAL GOVERNMENT CODE, AFTER A PUBLIC HEARING ON THE NEED TO CONTINUE THE ORDINANCE; CONTINUING THE JUVENILE CURFEW ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN

CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; DECLARING COMPLIANCE WITH TEXAS OPEN MEETINGS ACTS; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

John Champagne moved to set the effective times for the Curfew Ordinance as Monday through Thursday, to be moved back to 10 p.m., and weekends at 11 p.m. John Champagne said that they have a whole bunch of high school kids that are driving crazy during the day, so what are they doing at night, and he, personally, wonders why a kid under 17 has to be out after 11 p.m. Jon Bickford asked to confirm that the times during the week are 11 p.m. and on the weekends it is 12 midnight. Rebecca Huss said that the time does not count if the kids are coming home from work. Chief Napolitano said that is also for church and school projects.

Jon Bickford seconded the motion.

Discussion: Mayor Jones clarified that the motion is to change the times to 10 p.m. - 6 a.m. Monday through Thursday, and 11 p.m. to 6 a.m. for Friday and Saturday, therefore making the times one hour earlier. John Champagne said that was correct. John Champagne asked if this will make the Police Department's job any harder. Chief Napolitano said that it would not. John Champagne asked if it would make the job any easier. Chief Napolitano said that it would not make it easier, it would just give them one more reason for a probable cause stop. Dave McCorquodale said that he was not in favor of moving the hours, because to him the ordinance is well intentioned and he could get behind the curfew ordinance, although somewhat reluctantly because he sees it as the government trying to regulate a parent's job. Dave McCorquodale said that he recalled that he just heard John Champagne say that was a bad idea earlier. John Champagne said that was a big difference. Dave McCorquodale said that he could not imagine a reason why he would want to be out at that hour, and he did not pretend to know everyone, and so he could not support an arbitrary hour. John Champagne said that this does not expend dollars, it doesn't expend man power, and it just does the job. Mayor Jones said that it was government taking away freedom. John Champagne said that it was not taking away freedom, they can ride with their parents anywhere they want. Dave McCorquodale said that he did not really understand the point of it to begin with. John Champagne said that he did not see where a kid under 17 needs to be on the highway after 11 p.m. Dave McCorquodale said that he thought that was fair, but him telling everyone this is the way you are going to do

it, and asked if John Champagne saw a lot of reason for that time of night. John Champagne said that he was going by the culture, and the culture is out of control as far as he was concerned. Dave McCorquodale said that is fair enough, which is why he felt that there was no rational reason to vote yes. T.J. Wilkerson asked if they get tickets for being out after curfew. Chief Napolitano said yes. T.J. Wilkerson asked if he and his wife were sick and they sent their son or daughter to the store, they could get a ticket for going to the store to get medicine or something after 10 p.m. Mayor Jones said that was correct. Jon Bickford asked if that was a common sense issue. Chief Napolitano said yes. Rebecca Huss said that she did not think that there was any request for the Police Department to change the ordinance in response to any particular problems. Mayor Jones asked if the way that the ordinance was presently written was a problem. Chief Napolitano said no, the Police Department will enforce the ordinance however City Council writes it. Chief Napolitano advised that they will ask them where they are going or where they have been to make sure what they are doing, they can also check the MISD event calendar to see when there is a school event. Chief Napolitano said that they talk to them and find out if they are going to the store for their Mom or Dad, and advised T.J. Wilkerson that they probably would not write a ticket, but it is the officer's discretion as to whether they write the ticket. Dave McCorquodale asked if it was only a school sporting event that would allow them to be out after curfew. Chief Napolitano advised that it would be school or work. Dave McCorquodale asked if the juvenile was at the softball tournaments and baseball tournaments where the games and the practices are stacked up until 10:30 p.m. – 11:00 p.m. Dave McCorquodale said that some of the tournaments are in College Station and if they live in Conroe, they could receive a citation for driving after 11:30 p.m. if they were inside the City. Chief Napolitano said that they would not get a ticket if they were coming to or from a school function. Dave McCorquodale said that the tournaments are not a school function, it is club ball. Chief Napolitano said that it would be a citation to talk to the Judge, so they are not having to pay the ticket, they have to come in and explain that information to the Judge and/or Prosecutor. Dave McCorquodale asked how many citations are issued for curfew violations as it stands now. Chief Napolitano said he would have to look into that information. Jon Bickford asked if the Police Department did five or ten per year. Lt. Belmares said that it might average one to two per month, and a lot of that depends on the scenario that the officer is engaging. John Champagne asked if kids were in Memory Park at 12:30 a.m. Chief Napolitano said that as they had discussed earlier, that might just be a reason for a stop. Jon Bickford said that he had to believe that it is common sense, if a 17 year old kid is out at 10:30-11:00 p.m. and he or

she is on the way back from a league game and they are dressed in a uniform, no problem, he doubts that the officer would waste their time writing a ticket. Jon Bickford said that on the other hand, if the kid smarts off, he might get one to teach him a lesson.

After discussion, the motion to adopt the Ordinance with modifications to the time failed with the following vote:

Jon Bickford – Aye

T.J. Wilkerson – Nay

John Champagne – Aye

Rebecca Huss – Nay

Dave McCorquodale – Nay

Rebecca Huss moved to adopt the Ordinance as originally presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

7. Report regarding the Land Use Plan.

Mr. Yates advised that the Land Use Plan was adopted in October or November by the Planning and Zoning Commission. Mr. Yates advise that the Land Use Plan is a guide for the City's broad intention of how they intend to treat development. Mr. Yates said that the reason the Plan is being presented to City Council as an informal Land Use Plan, rather than formal, is because the City has not adopted a Comprehensive Plan. Mr. Yates said that according to the City Attorney the law requires a Comprehensive Plan to be adopted before a Land Use Plan can be adopted as a formal document. Mr. Yates said that nothing requires the City to have a Land Use Plan. Mr. Yates said that what got him and the Planning and Zoning Commission thinking about this was they kept getting requests for higher density variances, and he suggested to the Commission that they look at it as an entirety before a development comes into the City. Mr. Yates said that the Commission met for three or four months and he has also shown the map to Mr. LeFevre, Mr. Cheatham and two other developers in the City. Mr. Yates said that he would like City Council to consider the information.

Mayor Jones said that this was an opportunity for the Planning and Zoning Commission to do some planning versus just zoning or approving plats. Jon Bickford asked if the high density residential was 9,000 square feet, which is less than ¼ of an acre, and said that this has a lot of high density housing on the Plan. Mayor Jones said that the idea was that the high density

would stay away from the core of the City and be closer to major roads. Rebecca Huss said that this was something that they had talked about before if they want a diversified City, particularly economic and age wise, you need to have homes that are starter homes for people who are teachers or starting out their career, because those people bring a lot to our community. Rebecca Huss said that they need to have good neighborhoods for those people to move into.

Dave McCorquodale said that one of the things that stood out to him was the industrial area along SH 105, and said that he was not sure that if he was picking a spot for industrial to be located in the City, he would pick our main corridor for that location. Mr. Yates said that was one of the areas that the Planning and Zoning Commission is thinking about changing. Mayor Jones asked if that was the Mann property next to Spirit Industries, because that was rezoned at the request of the property owner. Mr. Yates advised that was what Carol Langley had advised. Jon Bickford asked if all they are doing is voting to accept this map. Mayor Jones said that they were not voting on this, Mr. Yates just wants City Council to think about the information. Mr. Yates said that he would wait at least two meetings before bringing it back to City Council.

8. Report regarding Fernland Historic Park by Mr. Mike Newman and Directors.

Mr. Newman introduced Ms. Patti Stafford, Treasurer, Mr. Gareth Westlake, Vice President to City Council, and Larry Daspit, Docent at Fernland. Mr. Newman commented on several projects that the Board has planned, adding that all of this would be brought before City Council before they enact the projects, as follows:

- 1) Eagle Scout Project – to archive the Arnold-Simonton House artifacts;
- 2) Joint project with the City, MEDC and the Fernland Board, regarding bushes along the east fence for decoration; and
- 3) A current project is to skirt the Simonton House because they have a lot of animals that get underneath and pull the insulation down. Mr. Newman said that the costs will be minimal and he has help. Mr. Newman said that they also have had some material donated from the old Post Office downtown.

Mr. Newman said that the Crane Cabin has some severe rot in the logs on the north side, which he has brought up to the City Council before, and to replace it would be very expensive. Mr.

Newman said that they are going to work with someone to get an epoxy mixture and then paint it. Mr. Newman said that Mr. Westlake is trying and find someone to do the work, because he is not experienced in that type of work. Mr. Newman said that it could be costly to repair. Mr. Newman said that since the City has taken over doing the maintenance at Fernland, they would have to come forward with that. Mr. Newman said that one other thing is the old log wagon that has deteriorated, and is a danger to the children that climb on it. Mr. Newman said that he tried working with Sam Houston State, who owns it, but he has not had any response from them, other than initial comments from the Director, that indicated he would like to get the wagon and let the prison restore it, but he has had no other contact. Mr. Newman said that Mr. Billy Ray Duncan has a man that he thinks might be willing to restore the wagon. Mr. Newman said that if Mr. Duncan is not capable of finding someone he is going to haul the wagon off, because it is beyond his capabilities and he can't find anyone locally to work on the wagon.

Mr. Newman reviewed the financial statement, showing the income, and the balance at this time at \$9,807.62. Mr. Newman stated that all the funds come from donations and tours, and they are pretty good stewards of the money, which they have been doing for seven years.

Mr. Newman said that Dana Bickford had prepared a spreadsheet that shows the attendance at Fernland as:

<u>Visitors</u>	<u>Tours</u>
2015: 2,115	2015 - 397
2016: 7,837	2016 - 469
2017: 8,277	2017 - 498

Mr. Newman stated that the docents work from 11 a.m. to 5 p.m., six days a week, if it is not raining. Mr. Newman advised that most of the traffic is after 5 p.m., when the photographers come into the park. Mr. Newman said that the numbers that they have for the photographers are greatly estimated.

Mayor Jones asked about the project that is presently going on at the Park with the sidewalks. Mr. Newman said that he did not know a thing about that project. Mr. Newman said that Mr. Yates gets all their literature, they have no secrets out there, and they have projects come in and he either meets with the City and advises what they plan on doing as a Board, present

drawings and get the City's approval. Mr. Newman said that what troubles him about the sidewalk, which he is pleased that they are going to have sidewalks out there, but the problem that they have is that they did not want to build a sidewalk to the bell tower after watching the erosion. Mr. Newman said that they had erosion at the Jardine Cabin at the bottom northeast corner of the Cabin where the foundation was going to wash away, if it does and it shifts on that building, he does not know how they are going to fix it, because those cabins do not take a lot of abuse, as old as they are. Mr. Newman said if they would have told him about the sidewalk, he would have been able to talk to them about it and maybe convince them that they could save some money by not spending it there. Mr. Newman said that he understands that the City is very busy, and he is not; he is retired but all it would have taken would have been a phone call and he would have met them out there and helped get them support. Mr. Newman thanked the City for their support. Mayor Jones thanked everyone for attending.

9. Consideration and possible action regarding Samdana Investments, L.P. variance requests regarding the front building line, along SH 105, from 35 feet to 25 feet, and the rear building line from 15 feet to 10 feet along John A. Butler Street, all within the property bounded by John A. Butler Street to the north and SH 105 to the south and Prairie Street to the East located at 20998 Eva Street, Montgomery, Texas.

Mr. Yates advised that the Planning and Zoning Commission recommended approval of this variance. Mr. Yates said that a question of traffic circulation is critical in consideration of this variance. Mr. Yates said that, as shown on the variance sketch map, the access off of SH 105 can only serve the Samdana property and prevents access to SH 105 for the property west of the Samdana property. Mr. Yates said the donut shop proposed a one-way driveway going around their building so that anyone that wanted to get to the property west of Samdana would have to go around the donut shop and then turn right, instead of left to get back onto SH 105 access that is shown on the sketch map. Mr. Yates said that there is one curb cut now, and TxDOT would have to be requested to get another curb cut, and it was his guess that TxDOT would not allow the curb cut, nor would he recommend another curb cut. Mr. Yates said that this was brought up last night at the Planning and Zoning Commission Meeting and Mr. Samdana said that he had an agreement with the property owner to the west that he would always allow access to their property. Mr. Yates said that he has requested a copy of the agreement, but has not received it as of yet. Mr. Yates said that no matter what the agreement says, the City should not be placing that property, to the west, where they would be cutting off

their access to SH 105. Mr. Yates said that he does not know if the property owner to the west knows about the variance request, or how it would affect their property. Mr. Yates said that this could probably all be worked out by repositioning the building on the triangular wedge shaped lot. Mr. Yates said that as it is, he certainly would not recommend the variance tonight because he thinks that it will require more planning.

Mayor Jones said that it looks like there are several possible solutions and maybe it will require moving the building. Mr. Yates said that he was suggesting that City Council table this item so that they can review the information and make some changes. Mr. Yates said that they plan on moving the barbershop building that is on the property, and then constructing the new building, where the sketch plan has it roughly on the old pool business location. Mayor Jones said that it would be about a month before they would see these plans again, because Planning and Zoning does not meet until next month. Mr. Yates said that it might be a good idea to send it back through the Planning and Zoning Commission.

Dave McCorquodale asked about the survey notes, and asked why the survey has a 10-foot building line in the rear and a 25-foot building line, and asked if that was a request from the surveyor. Mr. Yates said that was the owner drawing that information in as if it were approved. Dave McCorquodale said that his point is to ask if they all understand where the building lines were, and that there was nothing on our end where we would accidentally add something somewhere. Mr. Yates said that no, when they bought the property it did not. Mr. Yates said that they have a section in our ordinances, under variances, where it specifically points out for an irregularly shaped lot that a variance could be considered by City Council. Rebecca Huss said that Dave McCorquodale was asking whether they were relying on something else when they purchased the property. Dave McCorquodale said that his question was whether they understood, to the best of our knowledge, because we were not part of the transaction, that there was nothing on the City's side that would have alluded to not having a 35-foot building line in the front.

Mr. Roznovsky advised that this is unplatted property, so the platting requirements come in to this because they have to plat the property. Mayor Jones said the buildings that were sitting there were not meeting the requirements of the ordinance. Mr. Roznovsky said that was correct, and because they were so old, the property was never platted. Dave McCorquodale

said that what bothers him is that they don't have any say over what happens on SH 105, and if a lane widening occurs in the future, his concern is that getting the property even closer than 35-feet to SH 105, which is not much, he is not sure that would serve the public interest. Mayor Jones said that he would say the present right-of-way on SH 105, they have all of it right now, and the State would have to acquire a bunch of right of way if they wanted to widen the road.

