

NOTICE OF REGULAR MEETING

August 13, 2019

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, August 13, 2019 at 6:00 p.m. at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas for the purpose of considering the following:

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO FLAGS

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 of the Regular Meeting held on July 23, 2019.
2. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904).
3. Consideration and possible action regarding authorizing Jones|Carter to prepare a Utility and Economic Feasibility Study for Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904).

CONSIDERATION AND POSSIBLE ACTION:

4. Receive presentation on the Annual Service and Assessment Plan for the City of Montgomery Public Improvement District No. 1.
5. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY ACCEPTING AND APPROVING AN ANNUAL UPDATE TO THE SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR CITY OF MONTGOMERY PUBLIC IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR PAYMENT OF THE ANNUAL INSTALLMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; AND PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

6. Consideration and possible action to call a Public Hearing regarding the City of Montgomery 2019-2020 Proposed Operating Budget to be held on September 10, 2019, at 6 p.m. at City Hall.
7. Consider and Accept the 2019 Effective and Rollback Rates.
8. Consider and discuss the Tax Rates needed to Fund the 2019-2020 Budget for Maintenance and Operations and Debt Service.
9. Consider and Vote on a Proposed Tax Rate for 2019.
10. If the Tax Rate needed to fund the budget exceeds the lower of the 2019 Effective Rate or Rollback Tax Rate Presented, Consider and Approve two (2) Public Hearing dates.
11. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE BY OF THE CITY OF MONTGOMERY, TEXAS PROHIBITING FISHING IN THE MEMORY PARK MUNICIPAL POND; PROVIDING A CRIMINAL PENALTY OF UP TO \$200.00 PER OFFENSE; DIRECTING THE POSTING OF "NO FISHING" SIGNS; PROVIDING A REPEALING CLAUSE AND SEVERANCE CLAUSE; REQUIRING COMPLIANCE WITH TEXAS OPEN MEETINGS ACT; AND PROVIDING THE EFFECTIVE DATE UPON ITS PUBLICATION.
12. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MONTGOMERY, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.
13. Report on Boards and Planning and Zoning Commission Appointments by City Administrator.
14. Discussion regarding a future election proposition for the May 2020 Election to abolish the Montgomery Economic Development Corporation and transfer its sales tax to the City general fund.
15. Consideration and possible action regarding a variance to the Code of Ordinances of the City of Montgomery, Section 64-31(6), requiring a surety bond with permit application for food truck vendors during the Texas Flag Festival on August 24, 2019.

EXECUTIVE SESSION:

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

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

a) Section 551.071 (consultation with attorney) Pending and Possible Litigation.

17. Reconvene into Open Session.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

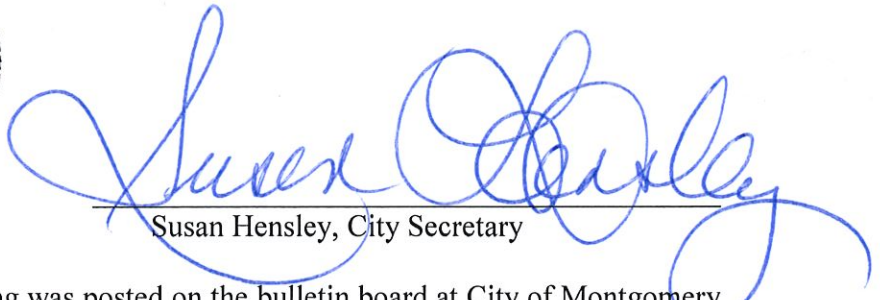
18. Consideration and possible action(s) if necessary, on matter(s) deliberated in Closed Executive Session.

COUNCIL INQUIRY:

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

ADJOURNMENT




Susan Hensley, City Secretary

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 9th day of August, 2019 at 3:30 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 REGULAR MEETING

July 23, 2019

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:03 p.m.

Present: Sara Countryman Mayor
John Champagne, Jr. City Council Place # 2
T.J. Wilkerson City Council Place # 3
Tom Cronin City Council Place # 5

Absent: Jon Bickford City Council Place # 1
Rebecca Huss City Council Place # 4

Also Present: Richard Tramm City Administrator
Susan Hensley City Secretary
Larry Foerster City Attorney
Chris Roznovsky City Engineer

INVOCATION

T.J. Wilkerson gave the Invocation.