Mr. Yates said that if City Council tabled the item, he would have Mr. Roznovsky meet with the Samdana's and their architect to work up something that would allow access to the property to the west and still give them an opportunity to build their building. Dave McCorquodale said that, as a design professional, he would offer the suggestion that looking to put a square into a triangle is going lead to issues, so maybe there is a design solution that would allow adherence to the ordinance. Mr. Yates said that he was thinking more of a rectangular building. Jon Bickford said that they are not going to be able to design the building here. Dave McCorquodale said that he would like to talk about it, because he is not going to talk about it until it comes back to City Council. Mr. Yates asked if Dave McCorquodale would rather have their building further off of SH 105 and closer to Butler Street. Dave McCorquodale said that if he had to pick the lesser of two evils, yes he would pick closer to Butler Street.

Dave McCorquodale asked Mr. Foerster, in a situation such as this, where there is an unplatted tract that has access to an adjacent property, would that fall under what would be a prescriptive easement or is there something that would compel them to offer that access, when the other tract has two frontages on two other streets. Mr. Foerster said that as long as the Samdana tract has access to a public street, an adjoining property owner has no obligation to provide them any additional access. Mayor Jones said that he thought they could get plenty of access, either property, from Butler Street, but that is not where the traffic is coming from.

Rebecca Huss moved to table this item until they come back with re-engineered and revised architecture. T. J. Wilkerson seconded the motion.

Discussion: Mr. Samdana advised that he brought the agreement that they have with the other property owner. Mr. Samdana said that in the agreement, when they purchased the property, the size of the property was what they were worried about, and in the agreement they provide ingress and egress for both property owners. Mr. Samdana said that when they did that the

architect drew different plans, with the arrow to the right, but there is enough room for two cars. Mayor Jones asked Mr. Yates if that changes the situation or do they still need to table this item. Mr. Yates said that he scaled it out and he thinks the right hand turn lane is after you go thru the line, on the south side of the building there is 12-13 feet, which is borderline for two vehicles. Rebecca Huss said that she felt either way, they will need to have the engineer look at the information. Rebecca Huss said that if our engineer feels it is okay, they can come back at the next meeting without going to the Planning and Zoning Commission, since they have already approved the variance. Mayor Jones asked Mr. Samdana to work with Mr. Yates and Mr. Roznovsky, and they will bring it back in two weeks, unless they have to redraw, then it would be a month.

The motion carried unanimously. (5-0)

10. Consideration and possible action regarding an Encroachment and Maintenance Agreement by and between the City of Montgomery and Montgomery SH 105 Associates, LLC regarding a storm sewer line easement located at FM 2854 and SH105.

Mr. Roznovsky presented the information, stating that they have a storm sewer that is encroaching on a public utility easement and crossing existing water and sewer lines on multiple locations. Mr. Roznovsky said that after review of the plans, they do not have any issue with this because they have the property coverage and, per this agreement, they would be responsible for it if the City has to repair the line or storm sewer, they would have to do the repair and replacement of that storm sewer pipe. Mr. Roznovsky said that one thing to note is CVS is requesting from the City that the City be responsible for a portion of the paving that is within the sanitary sewer easement. Mr. Roznovsky said the property owner is requesting that in the event of planned improvements of water taps, utility extensions and planned replacements, the City would be responsible for the paving and for any emergency repairs the property owner would be responsible for the repairs. Mr. Roznovsky said that the main issue with this is the City does not typically include paving in an encroachment agreement anywhere else in the City. Rebecca Huss said that it was pretty rich since most of the taps will be coming from their development, so she would not feel the need to pay for any damage for their developer doing taps for them to make money. Mr. Roznovsky said the line that is being

extended will serve CVS, and will also serve the development to the south and FM 2854 if needed. Rebecca Huss said then it would not be for the rest of their development.

Mayor Jones asked what the real likelihood of the City having a planned tap or disturbance. Mr. Roznovsky said the nearest likelihood is that the development across the street would have to make a tap for the HEB property, and they have already been told that they have a requirement that they will be extending water and sewer along their frontage anyway, so HEB will not be tapping onto that line. Mr. Roznovsky said that more than likely no pavement will need to be removed or replaced. Mr. Roznovsky said that these are brand new PVC lines, so replacement would be done in the next 40-50 years, and there is technology today for trenchless methods to do that replacement that would not disturb that pavement. Rebecca Huss said that she would say to tell them no, it is highly unlikely the City will not set any precedent and writing illegal agreements or signing their illegal agreement. Rebecca Huss said that she did not really see any point in doing that, they are already getting a good 380 Agreement, they can risk a corner of their parking lot, which the City is doing as a favor anyway. Mr. Roznovsky said that the request is to approve the agreement, subject to not including the pavement or including the pavement so that they can move forward with getting the agreement finalized and in place so that they can continue with their development.

Rebecca Huss moved to proceed with the Encroachment and Maintenance Agreement subject to the proviso that they do not enter into an agreement to allow them any additional qualifiers about planned maintenance and any repairs to their encroachment parking. John Champagne seconded the motion.

Discussion: Jon Bickford said that he understood it to be that they accept the agreement for the storm sewer line easement, but no other considerations. Mr. Roznovsky said that there is a sign agreement also. Mayor Jones said that was under a separate agreement. Ms. Hensley said that the agreement was subject to not include repair of the pavement or any other repairs or any other provisions or qualifications. Mr. Yates said that it was Section 3(c) that would need to be removed from the proposed agreement would take out all the provision and accomplish what City Council is trying to do. Mr. Roznovsky said that Section 3(c) in the pack, was written before the additional language was put into the agreement, but what CVS was originally trying to propose was that they put all the responsibility for the pavement on the property to the south

of them. Mr. Roznovsky said that what they are proposing is to take the pavement out completely from the agreement. Mayor Jones said that will work.

The motion carried unanimously. (5-0)

11. Consideration and possible action regarding LDC gas rates and recovery charges billed to their customer.

Mr. Foerster reviewed the information that he had presented two weeks ago, and said that he presented his evaluation of the situation with the relocation sur charge for the gas line that LDC had requested, which was \$20,527. Mr. Foerster said that under the Utilities Code, the Railroad Commission has original jurisdiction for any such request outside of an incorporated city, but also under the same Code, a city, and in this case, the City of Montgomery, has original jurisdiction for any relocation request for a relocation sur charge for customers within the city. Mr. Foerster said that, as he understands it, and he has had conversations with the Railroad Commission Attorney on a couple of occasions, and with Mr. Mike Swain, LDC, who he will say, they had some very good very positive discussions, and he thanked him for that. Mr. Foerster said that his original position was based on his reading of one of two appeals from LDC, one was for the incorporated area, which would go directly to the Railroad Commission, and the second appeal was to the City of Montgomery for the unincorporated area. Mr. Foerster said that the first request that was denied back in February 2017 to the City Council was premature, because they had not completed the work, which they acknowledged, and they needed to finish the project and get their final costs, which they did by June 2017. Mr. Foerster said about that same time in June, LDC had gotten permission from the Railroad Commission, based on all the information that they provided, that the relocation costs were acceptable and justified. Mr. Foerster said that in a docket number 10637 related to unincorporated areas, the Railroad Commission approved the relocation costs, in the Examiner's letter, which he read to be in order, it specifically said that any additional relocation costs could not be submitted for pending or future claims as to cities or other incorporated municipalities. Mr. Foerster said that he read that to mean that they had already gotten the approval for the entire \$20,527 for the unincorporated area and they could not come back to the City. Mr. Foerster said that he had a conversation a few days later with the Railroad Commission Attorney and she was not quite sure because it had never happened before, so she went back and spoke to the Railroad

Commission Examiner and also several councils of the Railroad Commission. Mr. Foerster said that last Friday he sent the attorney another email and he got an email from the Railroad Commission Attorney, who indicated that based on her inquiry, the Railroad Commissioner's Examiner's Order prorated that entire cost to the customers in the unincorporated areas, but it did not deal with the balance of the cost on the prorated basis, based on all the customers that are served by LDC, and did not address what happened in the incorporated areas. Mr. Foerster said that the attorney indicated that it was their opinion that the request to the City Council in June 2017, which was the second request, would have addressed the issue of whether or not LDC was entitled to collect the balance of \$20,527 from the customers in the City. Mr. Foerster said the statute for the Utility Code is a little different when it comes to relocation costs which is what they have here, the Utility Commission, in Section 104.112, says there has to be one of five findings or more from the City Council that denies the relocation costs or its in effect automatically approved. Mr. Foerster said that his problem with that, which he communicated with the Railroad Commission Attorney, is City Councils and local attorneys that represent City Councils do not know that one little rule unless it is brought to their attention, they are not going to find one of those five findings. Mr. Foerster said the Railroad Commission, in a pre-hearing conference on August 15, 2017, said that LDC did not need to be before them because by law the City of Montgomery did not find one of the five findings, therefore you do not have to appeal it to the Railroad Commission. Mr. Foerster said that according to the Railroad Commission Attorney, it appears that the Railroad Commission's position is that the LDC is only charging its customers in the unincorporated areas the pro rata share of the total relocation costs, and LDC has the authority and the obligation to request a similar pro rata sur charge to the City of Montgomery for the balance. Mr. Foerster said that because the City of Montgomery did not find one of these five findings in the Utilities Code, it automatically is effective. Mr. Swain said that Mr. Foerster has very accurately described what has been going on, and said that he will say that he has been in the utility business a long, long time, and he did not know that the City was required to state one of those five findings until the Railroad Commission pointed it out to him. Mr. Swain said that he and Mr. Foerster have had several very productive conversations, and he thinks that they are in the process of getting something worked out that will at least allow this confusion to not be a source of friction with his company and the City and its residents. Mr. Foerster said that unless some arrangement is made for refunding or stopping the surcharge by LDC, it appears that it will go forward.

John Champagne stated for the record, the five reasons listed under Section 104.112 of the Utility Code:

- 1) The relocation was not necessary or required. John Champagne said that the fact that LDC wants it paid back to them is obvious that it was not required, but we did not state it as such. Mr. Foerster said that was correct.
- 2) The cost of the relocations were excessive or not supported. John Champagne said that it was not supported by the City of Montgomery.
- 3) The utility did not pursue reimbursement from the entity requiring the relocation, if applicable.
- 4) The surcharge is unduly discriminatory among customers or classes of customers located in the service area; or
- 5) The period over which the relocation costs are designed to be recovered is less than one or more than three years.

Rebecca Huss said that she thought that a case could be made that the first reason was met, and the line was built on spec before a road, that they all knew was coming, was designed and the subdivision was designed. Rebecca Huss said that the line was built that way so that they could save money, but it was a business choice to take that risk knowing that things could work out badly. Rebecca Huss said that instead of taking the risk on their own books, they put it on the pocketbooks of our residents.

Mayor Jones asked Mr. Foerster whether LDC attempted to collect those damages from the County, who was the one building the road. Mr. Foerster said according to records that he saw, they reached out to the two developers and they declined, which was part of the package that the Railroad Commission sent to the City. Mayor Jones said that perhaps they approached the developers and they said no, but he did not know if they approached Montgomery County and they said no, but by default the citizens of Montgomery are stuck with the bill, because we are the last ones left to ask, and we are the ones where the money changes hands. Mr. Foerster said that they are stuck with their pro rata share of the bill. Mr. Foerster said that the unincorporated customer's payment has already been approved by the Railroad Commission. Mayor Jones said that does not change the amount that our citizens are paying. Mr. Yates asked about them filing a withdrawal for their motion of reimbursement. Mr. Foerster said that they had a pre-hearing conference in August with

the Railroad Commission, which the City was not notified of and they do not know what happened. Mr. Foerster said that Mr. Swain has advised him, and he has no reason to disbelieve him, but at the hearing the Railroad Commission said LDC you do not need to be here, they did not have any appellate jurisdiction because there was no finding by the City of one of the five findings, so LDC is entitled to the relocation costs.

Mayor Jones asked about the City's appeal process. Mr. Swain advised that the City of Montgomery Meeting Minutes were attached to their filing with the Railroad Commission, because they had to include the decision denying the request by LDC in the filing of the appeal. Mr. Foerster said that was probably where the Railroad Commission looked at the minutes. Mr. Foerster said that there were two sets of minutes, one was the February 2017 Meeting, and in those minutes Rebecca Huss raised the question as to why the City should pay because this should be the cost of doing business, and LDC laid the line before the road was planned, which City Council denied that action by a vote. Mr. Foerster said that however, that request was premature because the cost had not been completed and so when they were completed in May they submitted to the City Council, and having discussed the matter at the February meeting, at the June meeting there was very little discussion, it just stated that City Council was going to deny the charge.

Mr. Yates said that when they met with Mr. Corley on November 16, 2017, and they asked Mr. Corley why he was able to charge the City and he said that he could not remember. Mr. Yates said that Mr. Corley emailed him the next day and told him that they were able to charge the City because the five reasons were not given when the rate was denied. Mr. Yates said that if there was that much thought put into that information, it would seem that, ethically, Mr. Corley could have called and advised him, since Mr. Corley knew that he was using his letters as guidance for City Council. Mr. Yates said that he would think, ethically, that Mr. Corley should remove the charges from the customers.

Mayor Jones asked Mr. Foerster where the City stands legally. Mr. Foerster advised that he has not heard back from the Railroad Commission attorney, and said that he had not done any research to find out if at this late date the City has any opportunity to appeal the decision, and if they did it would only go back to the Railroad Commission, and the Code. Mr. Foerster said that he would continue to look into the information. Rebecca Huss said

that Mr. Yates comment about the ethics of this whole thing, and said that Mr. Randy Burleigh has been looking into some things, and there have been improper charges and LDC has decided to charge or not charge unilaterally, so she would like to see the actual numbers behind what they are actually charging people. Rebecca Huss said that she would like to know the absolute penny that they are required to pay, and if they are unable to come to some sort of appeal to ethics, she would like to know for sure that our citizens are not paying a penny more than they have to. Jon Bickford said that LDC has already started charging the City.

Mr. Swain stated that he and Mr. Foerster had some preliminary discussions today that may result in this matter being resolved in a way that is mutually satisfactory. Mr. Swain said that he would like the opportunity to follow this through to see how it turns out. Mr. Swain said that if City Council still feels like they need to take additional action after that time, or perhaps approve an agreement that they have made, perhaps that is the best way to resolve this matter.

Mayor Jones said that if Mr. Swain and Mr. Foerster are still talking, and Mr. Foerster is still fact finding, City Council will wait for the next report. Jon Bickford asked whether LDC was still billing citizens for the recovery costs. Mr. Swain advised that the costs have been fully recovered and the sur charge is done. Mr. Swain said he thought that the January bill was the final charge. Jon Bickford asked Mr. Burleigh if that statement by Mr. Swain was correct. Mr. Burleigh advised that he did not know, because he did not know what they are charging people outside the City. Mr. Burleigh stated that he wanted to ask Mr. Swain, as to whether he had worked for the Railroad Commission for six years. Mr. Swain said that he had not worked for them.

Mayor Jones said that Mr. Foerster and Mr. Swain will keep talking and Mr. Foerster will report back to City Council. Mayor Jones thanked Mr. Swain for his recommendation. Mr. Yates said that it is costing the City to have Mr. Foerster look into this, and it is a sizable cost. Jon Bickford asked that they try to get this matter wrapped up this week and possibly have some resolution that will help the City. Jon Bickford said that he felt that it was clear, with all due respect, there is a lot of very frustrated people regarding what LDC is billing and their rates, and they can't let this continue to go on, they have to look for

alternatives because they are getting pushing into a corner. Rebecca Huss said that Mr. Foerster will be able to write an article for TML informing all the people about the five findings, and will be the most informative legal article of the year. Mr. Foerster said that he would gather, with his experience representing cities for 30 years, and they are all served by gas service, that this is probably the first time that they have had a relocation sur charge. Jon Bickford said that based on everything else that has happened, this does not surprise him, so he would keep pursuing this matter.

Jon Bickford moved to table this item. John Champagne seconded the motion, the motion carried unanimously. (5-0)

12. Consideration and possible action regarding a proposal from Jones|Carter for the preparation of a City Geographic Information System (GIS).

Rebecca Huss said that she thought that this had been presented previously to City Council, and they had requested proof of other bids and other cost structures, etc. Mr. Roznovsky said that they had presented the information to City Council previously. Mr. Roznovsky advised that they had met with Jon Bickford and discussed how the information was written and some of the notes, to make sure that there were no gray areas that would come about for the City. Mr. Roznovsky said that they addressed all the issues with Jon Bickford and they have one more note to add to the copy of the proposal. Mr. Roznovsky said that they do not use proprietary software for their system, but if they should in the future they will provide the City with written notice prior to implementing it on their system, which is the one change that they will make. Mr. Roznovsky said that they had added some information regarding clarification of the actual software that is used, and added the note that it is not proprietary software.

Jon Bickford said that ESRI who provides the GIS platform is actually a customer of his, and he spoke to them regarding this information. Jon Bickford advised that this is a hosted solution, and if it goes away they can switch hosts. Jon Bickford said that all he wanted to make sure of, and he did, that they have a path to switch cloud service should they change engineers in the future. Mr. Roznovsky said that in the event that Jones|Carter is no longer the City Engineer, they would provide the City plenty of portable media, all files, documents, graphics, etc. for the City's use with any commercially available software.

John Champagne scanned through the pricing for the services, and asked if they had obtained pricing from any other entities to do this service. Mr. Yates advised that they had not. John Champagne asked why not. Mr. Yates said that he felt that Jones|Carter already had such a head start as far as having the information together, that he did not go out for bids. Jon Bickford said that what they are talking about, without engineering services, for the software services, is \$300 per month, which is \$3,600 per year, and it is going to cost more to go out and get bids, evaluate them and everything else. Jon Bickford said that they were not going to get a better price. John Champagne asked if the total ticket on this is \$3,600. Jon Bickford said that the software was \$3,600 per year, and said that they only have one engineering firm, so no matter whose GIS software you get, unless you get another engineering firm to deploy the software, you are going to pay a large number. John Champagne said that there would be support costs to implement this project. Jon Bickford said that there is a \$20,000 fee to get all the initial data loaded into the system.

Jon Bickford moved to proceed with the proposal as presented at the \$600 per month rate, subject to the notation that if Jones|Carter added proprietary software, they would notify the City. Dave McCorquodale seconded the motion, the motion carried with 4-Aye votes and 1-Nay vote by John Champagne. (4-1)

13. Consideration and possible action regarding the replat of Mitchell Corner.

Mr. Roznovsky presented the information, stating that this was the old Iron Works and Apache Machine Shop, the corner between Plez Morgan, Liberty and Lone Star Parkway that was originally platted as one Reserve, and now they are splitting the ownership between the two businesses and dividing the property into two Reserves. Mr. Roznovsky said that this was approved by the Planning and Zoning Commission last night.

Rebecca Huss asked, based on what they had discussed before, with the H-GAC and changing Lone Star Parkway into a TxDOT road, would changing this plat change any sort of existing driveway situation. Mr. Roznovsky said that potentially it could change and there would have to be a consolidation, but they are a ways out from knowing what the proposed road would be. Rebecca Huss asked to confirm that it would not make sense to start planning for that process now. Mr. Roznovsky said that he would not think so because right now it is still an idea that

is years down the road, but when they meet in six months they should have a better understanding of what it is going to look like going forward.

Dave McCorquodale moved to approve the Replat of Mitchell Corner, as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

14. Consideration and possible action regarding City property tax exemptions for Homestead, Over 65 and Disability Classifications.

Mr. Yates advised that this was a request from the Tax Appraiser/Collector asking whether the City wanted to change the Homestead, Over 65 and Disability Tax Exemptions. Mr. Yates said that last year City Council approved \$6,000 for Over 65 and \$12,000 for Disability. Mr. Yates said that if they left the exemptions the way that it is currently it would be \$2,244 for 90 people that are Over 65, and \$299 for 6 Disabled residents.

John Champagne said that he had looked the information over, and in light of our inability to keep costs down on utilities and some other things, and the pressures on retired people on fixed incomes, he made the following motion:

John Champagne moved to suggest \$20,000 for the Over 65 Exemption, which will come out to \$7,480 per year or \$83.11 per person; and \$35,000 for the Disability Exemption, which comes to \$872 per year, and \$145.33 per person.

Jon Bickford asked if those figures were for the entire year, John Champagne said that was correct. John Champagne said that would be \$7,480 as a negative or debit to the City for all residents over 65, which includes 90 people at this time. John Champagne advised that for Disability he is suggesting \$35,000, which comes to a total of \$872 per year, and \$145.33 per person which includes six people at this time. John Champagne said that he did not do anything for the Homestead Exemption.

T.J. Wilkerson seconded the motion.

Discussion: Dave McCorquodale asked if there had been any research on where the City stood in relation to the other municipalities in the area. John Champagne said that he had and that

information was included in the Agenda Pack. John Champagne said the City of Montgomery was above some cities and below others. John Champagne said the demographics in this City fall heavily towards this group, and this is what is going to build this City by the way, unless you think otherwise. Mayor Jones asked if John Champagne was referring to over 65. John Champagne said that the demographics are for over 50, which is who is going to spend the money, and if the cost of living to live in this City continues to do what it is doing, it is going to be horrible. John Champagne said that this pittance he is suggesting, is like offering them a night out to have dinner, maybe.

Rebecca Huss said that she did not disagree that tax relief is helpful, but she felt that some of the things that they have been doing with the budget, as well as the revenue increases that they have been seeing can be spread among all of the residents with more broad based taxing decrease that they could address during budget season, so that they see what their expenses look like, as well as the revenues before they make a decision that only benefits two groups. Rebecca Huss said that she was hoping to see, during the budget season, tax reduction for everyone, going from .4155 to a lower number. John Champagne said that if they look at our tax rates relative to other cities, we are pretty good. Rebecca Huss said that does not mean that they can't do better. John Champagne said that he totally agreed. Rebecca Huss said that was something that past City Councils have done quite well to rein in and have made some very smart decisions. Mayor Jones said that he liked what Rebecca Huss said about possibly lowering all taxes, but is there a special desire to help these two categories, because they are already doing it a little bit. Rebecca Huss said that she had to disagree with John Champagne, in terms of cities, and said the population can grow, and there is a lot of civic involvement from that category of people for sure, but our teachers, health care workers, employees at the stores and a lot of those people are younger. Rebecca Huss said that she felt a vibrant city has all sorts of people of all age and wage levels, and so she felt that they should really be looking to attract every level of age rather than saying that the City is only looking at the over 50 crowd. John Champagne said that all he was saying was the demographics are quite clear. John Champagne said that this town seems to attract people that want to get out of the millennial rat race. Rebecca Huss said that they could give a more effective tax relief by lowering the rate, than by increasing the exemptions. John Champagne said that he totally agreed with that statement, but he would keep the exemptions right where they are when they lower the tax rate. Jon Bickford said that he did not know when they were going to be able to lower the tax rate,

if they can do this right now, and said that seven of the 14 surrounding cities have exemptions for over 65 that are at least \$20,000 or more, and seven of them are \$25,000 or more, so to him, \$8,000 gets 90 people a nice break, and if he could put another \$8,300 in taxes back to everyone who is 65 and over and not disabled, he said why not do it tomorrow.

Rebecca Huss stated that she believed that her family qualifies this year under disabled, because her husband is 60% disabled, categorized by the VA as a 22-year military veteran, so asked if she needed to recuse from voting on this item. Mr. Foerster thanked Rebecca Huss for bringing that to his attention, and said he thought that it would be appropriate for her to do that. Mayor Jones asked what would happen when they start talking taxes and budget, they will all be affected by that. Mayor Jones said that T.J. Wilkerson would have to recuse himself because he is over 65. Mr. Foerster said that he did not think that it would make that much difference, and he senses that this item would pass with or without the vote of Rebecca Huss.

Mayor Jones stated that the motion was to approve setting \$20,000 for the Over 65 Exemption and \$35,000 for the Disability Exemption.

The motion carried with a vote of 4-Ayes, and Rebecca Huss recused herself from voting.

15. Buffalo Springs Bridge and Houston Street Report by City Engineer.

Mr. Roznovsky advised that the Bridge was moving along, but the recent weather had caused some delays. Mr. Roznovsky stated that they met the contractor on site today, and he is going back with a different plan to divert the water, but said he is still on schedule and he hopes to have the first piece of the concrete wall in next week. Rebecca Huss asked if the City paid extra for the re-excavation. Mr. Roznovsky said that it is a one-time lump sum for the temporary dams, so it is not every time that he does that, if it fails the first time it is one him to repair it, and the same with the excavation. Mayor Jones asked if they were going to pour something on the bottom of the channel. Mr. Roznovsky said the bottom of the channel will have riprap because FEMA did not want them to include concrete on the bottom, so they have broken concrete on the bottom. Mr. Roznovsky said that there will be concrete walls on either side and under the bridge that have relatively large footings on them, and under the water level

will be the concrete riprap to protect from future scouring and erosion. Mr. Roznovsky said that they did have Pay Estimate Number 1 for \$127,000 that came in this month.

Mr. Roznovsky reported that on Houston Street and as of today, the County has moved on site and put down the initial coat over the street which should be paved and complete by the end of the week.

16. Consideration and possible action regarding appointment of Citizen Advisory Board.

John Champagne said that this item is a result of a conversation that he had with Mr. Burleigh, although they have brought it up a number of times. John Champagne said that this is a citizen populated advisory board, that would be an ad hoc, pro bono group, that would assist the Montgomery City Council, and by extension the City Administrator in fostering a culture of excellence as it pertains to all functions of the City. The advisory board would serve at the pleasure and direction of the Montgomery City Council, and will be charged to evaluate, review, analyze, formulate, discuss and forward well-developed recommendations on critical issues, not day-to-day things or projects, to the City Administrator. In general, the advisory board will be looked upon to report their recommendations based on best practices for services and/or projects that reap the greatest value to the citizens of the City at the most competitive cost.

John Champagne stated that Mr. Yates had brought up some questions in his report, and he understood that Mr. Yates did not have much time to review the information. John Champagne stated his answers to the questions.

Mr. Yates stated that if this board were to act as Randy Burleigh has regarding looking into and analyzing water rates and billing that sounds fine. John Champagne said that the advisory board would look into whatever the Council agrees upon and would like them to investigate. John Champagne said that typically it would have to do with utilities, which is efficiencies and operation, equipment utilization, establishing best practices, such as standardizing whenever possible, etc.

Mr. Yates asked if the board that would serve as a pre-Council reviewer of all items. Mr. Yates asked, how often the group would meet. John Champagne said that they would meet at the direction or request of City Council.

Mr. Yates asked if this would involve additional engineering time/cost to present information to the group. John Champagne said that it would not cost more, as he sees it, the board will be ad hoc in nature and he envisioned, with the Council's approval initially directing the board to access the efficiency of the City's utilities and the value realized for the City's contractors that are related to these services. John Champagne said that would be his first request that they get on.

Mr. Yates asked if they would keep minutes for this public board, such as the Building Code Committee. John Champagne said that if it benefits the function of the board, brings value to the City and give information that is needed, then he would assume they would want to keep some record of the meetings so they could report to the City Council and the City Administrator.

Mr. Yates asked how the information would be distributed to the group, in a packet, such as the City Council Agenda Pack. John Champagne said that email is a good choice for him. John Champagne said that this is an advisory board, and with the existing laws that govern this type of information sharing, which he would defer to the City Attorney, he would hope a simple written report could be included in City Council Packets. John Champagne asked Mr. Yates how he was receiving the information from Mr. Burleigh. Mr. Yates said that he received the information by email from Mr. Burleigh.

Mr. Yates asked who would pick the subjects for review by the advisory board. John Champagne said that the City Council or the City Administrator would pick the subjects. John Champagne said that he personally advocate a number of committees, this is just one of them. John Champagne said that they could vote on putting the advisory board together, but he would submit for future evaluation, Mr. Randy Burleigh being the Chairman, and they have some people that have volunteered and said that he personally would ask that not more than four people, including the Chairman be on this board.

Mayor Jones said that he thought that this was good idea and he knew that Mr. Burleigh has been priceless to our City as far as the contributions that he has made, and his expertise. Mayor Jones said that when John Champagne says ad hoc, to him that means temporary. John Champagne said that ad hoc to him means specific. Mayor Jones said that in this case, to him, if City Council wanted to form a committee that could be a different membership every time, the nature of the subject and who has the expertise, so it is not a standing committee of those people, it is whoever they appoint at that time. John Champagne said that he is not saying this is an omnibus, and encompasses the entire City, although the group, with information to be provided about their expertise, will lend itself to where they want to direct this board. Mayor Jones said that once their purpose is completed, they would be disbanded, and then they would reform another one for the next issue. John Champagne said that it would be at the pleasure of the City Council.