VISITOR/CITIZENS FORUM:

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Mr. Mike Kupfarer advised he wanted to speak about the parking during festivals, especially during the Christmas Festival in Buffalo Springs. Mr. Kupfarer said this year during the Christmas Festival

there was a blockage right at Anna Springs and Buffalo Springs where traffic was completely stopped, and if they would have had to get an emergency vehicle in, they would not have been able to get in there. Mr. Kupfarer said he was wanting to get people to actually follow the signs, and his suggestion would be to place two barricades on the side of the road the sign is located on where people can actually see it and put one on each side of the neighborhood. Mr. Kupfarer said sometimes the parade can't even get through when they have cars parked on both sides of the street.

Mayor Countryman said she knew this was going to be coming up this evening and she did a little due diligence and found out that there was a float that dismantled at Bessie Price Owens and Berkley Drive, which is what caused the congestion. Mayor Countryman said she has made sure the parade committee knows to ensure their participants know they don't dismantle there because the congestion lasted about 45 minutes. Mr. Kupfarer said he has photos showing all the congestion with people trying to get out, and traffic was completely blocked. Mr. Kupfarer said as soon as the parade let out everyone tries to get out, which is what happened and caused the road to be blocked for 15 minutes. Mr. Kupfarer said this happens pretty much every Christmas when the floats come through and they are not able to get through, which to him is a very important thing.

Mr. Allen Madsen and Cody Richards stated they would wait for their Agenda Item if needed.

Mr. Floyd Montgomery advised he had opened the Montgomery Family Museum a few weeks ago and he is open on Friday, Saturday, and Sunday from 1:00 p.m. to 5:00 p.m. Mr. Montgomery said he has collected Montgomery items for over 35 years, including some from Scotland. Mr. Montgomery said some of the historical things he has include items from World War II, and one of the more interesting things he has is a letter written by James Montgomery dated 1791, where he was writing to a friend about the escape of a King of France from Paris. Mr. Montgomery said the name Stewart is the most Scottish name of all and is the name of Kings and Queens of Scotland. Mr. Montgomery talked about many of the items he has housed in the Museum. Mr. Montgomery invited everyone to come by the Museum.

CONSENT AGENDA:

1. Matters related to the approval of minutes of the Regular Meeting held on July 9, 2019.

2. Consideration and possible action regarding nomination to the Montgomery County 9-1-1 Board of Managers Appointment to serve a two-year term October 1, 2019 – September 30, 2021.
3. Consideration and possible action to affirm that the previously declared surplus patrol vehicle, 2013 Dodge Charger, Vin#1682, will remain City property, as requested by the Police Chief.

Tom Cronin moved to approve all three items under the Consent Agenda. T.J. Wilkerson seconded the motion.

Discussion: Mr. Tramm asked City Council to clarify, for the motion, who they are nominating for Agenda Item 2. Mr. Tramm advised Mr. Paul Virgadamo, who currently serves in that seat, is willing to remain there, so his assumption is they are just confirming what is in the documentation, but he wanted to confirm that was their choice for the record. City Council concurred and confirmed that Mr. Paul Virgadamo was their choice.

The motion carried unanimously. (3-0)

CONSIDERATION AND POSSIBLE ACTION:

4. Consideration and possible action on Department Reports.
 - A. Administrator's Report – Mr. Tramm presented his report to City Council advising this month serves as his first full month here on staff. Mr. Tramm said he has been spending time working and talking with staff and consultants and trying to concentrate on policies and projects that are ongoing and in varying stages of completion. Mr. Tramm said he wanted to mention the potential Budget Workshop dates on August 3, 6 and 10th. Mr. Tramm said between him and Ms. Hensley, they will send an email out to City Council either Thursday or Friday to confirm the dates. Mayor Countryman asked if they had a second date in mind. Mr. Tramm stated they had identified August 3, 6 and 10th. John Champagne asked if they had identified a specific date. Mr. Tramm said they had not, but he wanted to do that in the next few days.
 - ❖ Presentation - New City Web Site – Mr. Tramm reviewed the home page of the new City's web site, stating that there are several background photos that change each time you log onto the site. Mr. Tramm said they have several specific areas, such as, Pay My Bill and Event Calendar. Mayor Countryman asked to expand on