Mayor Jones asked John Champagne if he had a subject that he wanted them to work on. John Champagne said he wanted them to work on water and sewer right away. Mayor Jones said that City Council could form an ad hoc committee for the purpose of studying water and sewer, and maybe more specific something within water and sewer, because that is a big subject. John Champagne said that with this type of beginning you might get information where that will lead you into doing these things.

Rebecca Huss said that she thought that this was just a really big bite with something that they have hardly had any time to digest, and there are a lot of questions and a lot of work for staff, with the open ended aspect of it and she was a little uncomfortable with the idea of a committee that is already set up with potentially a plan already in place without any kind of guidelines from the rest of City Council. Rebecca Huss said that she would really like to have some time and look at the information to really narrow the focus as to what questions they would really like to get answered, because she did agree that they have gotten amazing results from the citizen boards that they have. Rebecca Huss said that they do have some boards that have answered questions or done work; they have seen the land use plan that the Planning and Zoning Commission put together, the blinking sign ordinance and that type of thing in response to specific questions and requests from City Council. Rebecca Huss said that she felt that coming up with a more focused, targeted plan that is more inclusive of the rest of City Council, in terms of input as to members.

John Champagne asked if Rebecca Huss has received information from Mr. Burleigh regarding water and sewer treatment. Rebecca Huss said that she received his comments about the billing department. John Champagne asked again if Rebecca Huss had received information in regards to the process, the costs and the functions of water and sewer from Mr. Burleigh. Rebecca Huss said no. John Champagne said that he was under the impression that Rebecca Huss had received that information. Mayor Jones said that he agreed that the focus should be pretty narrow. Dave McCorquodale said that he would be interested to know what the Oak Ridge North board looks at.

John Champagne said that they have citizens that are willing to take an active role in making the City better, all he wants to do is to give them an avenue to do that and influence decisions that are made by this City Council every two weeks. John Champagne said that whether they make those decisions based on their recommendations is up to City Council. John Champagne said that if he could incorporate individuals that are competent and know what they are talking about, and can give the City Council a different perspective, for instance, on engineering suggestions that are coming down the pike; he is not an engineer so that is the motivation. John Champagne said that if they want to put their fingers on it and everybody wants to review the information that is their pleasure. Dave McCorquodale said that he would like to know a little bit more about it, and he would like to hear from Mr. Foerster because it sounds like we are forming something very formal, because this is appointing a board to act on behalf of the City Council, so he would like to know if they are required to keep minutes and who keeps those minutes. Mr. Foerster stated that he could answer that question, and said that if it is a committee whether it is an ad hoc committee or a permanent committee the Texas Open Meetings Law would require that the meeting notice be posted 72 hours before the meeting and minutes taken. Mr. Foerster said that the transparency is important.

John Champagne said that they had a water committee that did not go through any of that. Rebecca Huss said that the Capital Improvement Advisory Committee did post agendas and take minutes. John Champagne said that when they drilled the well and they looked at the SJRA they did not go through that. Mr. Foerster said that he was not around back then, so he could not speak for that time. Jon Bickford said that he was slightly confused, and said that he did not think that there was anything wrong with Mr. Burleigh getting four people together and

say something came up at City Council last week, so let's go take a look at it and figure it out and get some input and pass it on to the City Administrator, because that would require nothing from this table. Rebecca Huss said that they are using Mr. Burleigh very effectively now, and as John Champagne said, he has provided an incredible amount of value. Rebecca Huss said that they have to acknowledge that for a committee to be effective, they have to have access to information, and in order to have access to information, they will have to get reports from the engineer, utility operator, so that will cost the City time since it is billable hours to fulfill that request. John Champagne said that they are assuming that they are going to go to the engineer but that is not a necessity.

John Champagne asked that Mr. Burleigh be recognized to speak. Mr. Burleigh stated that the City had a Water Board before, which he was a member, and several others were on the Board, along with the City Engineer. Mr. Burleigh said that they did all the analysis and recommendations for the Catahoula Well. Mr. Burleigh said if they had not done that and made the recommendation to the City, the City would be paying the SJRA rate. Mr. Burleigh said that they can pick anyone that they want to serve on the Board, and said that there are highly skilled people that want to volunteer to do engineering and analysis, everything that he has been doing for Mr. Yates for the last two years. Mr. Burleigh said that the City gave him access to information, he analyzed the information and provided spreadsheets and data, then gave it back to the City for them to make their decisions. Mr. Burleigh said that this would be other highly skilled people who want to help. Rebecca Huss said that she did not think that they needed to call it anything. Mr. Burleigh said the City has \$26 million dollars in projects coming up in the future, that the Capital Improvement Advisory Board looked at, and these technical people can look at the projects and prioritize them with a second set of eyes, and everything that comes out of this will be good for the City, free of charge. Mr. Burleigh said that they can name more and more things that the committee can do, and asked why they would not tap the talent that has been volunteered for your use, because that would be a grave mistake of the City. Mr. Burleigh said that the City used this information before and it was not a big issue, and he cannot really see the issue right now.

Jon Bickford asked if they need a formal path and whether they really need to do anything. Rebecca Huss said that she thought that it was the presentation of the idea rather than the idea itself. Rebecca Huss said that they could continue their good work and save money for the

City. Mayor Jones said if they need helpers, then get them. John Champagne asked if it could be recognized as a group of people, at the City Council's pleasure, that they use for advisory purposes. Mr. Foerster stated that the only concern is if City Council has directed some group of individuals, as a committee, to formulate information and come up with recommendations that will be presented back to City Council for the City Council's consideration, in his view, he believes in all his reading of the Texas Open Meetings Act, that would require the committee to post an agenda and to keep minutes. John Champagne asked how many people constitute a committee, because Mr. Burleigh has been doing that for years. Mr. Foerster said that there is nothing wrong with any individual, and said that he was not opposed to that idea. John Champagne asked what how many people would constitute a committee. Mr. Yates stated that up until now, Mr. Burleigh has been acting at his request. John Champagne said that Mr. Burleigh has been passing data to Rebecca Huss, who is part of the City Council, and said that he has never seen the data. Mr. Yates said that he had through the water and sewer rate information. Jon Bickford said that the point is, Mr. Burleigh has been providing the data to the City, not directly to City Council. Mr. Foerster said that any citizen has the right to look at records, under the Open Records Act, and provide recommendations to City Council, either in a public forum or to get on the agenda and make recommendations. Mr. Foerster said that it is when this City Council goes out and appoints a committee, then it falls under the Texas Open Meetings Act. John Champagne asked if Mr. Yates appointed the committee. Mr. Yates said that what he was going to say, Mr. Burleigh has been acting at his request. Mayor Jones said how about if Mr. Yates keeps using Mr. Burleigh as a consultant, and Mr. Burleigh brings along a couple of consultants to assist him, when needed. Mr. Foerster said that as long as this City Council does not appoint a committee, if the citizens do whatever they need to do, and any Administrator or City Council Member seeks their advice and consultation, that would be fine. Mr. Foerster said that when it is the governing body of the City appointing a committee that is the difference.

John Champagne said that he understood and withdrew his motion, so there was no action required for this item.

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:

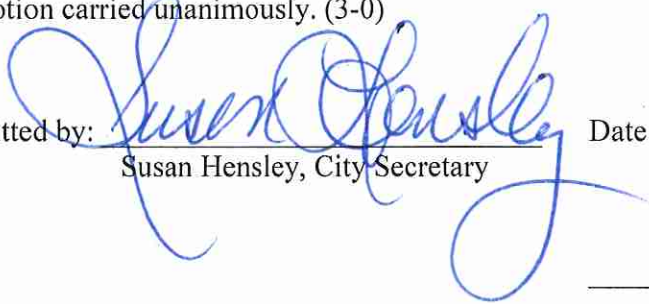
Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or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

There were no inquiries.

ADJOURNMENT

Jon Bickford moved to adjourn the meeting at 9:30 p.m. Dave McCorquodale seconded the motion, the motion carried unanimously. (3-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved: _____

Mayor Kirk Jones

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Memo from City Engineer,
Date Prepared: March 8, 2018	

Subject

This is the acceptance of the one year warranty for Lake Creek Village, Section 2

Description

The City Engineers memo is attached.

Recommendation

Motion to in the warranty period and release the letter of credit submitted by the developer.

Approved By

City Administrator	Jack Yates	Date: March 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

March 8, 2018

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

Re: Lake Creek Village, Section 2 – One Year Warranty Completion
City of Montgomery

Dear Mayor and Council:

We completed the one-year warranty inspection of the work completed for Lake Creek Village, Section 2 on October 13, 2017 in the presence of Mr. James McCain, C. Tech – J|C, Mr. Al Raymond – Randy Roan Construction, Mr. Russel Roan – Randy Roan Construction, and Mr. John Rusk – GLS Engineering. All punch list items identified at the inspection were sufficiently addressed on March 7, 2018, and the work completed is in compliance with all City ordinances and standards, unless previously authorized by variance.

We recommend the City officially end the warranty period and release the Letter of Credit submitted by the Developer.

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\W5841-1009-00 Lake Creek Village, Section 2\Letters\One Year Warranty Letter.docx

Enc: Punchlist

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. Russel Roan – Randy Roan Construction, LLC
Mr. Philip LeFevre – Lefco Investments, Inc.

ONE YEAR WARRANTY INSPECTION PUNCH LIST

Project: Lake Creek Village Section Two
Inspection Date: October 13, 2017

J & C Job No.: W5841-1009-01

Contractor: Randy Roan Construction, LLC	Construction Manager: Mr. James Ian McCain, C. Tech.
Owner: City of Montgomery	Field Project Representative: Mr. Jim Gregg
	Design Engineer: Mr. Stephen Toland, PE - GLS Engineering

An Inspection was conducted at the above project by Jones and Carter at 9:16am on the above date.
 The following items are to be corrected or completed to comply with the Contract Documents:

Item No.	Description	Date Comp.	FPR	Sign Off
1	Caulk crack in center of street near the address of 118 Dudley Road.	C	10/16/17	[Signature]
2	Ensure home builders Fix curb breaks in various locations caused by there construction activities.	D	[Signature]	[Signature]
3	Recaulk expansion joint on Race Track Lane as it transitions from section 1 to 2.	C	[Signature]	[Signature]
4	Expose water valves 176 Race Track Lane, as they were covered up by the homebuilder.	D	[Signature]	[Signature]
5	Remove loose concrete from the throat of the Type C-2 inlet on Race Track Lane and caulk replace with Caulk.	C	[Signature]	[Signature]
6	Install blow off valve box top flush with the existing grade and ensure pea gravel is installed in the bottom of the box.	C	[Signature]	[Signature]
7	Paint a valves blue.	C	[Signature]	[Signature]
8	Raise hydrant valve box at 226 Race Track Lane. Home builder has coved while installing the side walk.	D	[Signature]	[Signature]
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Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Memo from City Engineer,
Date Prepared: March 8, 2018	

Subject

This is the acceptance of the one year warranty for Terra Vista, Section 1

Description

The City Engineers memo is attached.

Recommendation

Motion to in the warranty period and release the letter of credit submitted by the developer.

Approved By

City Administrator	Jack Yates	Date: March 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

March 8, 2018

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

Re: Terra Vista Section 1 One-Year Warranty Completion
City of Montgomery

Dear Mayor and Council:

We completed the one-year warranty inspection of the work completed for Terra Vista Section 1 on January 8, 2018 in the presence of Mr. Jim Gregg – Jones|Carter, Mr. James McCain – Jones|Carter, Mr. Mark Windell – Bowen Group, and Mr. Mike Muckleroy – City of Montgomery. All punch list items identified at the inspection were sufficiently addressed on March 7, 2018, and the work completed is in compliance with all City ordinances and standards, unless previously authorized by variance.

We recommend the City officially end the warranty period and release the Letter of Credit submitted by the Developer.

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\W5841-1005-00 Waterstone\Letters\Terra Vista\One Year Warranty Release Letter.docx

Enc: Punchlist

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. Steve Bowen – Waterstone Texas/Bowen Group

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Memo from City Engineer,
Date Prepared: March 9, 2018	

Subject

This is the acceptance of the one year warranty and release of Letter of Credit for Waterstone Section 2

Description

The City Engineers memo is attached.

Recommendation

Motion to in the warranty period and release the letter of credit submitted by the developer.

Approved By

City Administrator	Jack Yates	Date: March 9, 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

March 9, 2018

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

Re: Waterstone Section 2 One-Year Warranty Completion
City of Montgomery

Dear Mayor and Council:

We completed the one-year warranty inspection of the work completed for Waterstone Section 2 on January 8, 2018 in the presence of Mr. Jim Gregg – Jones|Carter, Mr. James McCain – Jones|Carter, Mr. Mark Windell – Bowen Group, and Mr. Mike Muckleroy – City of Montgomery. The majority of the punch list items identified at the inspection were sufficiently addressed on March 6, 2018. Enclosed is a copy of the punch list identifying the items outstanding. The Developer has provided the enclosed letter requesting the City allow him to deposit funds with the City to cover the estimated cost to complete the outstanding items. The estimated cost to complete the work is \$15,000.00. Once these items are complete the work will be in compliance with all City ordinances and standards, unless previously authorized by variance.

We recommend the City officially end the warranty period and release the Letter of Credit submitted by the Developer subject to receipt of a deposit from the Developer in the amount of \$15,000.00. Upon completion of the work the City is to refund the developer for the difference between the actual cost and the deposited amount.

Should you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Chris Roznovsky, PE
Engineer for the City

CVR/jim

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Enc: Lift Station No. 14 Punch List
Waterstone Section 2 Punch List
Letter from Bowen Group

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. Steve Bowen – Waterstone Texas/Bowen Group

FINAL INSPECTION PUNCH LIST

Project: Terra Vista Section 1 & Waterstone Section 2 - (Lift Station No. 14)

JC Job No.: W5841-1005-00

Inspection Date: Jan 10th & 11th, 2018

Contractor: <u>Bowen Group</u>	Construction Manager: <u>James Ian McCain, C.Tech.</u>
Owner: <u>Bowen Group O.B.O. City of Montgomery</u>	Field Project Representative: <u>Mr. Jim Gregg</u>
	Design Engineer: <u>GLS Engineering</u>

An Inspection was conducted at the above project by Jones and Carter at 8:00 am on the above date.

The following items are to be corrected or completed to comply with the Contract Documents:

Item No.	Description	Date Comp.	FPR Sign Off
1	The pump installed doesn't match the pump O&M manual. Installed - WHR20H-21-50 O&M manual - PFSE2024 The installed pump needs to be replaced with a pump that meets TCEQ min requirements and matches the O&M manual. The one installed can only pass a 2" ball. TCEQ requires a min 2.5".		
2	Ensure new pump seals around the outlet seat.		
3	Replace electrical schematic with the appropriate diagram in the control panel.		
4	Adhere wiring clips to the backer board inside auto dialer and junction box.		
5	Replace door seal for the auto dialer.	3/7/18	<i>JG</i>
6	Label electrical boxes with lamacoid or stainless steel tags.		
7	Label each position of the manual transfer switch. (Utility or Generator.)		
8	Reseal all penetrations in the control panel. i.e. beacon, push buttons, conduit penetrations, and horn.		
9	Lower Lead and lag pump floats to match the flow times on dwgs. The pump on shall be lower than the inlet invert elevation.		
10	Reapply gravel for road to ensure it has 12' worth of drivable area.	3/4/18	<i>JG</i>
11	Supply and install a lighting protection device as described in Section 16710 2.2.		
12	Supply and install the appropriate connection on the Manual Transfer switch and wire accordingly. Coordinate FLA from proper pumps and select receptacle suited for that load.		
13	Repair fence covering.	3/6/18	<i>JG</i>
14	Install valve vault drain line outlet duckbill valve.		
15	Install valve vault vent.		
16	Pour grout in the bottom of the valve vault to ensure positive flow to the LS. Ensure grout doesn't enter LS during this process.	3/6/18	<i>JG</i>
17	Supply and install 6" of gravel through entire fenced in area to fill in lower spots.	3/6/18	<i>JG</i>
18	Remove Misc. debris from site. i.e. pipes and fittings	3/6/18	<i>JG</i>



101 Waterstone Drive
Montgomery, Texas 77356

Office 936-582-1004
Fax 936-597-9211

March 9, 2018

Mr. Jack Yates
City Montgomery
P.O. Box 1361
Conroe, Texas 77305

via email to: jyates@ci.montgomery.tx.us
Chris Roznovski @ CRoznovski@jonescarter.com

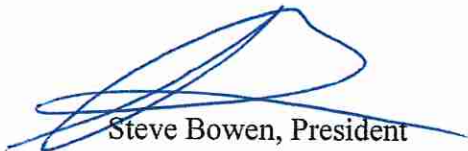
RE: Agreement to deposit funds from Waterstone on Lake Conroe, Inc.

Mr. Yates:

Please let this letter serve as my agreement to deposit funds in the amount of \$15,000.00 from Waterstone on Lake Conroe. The funds will be payable to the City of Montgomery for the release of the Letter of Credit being held for the one year maintenance bond for Waterstone on Lake Conroe Section Two. This will allow the City to have the bond on the City Council Agenda for Tuesday March 13 for confirmation of the release of the maintenance bond. The funds will be delivered to the City by the end of the business day on Monday March 12, 2018.

Thank you for your time and attention in this matter.

Sincerely,

A blue ink signature of Steve Bowen, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Steve Bowen, President

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: City Attorney email
Date Prepared: March 7, 2018	

Subject

This is the culmination of the LDC gas rate issue—regarding the relocation surcharge paid by LDC customers in the City.

Description

In Mr. Foerster's email he states that LDC is going to be refunding as a credit the relocation surcharge paid by LDC customers in the City. My understanding is that Mike Swaim, of LDC, will be present and make that announcement.

Recommendation

My blunt thought is: either simply say "thank you" or "thank you for doing the right thing".

Approved By

City Administrator	Jack Yates	Date: March 7, 2018
--------------------	------------	---------------------

Email from Larry Foerster – March 6, 2018

Larry Foerster

to Dave, me, John, Jon, Kirk, Rebecca, Susan, T

Mayor and Council: I talked to Mike Swaim with LDC this afternoon and LDC has offered to refund as a credit the relocation surcharge paid by LDC customers in the city. His email follows.

I invited him to give a short statement at the Public Comments section of next week's council meeting.

Larry L. Foerster

Darden, Fowler & Creighton, LLP

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Letter of request, Sketch Site Plan, Easement Agreement for Reciprocal Access,
Date Prepared: March 6, 2018	

Subject

This is a requested variance from 35 feet to 25 feet along SH 105 and from 15 feet to 10 feet along John A. Butler Street to the north.

Description

At your February 27 meeting this item was first presented to you, with a concern about the driveway being shared by the Samdana property and Carolyn Lee, the property owner to the west. What has happened since February is that the Samdana property owner has agreed to widen the driveway between his building and State Highway 105 to allow a 20-foot access driveway, that allows two lanes of traffic to go on to his property and on to the property to the west.

Recommendation

Act as you think appropriate.

Approved By

City Administrator

Jack Yates

Date: March 6, 2018



January 30, 2018

Jack Yates, City Administrator
City of Montgomery
101 Old Plantersville Rd.
Montgomery, TX 77316
(936) 597-6463
jyates@ci.montgomery.tx.us

**Re: Variance Request in Historical District
Reduction of Building Line (B.L.)
35' to 25' along S.H. 105 & from 15' to 10' along John Butler St.
Minor Plat Name: SAMDANA INVESTMENTS, L.P.
20998 Eva St. (S.H. 105), Montgomery, TX 77356
Montgomery County, Texas**

Dear Mr. Yates:

Pursuant to Section 78-28 of the City of Montgomery's Code of Ordinances and as the representative for the owner of the property, Mrs. Sopheap Chem, we would like to request a variance for the B.L. along Eva Street (State Highway 105) and John Butler St.

As per Section 78-90 and 98-351, the B.L. along State Highway 105 is to be 35 feet and/or match adjacent buildings or structures whose front (main entrance) setback line is closest to the street which the adjacent structure or building faces.

Due to the unique triangular shape of this tract, enforcement of a 35 foot B.L. along State Highway 105 and a 15 foot B.L. along John Butler St. would preclude the owner from redevelopment of this tract. A copy of the survey showing existing site conditions is attached.

We look forward to developing a project that will be in conformance with the general character of the Historical District and that will also provide an economic benefit to the city.

Best Regards,

A handwritten signature in black ink, appearing to read "Christian Offenburger". The signature is stylized and cursive.

Christian Offenburger, R.P.L.S.
Principal

Easement Agreement for Reciprocal Access

Date: February 28, 2017

First Party: TOWN CREEK ENTERPRISES, LLC

First Party's Mailing Address:

Town Creek Enterprises, LLC
29 La Costa Drive
Montgomery, Texas 77356
(Montgomery County, Texas)

Second Party: DOUGLAS LEE and wife, CAROLYN LEE

Second Party's Mailing Address:

Douglas Lee and Carolyn Lee
11 Tealbriar Circle
The Woodlands, Texas 77381
(Montgomery County, Texas)

First Party's Property:

A 0.289 acre tract of land situated in the John Corner Survey, Abstract No. 8, City of Montgomery, Montgomery County, Texas and being the easterly portion of a 0.539 acre tract described in deed to Town Creek Enterprises, LLC recorded under County Clerk's File No. 2006103879 of the Official Public Records of Montgomery County, Texas, said 0.289 acre tract being more particularly described by metes and bounds set out in Exhibit "A" attached hereto.

Second Party's Property:

A 0.250 acre tract of land situated in the John Corner Survey, Abstract No. 8, City of Montgomery, Montgomery County, Texas and being the easterly portion of a 0.539 acre tract described in deed to Town Creek Enterprises, LLC recorded under County Clerk's File No. 2006103879 of the Official Public Records of Montgomery County, Texas, said 0.250 acre tract being more particularly described by metes and bounds set out in Exhibit "B" attached hereto.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to, egress from, and access across and between First Party's Property and Second Party's Property and portions thereof and to allow vehicular parking by each Party and by each Party's customers and invitees on the property of the other Party as set forth more specifically herein below.

CHICAGO TITLE CONROE
GF# 271190102823

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from and Exceptions to Conveyance of First Party's Property:

This conveyance is made and accepted subject to any and all recorded liens, easements, rights-of-way, prescriptive rights, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and all rights, obligations, and other matters emanating from and existing by reason of the creation, establishment, maintenance, and operation of any water district, utility district, or other applicable governmental district, agency or authority.

Reservations from and Exceptions to Conveyance of Second Party's Property:

This conveyance is made and accepted subject to any and all recorded liens, easements, rights-of-way, prescriptive rights, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and all rights, obligations, and other matters emanating from and existing by reason of the creation, establishment, maintenance, and operation of any water district, utility district, or other applicable governmental district, agency or authority.

Grants of Easements:

First Party, for the Consideration and subject to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, grants, sells, and conveys to Second Party and Second Party's heirs, successors, and assigns an easement to, over, and across First Party's Property for the Easement Purpose and for the benefit of all or any portion of Second Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Second Party and Second Party's heirs, successors, and assigns forever. First Party binds First Party and First Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in Second Party and Second Party's heirs, successors, and

assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property.

Second Party, for the Consideration and subject to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, grants, sells, and conveys to First Party and First Party's heirs, successors, and assigns an easement to, over, and across Second Party's Property for the Easement Purpose and for the benefit of all or any portion of First Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to First Party and First Party's heirs, successors, and assigns forever. Second Party binds Second Party and Second Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in First Party and First Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, to the extent that such claim arises by, through, or under Second Party but not otherwise.

The easements, rights, and appurtenances hereby granted by and between First Party and Second Party are referred to herein as the "Easements." First Party's Property and Second Party's Property are sometimes referred to herein collectively as the "Properties." First Party and Second Party are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Terms and Conditions: The following terms and conditions apply to the Easements granted by this Agreement:

1. *Character of Easements.* The Easements are appurtenant to and run with the Properties, and portions thereof, whether or not the Easements are referenced or described in any conveyance of the Properties, or any portion thereof. The Easements are for the benefit of the Parties and the heirs, successors, and assigns of the Parties who at any time own the Properties or any interest therein (as applicable, the "Holders").

2. *Duration of Easements.* The duration of the Easement is perpetual

3. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and each of the Parties reserves for itself and its heirs, successors, and assigns the right to use all or part of the Easements in conjunction with any other Holder and the right to convey to others the right to use all or part of the Easements in conjunction with the Holders, as long as such further conveyance is subject to the terms of this agreement.

4. *Use and Location of Easements.*

(a) The Parties and other Holders will be entitled to exercise direct access to, across and between the Properties without interference except as set forth in this Agreement and to use all existing and future (i) street access areas, (ii) driveways, (iii) sidewalks, (iv) pedestrian areas, and (v) parking lots on any portion of the Properties in exercising the Easements.

(b) A Holder may not erect fences, buildings, curbs, other improvements or other barriers to vehicular traffic or pedestrian traffic on the Properties owned by that Holder or between the Properties owned by that Holder and adjacent portions of the Properties in any manner that will interfere with or restrict:

(1) direct access to, across and between the Properties by the Holders of other

portions of the Properties and their employees, customers, and other invitees; or

(2) the use of and access to existing and future (i) street access areas, (ii) driveways, (iii) sidewalks, (iv) pedestrian areas, and (v) parking lots by the Holders of other portions of the Properties and their employees, customers, and other invitees.

(c) A Holder's customers, and other invitees will be entitled to park in any parking spots on the other Holder's Properties, with the exception that parking spots located directly in front of and adjacent to a Holder's business establishment may be reserved for that Holder and that Holder's employees, customers and invitees if said parking spots are marked accordingly with signage.

(d) A Holder's employees will not be entitled to park on the other Holder's Properties but will be permitted to walk or drive across and otherwise traverse the Properties to obtain ingress to or egress from the other Properties.

5. *Maintenance of Easement Property.* Each Holder will be solely responsible for the costs of maintaining the access ways, driveways, and parking lots located on that Holder's Properties.

Any substantial improvement to the current gravel type parking lot surface such as blacktop or pavement will be mutually agreed between each Holder. If improvements are mutually agreed, the costs will be shared proportionately.

6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs,

successors, and assigns the right to continue to use and enjoy the surface of the Properties for all purposes subject to the terms and conditions of this Agreement.

7. *Equitable Rights of Enforcement.* These Easements may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Attorney's Fees.* If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

9. *Binding Effect.* This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

10. *Choice of Law.* This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any other jurisdiction. Venue is in the county or counties in which the Properties are located.

11. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

12. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting Party fails to declare immediately a default or delays in taking any action. Pursuit of any

remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

13. *Further Assurances.* Each signatory Party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

14. *Indemnity.* Each Party agrees to indemnify, defend, and hold harmless the other Party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this Agreement by the indemnifying Party.

15. *Entire Agreement.* This Agreement and any exhibits are the entire agreement of the Parties concerning the Properties and the reciprocal Easements granted by the Parties. There are no representations, agreements, warranties, or promises, and neither Party is relying on any statements or representations of any agent of the other Party, that are not in this Agreement and any exhibits.

16. *Legal Construction.* If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

17. *Notices.* Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

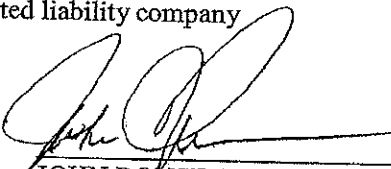
18. *Recitals.* Any recitals in this Agreement are represented by the Parties to be accurate, and constitute a part of the substantive agreement.

19. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

FIRST PARTY:

TOWN CREEK ENTERPRISES, LLC, a Texas
limited liability company

BY:



JOHN ROUSE, Manager/Member

BY:



BEA ROUSE, Manager/Member

SECOND PARTY:

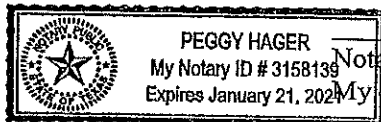
Douglas B Lee
DOUGLAS LEE

Carolyn M Lee
CAROLYN LEE

STATE OF TEXAS)

COUNTY OF MONTGOMERY)

This instrument was acknowledged before me on 2/28/17, 2017, by JOHN ROUSE, as a Manager/Member of Town Creek Enterprises, LLC a Texas limited liability company, on behalf of said company.

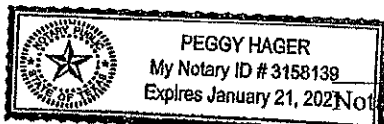


Peggy Hager
Notary Public, State of Texas
My commission expires: _____

STATE OF TEXAS)

COUNTY OF MONTGOMERY)

This instrument was acknowledged before me on 2/28/17, 2017, by BEA ROUSE, as a Manager/Member of Town Creek Enterprises, LLC a Texas limited liability company, on behalf of said company.