the Pay My Bill section, stating in the past they did not have any electronic way to pay their water bill. Mayor Countryman asked if that was for water bills or just for Court. Ms. Hensley advised it was for both, stating they have the Court citation payments and utility payments on this page, and it is included in each Department. Mayor Countryman said wonderful, the City is getting current. Mr. Tramm said as technology improves and as people are coming here, they have expectations of paying their bills online, which is becoming a more normal part of life. Tom Cronin asked if there was a charge to pay online. Ms. Hensley advised there was a service fee. Ms. Hensley advised they have News Releases, Job Opportunities, and Community Development and they have included these items in different places in the site, so they are not searching for them. Ms. Hensley advised they now have Open Records Requests on the web site, which has also been placed in numerous locations. Ms. Hensley advised Police Records requests are now handled by the Police Department and all others are filed in her office.

Mayor Countryman stated you can do a keyword search in the search bar and it will search the entire web site and does not silo you in. Mayor Countryman stated the photos on the web site were from the Photo Contest where they received hundreds of photos, and these are photos from residents, which they will be changing them out. Mayor Countryman said the previous City web site was tired and thanked the City Secretary stating they have worked a long time on this project, and they are proud of the site.

Ms. Hensley said there were two sections of the site she wanted to mention, one being the City Parks Map where you can click on each of the Parks and it will show the amenities. Ms. Hensley said they also have the City Projects Map, so when projects are approved they will be added to this map and it will show the progress of the project with photos and a timeline through to completion, which the public will be able to click on to see the progress. Mr. Dave McCorquodale spoke about the GIS Map, which they have also integrated into the web site from the Community Development page where there is a link. Mr. McCorquodale said on the public side of the GIS you don't see the water and sewer information, which is only on the staff side. Ms. Hensley advised that each City department will maintain

their information, so the information will remain current and up to date. Ms. Hensley said one of the most important goals was to keep the public informed and advised they now have the ability to subscribe to the site to notifications in several locations, which will allow the public to select when to be notified regarding meetings, job opportunities, etc.

- B. Public Works Report – Mr. Mike Muckleroy, Director of Public Works, presented his report to City Council. Mr. Muckleroy said they fueled the generators at the water plants and the sewer sites to get prepared for hurricane season. Mr. Muckleroy said they met with a contractor at water plant 2 for repairs, completed eight work orders for leaks and three for water taps. Mr. Muckleroy said on the wastewater side they raised three manholes on Harley Drive and located five more from the manhole inspection report, which Gulf Utility has finalized and is being reviewed right now. Mr. Muckleroy said they have completed two work orders for sewer taps and one for sewer stoppage. Mr. Muckleroy said on the streets and drainage side they have repaired street signs at Liberty and College, extended the culvert at lift station 10, and repaired the ditch at Bubble King. Mr. Muckleroy said they also repaired potholes on West Way and CV Stewart Drive and Precinct 1 repaved three of the streets in town and did a really nice job.

Mr. Muckleroy said they tested the City generator and repairs were completed, replaced photocell for streetlights on McCown Street, and created a map of the electrical outlets at the Community Center for festivals so they can hand out to vendors who will know how to utilize the electricity. Mr. Muckleroy said they completed 26 work orders for general City Hall maintenance issues. Mr. Muckleroy said on parks and recreation, they completed 27 work orders for maintenance park issues and set up and assisted with the City Water Party at the Community Center. Mr. Muckleroy said they repaired the water pump at Memory Park, repaired the wooden footbridge at Cedar Brake Park, and a section of the sidewalk at the playground entrance. Mr. Muckleroy said they replaced four sections of the two-wire system on the irrigation at Memory Park. Mr. Muckleroy said the Fernland docents reported 573 visitors and they provided 64 tours for the month.

Mr. Muckleroy said in the general section, they completed 23 work orders for maintenance general issues and completed a tour with the City Administrator showing him the Public Works area and staff. Mr. Muckleroy said he attended a budget meeting with the City Administrator and a meeting at Memory Park regarding the bulkheading project.

John Champagne asked whether the City was hurricane ready and if the generators are all repaired and ready to go. Mr. Muckleroy said that was correct. John Champagne asked if Mr. Muckleroy was still the main or primary contact for Fernland in terms of repairs, maintenance, and docents. Mr. Muckleroy said he is the main contact, stating before, Mr. Yates was the contact for the docents. John Champagne asked if there was any conversation about starting to charge or maintain fees for photography because they have talked about this several times.