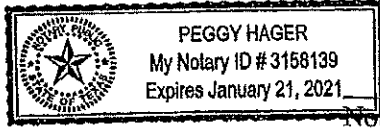


Peggy Hager
Notary Public, State of Texas
My commission expires: _____

STATE OF TEXAS)

COUNTY OF MONTGOMERY)

This instrument was acknowledged before me on 2/22/17, 2017, by DOUGLAS LEE.



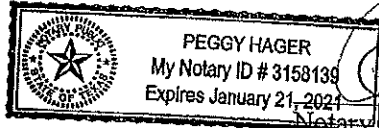
Peggy Hager

Notary Public, State of Texas
My commission expires: _____

STATE OF TEXAS)

COUNTY OF MONTGOMERY)

This instrument was acknowledged before me on 2/28/17, 2017, by CAROLYN LEE.



Peggy Hager

Notary Public, State of Texas
My commission expires: _____

*FIELD NOTE DESCRIPTION
0.289 ACRE OF LAND IN THE
JOHN CORNER SURVEY, A-8
MONTGOMERY COUNTY, TEXAS*

BEING a 0.289 acre tract of land situated in the John Corner Survey, Abstract No. 8, City of Montgomery, Montgomery County, Texas, and being the easterly portion of a 0.539 acre tract described in deed to Town Creek Enterprises, LLC recorded under County Clerk's File No. 2006103879 of the Official Public Records of Montgomery County, Texas, said 0.289 acre tract being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod in the southerly right-of-way line of John A. Butler Street (formerly Old Danville Road) for the northeasterly corner of said 0.539 acre Town Creek parent tract;

THENCE with a right-of-way cut-back South 13° 00' 28" East 21.87 feet to a 1/2 inch iron rod in the northerly right-of-way line of State Highway 105 (aka Eva Street), for the southeasterly corner of said 0.539 acre parent tract, in a curve to the left having a radius of 1677.02 feet;

THENCE westerly with the northerly line of State Highway 105 and said curve to the left through a central angle of 01° 21' 47", an arc length of 39.90 feet (chord bearing South 67° 53' 41" West) to a 1/2 inch iron rod for corner;

THENCE continuing with the northerly line of State Highway 105 South 67° 12' 06" West 160.59 feet to a spike w/cap (stamped RPLS 4935 for the southwesterly corner of the herein described 0.296 acre;

THENCE departing State Highway 105 and severing said 0.539 acre parent tract North 16° 26' 47" West 104.50 feet to a spike w/cap (RPLS 4935) set in the southerly line of John A. Butler Street;

THENCE with the southerly line of John A. Butler Street South 89° 32' 29" East 209.68 feet to the POINT OF BEGINNING.

CONTAINING 0.289 acre of land, based on a survey made on the ground 22 February 2017 and shown on Survey Plat No. 128217 of same date.

Michael C. Warren
RPLS 4935 (TX)
PO 1343 Willis 77378
936 856 8989



**FIELD NOTE DESCRIPTION
0.250 ACRE OF LAND IN THE
JOHN CORNER SURVEY, A-8
MONTGOMERY COUNTY, TEXAS**

BEING a 0.250 acre tract of land situated in the John Corner Survey, Abstract No. 8, City of Montgomery, Montgomery County, Texas, and being the westerly portion of a 0.539 acre tract described in deed to Town Creek Enterprises, LLC recorded under County Clerk's File No. 2006103879 of the Official Public Records of Montgomery County, Texas, said 0.250 acre tract being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the northwesterly corner of said 0.539 acre parent tract, at the intersection of the southerly right-of-way line of John A. Butler Street (formerly known as Old Danville Road) and the easterly line of McCown Street;

THENCE with the southerly line of John A. Butler Street South 89° 32' 29" East 71.80 feet to an iron spike set w/cap (stamped RPLS 4935) for the northeasterly corner of the herein described tract;

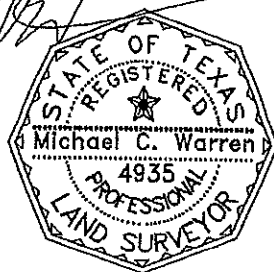
THENCE severing said 0.539 acre parent tract South 16° 26' 47" East 104.50 feet to a spike set (RPLS 4935) in the northerly right-of-way line of State Highway 105 (aka Eva Street);

THENCE with the northerly line of State Highway 105 South 67° 12' 06" West 110.44 feet to an "x" scribed in a concrete sidewalk apron, in the easterly line of McCown Street;

THENCE with the easterly line of McCown Street North 00° 10' 18" East 143.60 feet to the POINT OF BEGINNING.

CONTAINING 0.250 acre of land, based on a survey made on the ground 27 February 2017 and shown on Survey Plat No. 128217 of same date.

Michael C. Warren
RPLS 4935 (TX)
PO 1343 Willis 77378
936 856 8989



E-FILED FOR RECORD

03/01/2017 03:13PM



COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number
sequence on the date and time stamped herein
by me and was duly e-RECORDED in the Official Public
Records of Montgomery County, Texas.

03/01/2017



County Clerk
Montgomery County, Texas

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits:
Date Prepared: March 6, 2018	

Subject

This is to call the public hearing regarding zoning of the Peter Hill tract.

Description

This is to set a public hearing date for the zoning of the Peter Hill property, annexed at your February 27 meeting. The proposed zoning is commercial and the date of the proposed public hearing is June 12th.

The sequence of dates here is:

March 13 -- City Council calls for public hearing on June 12

March 26 -- Planning Commission calls for public hearing on May 28
(following the calling staff time is needed to determine property Owners/addresses, mailings prepared)

April 2 and 9 -- Publish public hearing notice of Planning Commission and City Council in one notice

April 23 --- Planning Commission holds public hearing

April 24 -- City Council holds public hearing.

Recommendation

Move to hold the public hearing regarding the zoning of the Peter Hill tract on April 24th at 6:00 p.m.

Approved By

City Administrator

Jack Yates

Date: March 6, 2018

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Proposed leases with Mrs. Rose and Mr. Jacobs, Paving proposal of Laurel Paving, Layout of parking area w/ costs
Date Prepared: March 6,, 2018	

Subject

This is to pave south of College Street, east of liberty Street (FM 149), west of McCown Street and north of Larry Jacobs real estate office. This is a cost of \$22,000 and up to \$6000 in streetscaping and plantings.

Description

This is a proposal to pave, with asphalt, a parking area immediately north of Larry Jacobs real estate office that we create approximately 19 parking space and a cost of \$22,000 for the paving and up to \$6000 for street skipping and plantings.

The lease with Mr. Jacobs also includes the gazebo stage and the city currently has a lease with Mr. Jacobs regarding -- however I cannot find a copy of that lease. Mr. Jacobs has agreed to a 5 year lease for one dollar per year.

Mrs. Rose has also agreed to a 5 year lease for one dollar per year. At its January meeting the MEDC Board voted unanimously to pay for the parking cost up to \$28,600.

Recommendation

Approve the leases as presented with Mr. Jacobs and Mrs. Rose.

Approved By

City Administrator

Jack Yates

Date: March 6, 2018

LEASE AGREEMENT BETWEEN
CITY OF MONTGOMERY, TEXAS
AND BETTY ROSE

DATE: March 9, 2018

LANDLORD: Betty Rose, and her heirs, administrators, and successors

Landlord's Address:

P.O. Box 512
Montgomery, Tx. 77316-9260

Tenant: CITY OF MONTGOMERY, TEXAS

Tenant's Address:

P.O. Box 708
Montgomery, Tx. 77356

Premises: Montgomery Townsite 02, Tract 14 and Area B 55 ft. X 55 ft. as particularly described in Exhibit "A" attached and incorporated here

Term (months): Five (5) years (60) months

Commencement Date: April 1, 2018

Termination Date: March 31, 2023

Automatic Renewal: Notwithstanding anything herein to the contrary, unless Landlord gives a notice of non-renewal, this Agreement is automatically renewed from year to year after the March 31, 2023 Termination Date. Landlord shall give Tenant 45 days' notice of non-renewal by certified mail delivered to Tenant's address.

Early Termination: Tenant understands that landlord may wish to sell the Premises during the term of this lease or any extended term of this lease. If a contract to purchase is submitted to Landlord by a third party, Landlord shall give 45 days' notice to Tenant which shall have the Right of First Refusal as described below. If Tenant does not offer to match the purchase price, this Agreement to lease is terminated effective the 45th day after the written notice is received by Tenant.

First Right of Refusal by Tenant: In the event a genuine contract to purchase the Premises is offered to Landlord by a third party, Landlord will give Tenant (City of Montgomery) 45 days' written notice of such offer to purchase. Thereupon, within 45 days from the Tenant's receipt of such written notice by Landlord, Tenant shall have the first right of refusal to purchase the Premises at the same price and under the same terms offered in writing to Landlord by a third party.

Rent: Tenant shall annually pay to Landlord the amount of \$1.00 which shall be paid in the month of February of each year of the 5-year term or any extended term of the lease. Tenant shall remit payment without invoices from the Landlord. Tenant may pay the rent amount for any, or all, of the years of the term of this Agreement.

Permitted Use of Premises:

1. Tenant and its agents shall be permitted to host special public events on the Premises for event vendors and event parking at no additional cost to the Tenant.
2. Tenant shall be permitted to construct, install, maintain, utilize and operate a parking lot on the Premises, along with related appurtenances, including but not limited to, overhead and/or underground lighting and electricity, fencing, benches, gazebos and other improvements necessary to promote public use for public events. Tenant may use of the Premises as an overflow parking area and events area for the City of Montgomery and the public.

Clauses and Covenants

A. Tenant agrees to:

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Premises in its present condition "AS IS," the Premises being currently suitable for the Permitted Use.
3. Obey (a) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.
4. Obtain and pay for all utility services used by Tenant and not provided by Landlord.
5. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers.
6. Repair, replace and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.
7. Vacate the Premises on the last day of the Term.
8. Maintain a liability insurance policy covering the Premises in an amount similar to other property owned and or leased by Tenant and provide Landlord certificates of insurance or other proof of said insurance on request. The liability policy must be endorsed to name Landlord as additional insured.

9. Maintain the Premises in a neat and attractive condition, and reasonably mowed and maintained.
10. Place a plaque memorializing W.J. Smith with the plaque agreed upon by Landlord and the City Administrator. Memorial Plaque not to exceed \$500.00 in cost. The plaque is to be placed within the first year of the lease and located in the landscape area on the northern side of the leased area.

B. Tenant agrees not to:

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Allow a lien to be placed on the Premises.
5. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

C. Landlord agrees to:

1. Lease to Tenant the Premises subject to the Term and Termination Date provisions.
2. Obey all laws relating to Landlord's operation of the Premises.

D. Landlord agrees not to:

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.
2. Unreasonably withhold consent to a proposed assignment or sublease.

E. Landlord and Tenant agree to the following:


1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require in writing that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.
2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

3. *Default by Landlord/Event.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice.
4. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages.
5. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent after being given thirty (30) day's written notice by Landlord; (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).
6. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to terminate this lease by written notice and sue for damages.
7. *Default/Waiver/Mitigation.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.
8. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant-at-will and must vacate the Premises on receipt of written notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend this Term.
9. *Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.
10. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.
11. *Venue.* Exclusive venue is in Montgomery County, Texas.
12. *Entire Agreement.* This lease constitutes the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the lease of the Premises by Landlord to Tenant that are not in this lease.
13. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.
14. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
15. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether received or not

when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, person delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when received. Any address for notice may be changed by written notice delivered, as provided herein.

16. *Abandoned Property.* Landlord may retain, destroy or dispose of any property left on the Premises at the end of the Term.
17. *Binding on Successors.* This lease shall be binding on the parties' heirs, administrators, successors and assigns.
18. *Recording the Lease Agreement.* Landlord and Tenant agree that this lease Agreement may be recorded in the Real Property Records of the County Clerk of Montgomery, County.

LANDLORD:


Betty Rose, Owner

TENANT:

CITY OF MONTGOMERY, TEXAS

KIRK JONES, Mayor

ATTEST:

SUSAN HENSLEY, City Secretary

After Recording Return To:

City of Montgomery, Texas
Attn: Susan Hensley, City Secretary
P.O. Box 708
Montgomery, Texas 77356

Exhibit "A"

Being a tract of land in Montgomery Townsite 2, Tract 14 and Area B,

Commencing at the north-west corner of said tract, as a POINT OF BEGINNING;

Thence, South 55.0' along the eastern right-of-way of Liberty Street;

Thence, East 55.0 feet 00° 00' 00";

Thence, North 55.0 90° 00' 0" to the South right-of-way line of College Street;

Thence, West 55.0 feet along the south right-of-way line of College Street, to the POINT OF BEGINNING, also as described in the General Warranty Deed file marked 979-01-0261 of the Montgomery County deed records.

LEASE AGREEMENT BETWEEN
CITY OF MONTGOMERY, TEXAS
AND L.D. JACOBS, TRUSTEE

DATE: February 14, 2018

LANDLORD: L.D. Jacobs, Trustee, and his heirs, administrators, and successors

Landlord's Address:

P.O. Box 1370
Montgomery, Tx. 77316-9260

Tenant: CITY OF MONTGOMERY, TEXAS

Tenant's Address:

P.O. Box 708
Montgomery, Tx. 77356

Premises: Being two tracts of land situated in the John Corner Survey, Abstract No. 8, Montgomery County, Texas, and being more particularly described as Tract One, containing 0.069 acres of land, and Tract Two, containing 0.058 acres of land, and being more particularly described by metes and bounds on Exhibit "A" and Exhibit "B" attached hereto and incorporated herein.

Term (months): Five (5) years (60) months

Commencement Date: April 1, 2018

Termination Date: March 31, 2023

Early Termination: Notwithstanding anything herein to the contrary, this Agreement is automatically renewed from year to year after the Termination Date, while termination with mutual consent of the parties may happen at any time during the term of this lease. Tenant understands that landlord may wish to sell the Premises during the term of this lease or any extended term of this lease. If a contract to purchase is submitted to Landlord by a third party, Landlord shall give 45 days' notice to Tenant which shall have the Right of First Refusal as described below. If Tenant does not offer to match the purchase price, this Agreement to lease is terminated effective the 45th day after the written notice is received by Tenant.

First Right of Refusal by Tenant: In the event a genuine contract to purchase the Premises is offered to Landlord by a third party, Landlord will give Tenant (City of Montgomery) 45 days' written notice of such offer to purchase. Thereupon, within 45 days from the Tenant's receipt of such written notice by Landlord, Tenant shall have the first right of refusal to purchase the Premises at the same price and under the same terms offered in writing to Landlord by a third party.



Rent: Tenant shall annually pay to Landlord the amount of \$1.00 which shall be paid in the month of February of each year of the 20-year term or any extended term of the lease. Tenant shall remit payment without invoices from the Landlord. Tenant may pay the rent amount for any, or all, of the years of the term of this Agreement.

Permitted Use of Premises:

1. Tenant and its agents shall be permitted to host special public events on the Premises for event vendors and event parking at no additional cost to the Tenant.
2. Tenant shall be permitted to construct, install, maintain, utilize and operate a parking lot and stage gazebo on the Premises, along with related appurtenances, including but not limited to, overhead and/or underground lighting and electricity, fencing, benches, gazebos and other improvements necessary to promote public use for public events. Tenant may use of the Premises as an overflow parking area and events area for the City of Montgomery and the public.

g 3, Parking spaces to be 113' wide.

Clauses and Covenants

A. Tenant agrees to:

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Premises in its present condition "AS IS," the Premises being currently suitable for the Permitted Use.
3. Obey (a) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.
4. Obtain and pay for all utility services used by Tenant and not provided by Landlord.
5. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers.
6. Repair, replace and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.
7. Vacate the Premises on the last day of the Term.
8. Maintain a liability insurance policy covering the Premises in an amount similar to other property owned and or leased by Tenant and provide Landlord certificates of insurance or other proof of said insurance on request. The liability policy must be endorsed to name Landlord as additional insured.

g

9. Maintain the Premises in a neat and attractive condition, and reasonably mowed and maintained.

B. Tenant agrees not to:

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Allow a lien to be placed on the Premises.
5. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

C. Landlord agrees to:

1. Lease to Tenant the Premises subject to the Term and Termination Date provisions.
2. Obey all laws relating to Landlord's operation of the Premises.

D. Landlord agrees not to:

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.
2. Unreasonably withhold consent to a proposed assignment or sublease.

E. Landlord and Tenant agree to the following:

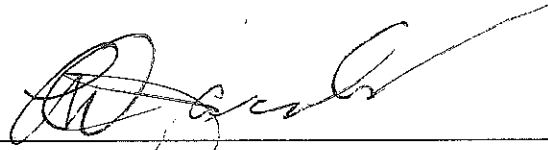
1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require in writing that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.
2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.
3. *Default by Landlord/Event.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice.
4. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages.



5. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent after being given thirty (30) day's written notice by Landlord; (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).
6. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to terminate this lease by written notice and sue for damages.
7. *Default/Waiver/Mitigation.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.
8. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant-at-will and must vacate the Premises on receipt of written notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend this Term.
9. *Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.
10. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.
11. *Venue.* Exclusive venue is in Montgomery County, Texas.
12. *Entire Agreement.* This lease constitutes the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the lease of the Premises by Landlord to Tenant that are not in this lease.
13. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.
14. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
15. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether received or not when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, person delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when received. Any address for notice may be changed by written notice delivered as provided herein.

16. *Abandoned Property.* Landlord may retain, destroy or dispose of any property left on the Premises at the end of the Term.
17. *Binding on Successors.* This lease shall be binding on the parties' heirs, administrators, successors and assigns.
18. *Recording the Lease Agreement.* Landlord and Tenant agree that this lease Agreement may be recorded in the Real Property Records of the County Clerk of Montgomery, County.

LANDLORD:



L.D. Jacobs, Trustee

TENANT:

CITY OF MONTGOMERY, TEXAS

KIRK JONES, Mayor

ATTEST:

SUSAN HENSLEY, City Secretary

After Recording Return To:

City of Montgomery, Texas
Attn: Susan Hensley, City Secretary
P.O. Box 708
Montgomery, Texas 77356

EXHIBIT "A"

TRACT ONE:

BEING a 0.069 acre tract of land situated in the City of Montgomery, Texas out of the John Corner Survey, Abstract Number 8, (said tract sometimes known as the East 1/2 of Lot 1, Block 7 of the Town of Montgomery), also being all of that certain tract of land described in deed to A. L. Johnson dated June 8, 1964 and recorded in Volume 568, Page 565 of the Deed Records of Montgomery County, Texas, said tract also being described as Third Tract in deed to Camille Bernann dated September 14, 1964 and recorded in Volume 585, Page 251 of said Deed Records, said 0.069 acre tract of land being more particularly described as follows:

BEGINNING at a 1-1/4 inch iron pipe found for the intersection of the southerly right-of-way line of College Street with the westerly right-of-way line of McCown Street;

THENCE with the westerly right-of-way line of McCown Street South 00° 00' 00" East a distance of 55.00 feet to a 1-1/4 inch iron pipe found for corner;

THENCE departing the westerly right-of-way line of McCown Street South 90° 00' 00" West a distance of 55.00 feet to a 5/8 inch iron rod set for corner;

THENCE North 00° 00' 00" West a distance of 55.00 feet to a 5/8 inch iron rod set in the southerly right-of-way line of College Street;

THENCE with the southerly right-of-way line of College Street North 90° 00' 00" East a distance of 55.00 feet to the POINT OF BEGINNING.

CONTAINING a computed area of 0.069 acre (3,025 square feet) of land within this description.



EXHIBIT "B"

TRACT TWO:

BEING a 0.058 acre tract of land situated in the City of Montgomery, Texas out of the John Corner Survey, Abstract Number 8, (sometimes known as Lot 2, Block 7 of the Town of Montgomery) also being a portion of that certain tract of land described in deed to Albert Giesinger recorded in Volume 569, Page 440 of the Deed Records of Montgomery County, Texas, also being described as Fourth Tract in deed to Camille Bernann dated September 14, 1964 and recorded in Volume 585, Page 251 of said Deed Records, said 0.058 acre tract of land being more particularly described as follows:

COMMENCING At a 1-1/4 inch iron pipe found for the intersection of the southerly right-of-way line of College Street with the westerly right-of-way line of McCown Street;

THENCE with the westerly right-of-way line of McCown Street South 00° 00' 00" East a distance of 55.00 feet to a 1-1/4 inch iron pipe found for the northeasterly corner and POINT OF BEGINNING of the herein described tract of land;

THENCE continuing with the westerly right-of-way line of McCown Street South 00° 00' 00" East a distance of 24.00 feet to a 5/8 inch iron rod set for corner;

THENCE departing the westerly right-of-way line of McCown Street South 90° 00' 00" West a distance of 104.56 feet to a 1/2 inch iron rod found in the easterly right-of-way line of F.M. Highway 149;

THENCE with the easterly right-of-way line of F.M. Highway 149 North 00° 00' 00" West a distance of 24.00 feet to a 5/8 inch iron rod set for corner;

THENCE departing the easterly right-of-way line of F.M. Highway 149 North 90° 00' 00" East a distance of 104.56 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 0.058 acre (2,509 square feet) of land within this description.

FILED FOR RECORD

98 OCT 21 PM 3:09

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

DEPUTY

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this Instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the official Public Records of Real Property of
Montgomery County, Texas.

OCT 21 1998



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

PROPOSAL
LAUREL PAVING
12876 Shadowbrook Dr. Willis, Texas 77378
PH. (936) 672 3297 Fax 936 890 1271

PROPOSAL SUBMITTED TO	E-MAIL	cell	PHONE	DATE
Mike Muckleroy	936-521-5294	936-597-6434	10/17/17	
STREET			JOB NAME	

mmuckleroy@ci.montgomery.tx.us	
CITY, STATE AND ZIP CODE	JOB LOCATION
Montgomery, Texas 77356	Paving Parking lot @ Jacobs Properties
ARCHITECT	DATE OF PLANS
We Propose: hereby to furnish materials and labor complete in accordance with specifications below, for the sum of:	
Price determined by option chosen	

Payment to be made as followed

On completion, Please furnish tax exempt certificate

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or Authorized By _____ This proposal may be withdraw by us if not accepted with 30 day.

Option. I. Brake and remove concrete approx. 1,660 sq.ft	\$ 2,500.00
Option: II. Pave parking lot 7,580 sq.ft	\$20,100.00
Total=	\$22,600.00

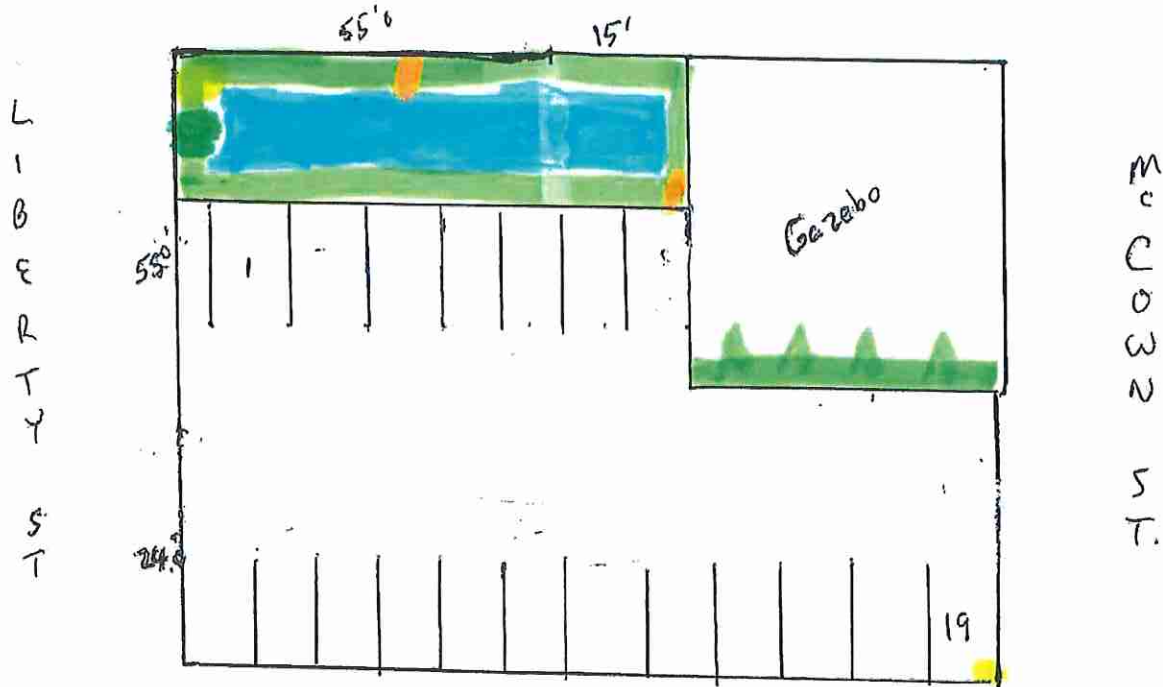
- 1. Brake and remove existing concrete and haul it of the site**
- 2. Remove grass and furnish crushed concrete base 6" thick compacted.**
- 3. Pave area with hot mix asphalt 2" thick compacted.**

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







Date of acceptance _____

Signature _____ Signature _____

COLLEGE ST.



Parking Layout

-  = bushes plantings
-  = tall bushes
-  = trees
-  = ornamental light
-  = plaque, commemorative area
-  = stamped concrete area

Development Cost

Paving	\$ 22,600
Streetscape/Plantings	<u>6,000</u>
	\$ 28,600

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Paving proposal of Laurel Paving, Layout of parking area w/ costs
Date Prepared: March 6,, 2018	

Subject

This is to accept the MEDC offer of \$28,600 to pave south of College Street, east of liberty Street (FM 149), west of McCown Street and north of Larry Jacobs real estate office for a downtown parking area.

Description

This is a proposal to pave, with asphalt, a parking area immediately north of Larry Jacobs real estate office that we create approximately 19 parking space and a cost of \$22,000 for the paving and up to \$6000 for street skipping and plantings.

Mr. Jacobs has agreed to a 5 year lease for one dollar per year.

Mrs. Rose has also agreed to a 5 year lease for one dollar per year. At its January meeting the MEDC Board voted unanimously to pay for the parking cost up to \$28,600.

Recommendation

Approve the expenditure of MEDC as proposed.

Approved By

City Administrator

Jack Yates

Date: March 6, 2018

PROPOSAL
LAUREL PAVING
12876 Shadowbrook Dr. Willis, Texas 77378
PH. (936) 672 3297 Fax 936 890 1271

PROPOSAL SUBMITTED TO	E-MAIL	cell	PHONE	DATE
Mike Muckleroy	936-521-5294	936-597-6434		10/17/17
STREET		JOB NAME		
mmuckleroy@ci.montgomery.tx.us				
CITY, STATE AND ZIP CODE		JOB LOCATION		
Montgomery, Texas 77356		Paving Parking lot @ Jacobs Properties		
ARCHITECT	DATE OF PLANS	JOB PHONE		

We Propose: hereby to furnish materials and labor complete in accordance with specifications below, for the sum of:

Price determined by option chosen

Payment to be made as followed

On completion, Please furnish tax exempt certificate

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or

Authorized By _____ This proposal may be withdraw by us if not accepted with 30 day.

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Option; II. Pave parking lot 7,580 sq.ft	\$20,100.00
Total=	\$22,600.00

- 1. Brake and remove existing concrete and haul it of the site**
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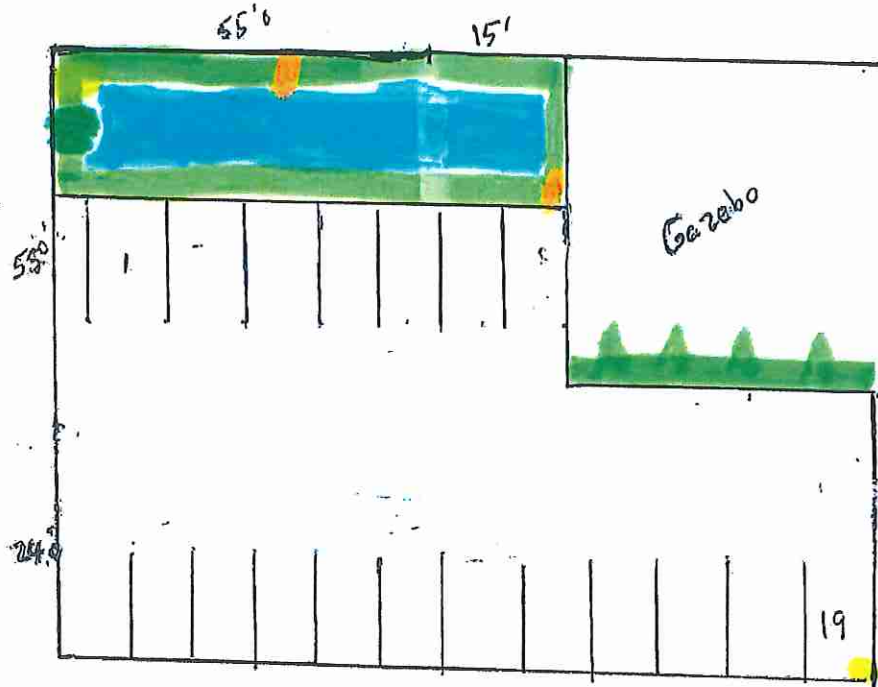
Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of acceptance _____

Signature _____ Signature _____







COLLEGE ST.

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Parking Layout

-  = bushes plantings
-  = tall bushes
-  = trees
-  = ornamental light
-  = plaque, commemorative area
-  = stamped concrete area

Development Cost

Paving	\$ 22,600
Streetscape/Plantings	6,000
	<hr/>
	\$ 28,600

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Memo from City Engineer, Letter of request from L Squared Engineering, Option one and Option Three plats
Date Prepared: March 8, 2018	

Subject

This is the revisiting of the CVS easement question issue of who pays for repairs of the parking surface if repairs are needed at a later time due to relocation of the utilities.

Description

In the city engineers memo is the clear definition of the choices which are:

1. to require the water and sewer lines be within the property and pavement replacement cost borne by CVS (which was your decision at your last meeting).
2. requiring the water and sewer be placed within the property and payment replacement borne by the city. At a possible cost of \$50-\$70,000 per repair—(a very high estimate done in my mind by the engineer- because this assumes the entire length and the entire width of the easement area to be torn up and repaved). Also, the right of another utility to use is a legal question that I have asked the City Attorney – his response was that the wording on the plat regarding the easement could be written so the easement could be for water and sewer only and the city could allow another utility permission to use that utility easement by also requiring the repair cost upon that utility wanting to use the utility easement-- so the possibility of re-requiring a water and sewer relocation is remote.
3. locating the water and sewer facilities within the right-of-way of the FM 2854 which exposes the city to relocation should future expansions of FM 2854 require one, or both, those lines to be relocated. At a possible cost of the hundred \$175,000-\$200,000 – (a very realistic estimate)

Opinion : Supposedly this is a make or break issue for the CVS store. The likelihood of a repair of the parking lot is fairly remote at all, especially since the city can require permission to other utilities to bear their own cost of repair. (the boring expense option could be quite a bit less than an open cut requiring expensive repairs). If a full repair was needed by the City that would probably equal one years' worth of sales tax from such a store—however the enticement of other stores around the CVS would greatly exceed the cost of a possible repair for possibly 20-30 years from now.

I prefer the Option 2. with the addition of the water and sewer exclusivity of the utility easement with other utility use by permission of the city.

Recommendation

Option One: Keep the language out of the Agreement entirely which means that CVS is required to place the utilities inside the property and if the other utilities are placed at the future it will be at CVS expense.

Option Two: locating the public water line and sewer line within a 26' utility easement interior to the tract with the cost of payment removal and replacement by the city.

Option Three: locating the water and sewer line in the 2854 right-of-way with relocation payment of either, or both of those lines by the city.

Approved By

City Administrator	Jack Yates	Date: March 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

March 8, 2018

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

Re: Proposed Shoppes at Montgomery Public Utility Extension
The Shoppes at Montgomery, Section 1
The City of Montgomery

Dear Mayor and Council:

As you are aware, at the February 27th meeting of the City Council, you approved an encroachment agreement with Montgomery SH-105 Associates subject to the removal of all paving references. The developer has requested that the proposed public water and sanitary sewer lines that were proposed to be located within a 26' wide public utility easement along the eastern boundary of the tract, be relocated into the adjacent TxDOT right-of-way ("ROW"). Enclosed are layouts showing the original proposed location and the proposed revision.

Locating the proposed public water and sanitary sewer facilities within a 26' utility easement interior to the tract would expose the developer to risk associated with the cost of pavement removal and replacement during potential utility repairs by the City. In the unlikely event that all proposed paving within the easement needs to be removed and replaced, we estimate the cost to the property owner would be between \$50,000-\$70,000.

Locating the proposed public water and sanitary sewer facilities within the FM 2854 ROW would expose the City to risk associated with the relocation of the proposed utilities should future expansions to FM 2854 require the relocation. We estimate the cost to the City to relocate the proposed water and sanitary sewer lines to be between \$175,000-\$200,000.

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

Sincerely,

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

Chris Roznovsky, PE
Engineer for the City

CVR/ab

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2018\MEMO to Council RE CVS Utility Easement.doc

Enc: Original Proposed Public Utility Layout
Revised Proposed Public Utility Layout

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

March 8, 2018

City of Montgomery
City Council
101 Old Plantersville Road
Montgomery, Texas 77356

Re: The Shoppes at Montgomery CVS Utility Extension

Mr. Yates,

Regarding the ongoing issue of the water and sewer utility extension, and the requested 26' utility easement (UE) on the CVS tract, we are requesting that the water and sewer utilities be located into the adjacent public right-of-way (ROW) along FM 2854. The developer will then provide a 5' wide utility easement that can be used for maintenance of these facilities. We feel that this tract has an abnormal hardship that requires the utilities to be placed within the ROW. The hardships and justifications for this request are as follows:

1. The City has required a 150' drainage easement along Stewart Creek, which approximately 80-100' encroaches onto the west side of the subject tract. The City Ordinance only requires 12' outside of the high bank; however, the City required a significantly larger easement due to possible future improvements. There is also currently a 26' UE along the frontage of the subject tract. The requirement for another 26' UE on the east side of the subject tract severely limits the developable area.
2. In conversations with City Staff, there does not appear to be a specific rule or regulation that would require the public utility extensions to be placed on private property within an easement.
3. There should be minimal risk to the City to have the facilities located within the ROW. The ROW of FM 2854 widens to approximately 200' at the Highway 105 and FM 2854 intersection. This appears to be adequate space for a 5-lane intersection and it would conflict with the proposed utility locations.
4. Upon the expansion of FM 2854, future pavement will likely be expanded east to align with the ROW of Lonestar Parkway to the north.

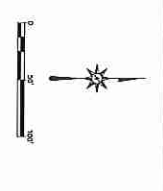
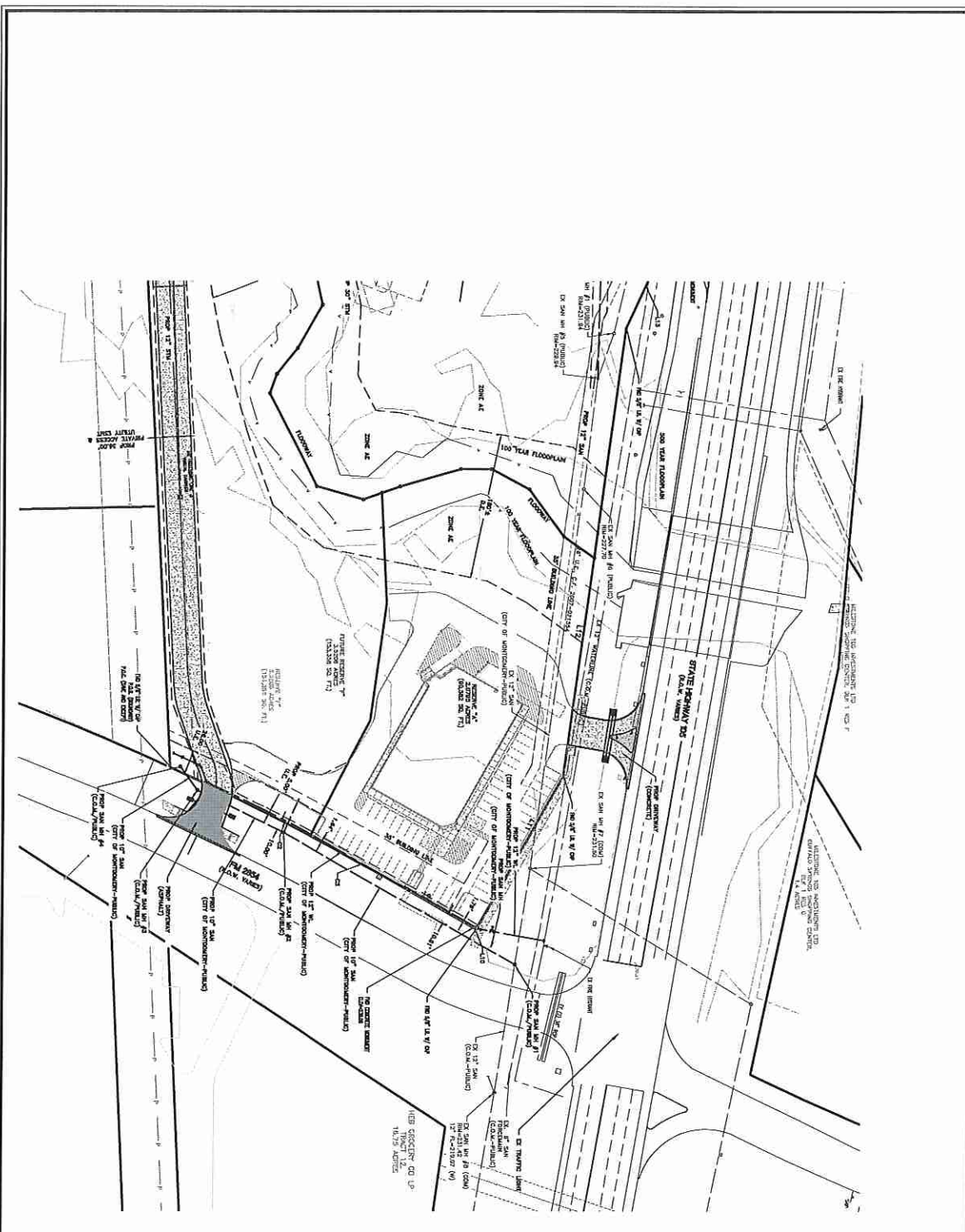
If you have any questions or require further information prior to the meeting, please do not hesitate to call or email (jwhite@l2engineering.com).

Thank you,



Jonathan White, PE
L Squared Engineering

Attachments: Exhibit A (Utility Location Exhibit), Exhibit B (Conceptual Future Intersection)



- LEGEND**
- EX 100
 - EX 200
 - EX 300
 - EX 400
 - EX 500
 - EX 600
 - EX 700
 - EX 800
 - EX 900
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 - EX 1100
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REMARKS:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.

2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

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NOTES:

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GENERAL NOTES:

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EXHIBIT A:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.

2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

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THE SHoppes at MONTGOMERY
PUBLIC INFRASTRUCTURE
RESERVE "A" SITE
EXHIBIT "A"

L SQUARED ENGINEERING
11000 W. MONTGOMERY BLVD.
SUITE 100
MONTGOMERY, AL 36117
PH: 205.833.1100
WWW.LSQUAREDENGINEERING.COM

EXHIBIT A

DATE: 11/11/11

SCALE: 1" = 40' (HORIZONTAL)

SCALE: 1" = 80' (VERTICAL)

PROJECT: MONTGOMERY BLVD. INFRASTRUCTURE

OWNER: MONTGOMERY COUNTY

DESIGNER: L SQUARED ENGINEERING

DATE: 11/11/11

APPROVED:

DATE: 11/11/11

SCALE: 1" = 40' (HORIZONTAL)

SCALE: 1" = 80' (VERTICAL)

PROJECT: MONTGOMERY BLVD. INFRASTRUCTURE

OWNER: MONTGOMERY COUNTY

DESIGNER: L SQUARED ENGINEERING

DATE: 11/11/11

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits:
Date Prepared: March 9, 2018	

Subject

This is a report regarding the reckless driving by high school students in the city.

Description

The Chief of Police, Mayor and I met with School Superintendent Dr. Beau Reus and discussed the issue. Dr. Rues was very receptive to removal parking privileges by those who received two or more tickets. The Chief and the Superintendent are going to be working out the details however what was discussed was: a second speeding citation would get one-month parking privileges taken away, a third citation would be parking privileges taking away for an entire semester. A reckless driving citation would result in a parking permit is being taken away for an entire semester. This would involve certain roads at certain times, an announcement and information distribution at the school – all of this to happen in the next two weeks. The Superintendent said he was agreeing to this in the interest of public and student safety. The program would be administered by the school.

Also discussed was the operation of the traffic light at 149 / 105 as a way of lessening congestion on 105- to make 105 as accessible as possible.

The brush along the southwest side of Old Plantersville Road and Womack Cemetery Road has been cleared to improve visibility. It was discussed by the Public Works Director, Police Lieut. Rosario and myself and it was the overall consensus not to place a stop sign on Old Plantersville Road and Womack Cemetery Road – because of the speedbump that is at that intersection already and the possible more serious accidents that might happen if drivers on Womack Cemetery Road came to rely upon the stopping of vehicles on Old Plantersville Road.

Montgomery City Council
AGENDA REPORT

Enforcement has increased over the last two weeks. Some days there are as few as eight vehicles traveling on Od Plantersville Road.

Also discussed was Emma's Way parking. The intent there is to put a parking restriction on the interior streets to Town Creek subdivision for the remainder of the school year – coming down at summer –with the Superintendent saying that next year the issue should mostly go away because of the splitting of the school population/creating more parking on-campus parking spaces. Somewhat related is the planned use of a drug-sniffing dog will once or twice per month be used to check vehicles on Emma's Way. It was suggested that perhaps the reason that someone might choose to park on Emma's Way instead of the school parking area is because of the regular dog use on school grounds.

Also, discussed was the use of football stadium parking, but nothing was worked out on this.

Recommendation

Comment as you think appropriate.

Approved By

City Administrator

Jack Yates

Date: March 9, 2018

Montgomery City Council
AGENDA REPORT

Meeting Date: March 13, 2018	Budgeted Amount:
Prepared By: Jack Yates City Administrator	Exhibits: Engineers memo
Date Prepared: March 6, 2018	

Subject

This is a report regarding Buffalo Springs Bridge.

Description

The bridge construction is according to schedule, even with the several days added to the contract days allowed --because of cold and wet weather. The engineers explain more.

Recommendation

Listen and make comments as you feel appropriate.

Approved By

City Administrator

Jack Yates

Date: March 6, 2018