John Champagne said he is looking at 573 visitors and asked if there has been any conversation on how they might generate a \$1 apiece for these visitors. Mr. Muckleroy said they have had internal discussions about the matter, and it has been brought up before by John Champagne in the past. Mr. Muckleroy said he had discussed the matter with Mr. Yates in the past and said himself he was not a fan of it and did not see a good way to police it. Mr. Muckleroy said he did not want his guys to ever have to deal with collecting money from the donation boxes. Mr. Muckleroy said it is a possibility to do that, he just does not see it working. Mayor Countryman asked where the collected photography money goes and whether it goes to the Park or does it come to the City. Mr. Muckleroy said he honestly did not know the answer to that question. Mr. Tramm said it comes to the City through the permitting department and goes into the general fund. Mr. Muckleroy said the donations go to Fernland Park. John Champagne asked if it was a 501(c)(3). Mr. Muckleroy said that was correct.

- C. Police Department Report – Police Chief Anthony Solomon presented his report to City Council. Chief Solomon said they are looking at the numbers and they have had 15 accidents in the last two months between the last reporting period. Chief Solomon said when they look back to the beginning of the year there are almost 38 accidents, which is a lot of accidents. Chief Solomon said they have put together a new traffic

policy to try and combat some of these accidents. Chief Solomon said a lot of it has to do with police visibility. Chief Solomon said the speed trailer has not been run for a while, so they finally got it back up and monitoring different activity in different neighborhoods because it is a known fact that if people see police cars they tend to slow down. Chief Solomon said they are also looking at the number of DWI's because they are up to about 6 DWI's for the last two months, one being a vehicle that hit our patrol vehicle. Chief Solomon said between 6 p.m. and midnight, statistics show about 55%-60% of the people on the street has had something to drink, so they are starting to look at those areas.

Chief Solomon said they had the Police Department audited and some of the things they have started working on already are the policies and they are putting together a lot of new policies. Chief Solomon said the officers are reading the policies and discussing them with their supervisors. Chief Solomon said their first meeting with the entire department will be August 1 and they will get everyone together to go over the information and discuss their expectations and where they want to go and what they want to make of this Police Department.

Chief Solomon said the evidence room is a major part of the Audit. Chief Solomon said they have brought in two people to give them a bid since there was money in the budget to extend the evidence room. Chief Solomon said they have also picked up lockers for the evidence room so when they drop off evidence, nobody has any way of going back in there and getting the evidence out. Chief Solomon said they had three keys out for the evidence room, which was unacceptable, you only need one key. Chief Solomon said the other keys need to be locked up somewhere, so the extra keys have been collected and they will be locked away.

Chief Solomon said they have spoken with the Fire Department and the School District because one of our officers will be putting on an active shooter program for City Hall, including City Council. Chief Solomon said he was not extremely happy with Emergency Management here and where that it is going, we need to get a better direction on that. Chief Solomon said he has looked up what the County has and said the City can draw from that, but we need to make sure we have something that works

for the citizens here in Montgomery. Chief Solomon said he has seen these things when they happen, where everyone says they will help you out, but by that time they are trying to help their own people out and we need to make sure that we will help our own people out.

Mayor Countryman said she was glad the Chief brought up the Audit because she had gone to TECLOSE, the District Attorney's Office, and the Texas Rangers and finally she had to talk with a different agency to get some help. Mayor Countryman said it sounds like they are moving forward on some things that need to be changed from what the Audit suggested. Chief Solomon said there were a lot of things that City Council will have to make some decisions on at budget time as well, but the things they can work on that need to be changed, they are making those changes now. Chief Solomon said the changes won't happen overnight, but they will stay on it until they get it done.

Tom Cronin asked if there were any hot spots regarding the accidents. Chief Solomon said the area of SH 105 and FM 149, between that point and back toward Kroger and the other part is FM 149 by Liberty Street. Chief Solomon said they have TxDOT engineers working on doing something with that curve to keep people from going into the ditches. Chief Solomon said he spoke to TxDOT two days ago because he was out there again today, and he does not think people know just how steep that curve is. Chief Solomon said he was behind a man today that as he made that curve, he tried to correct it and almost went off the road. Chief Solomon said he keeps calling TxDOT because every time he calls they need to put some sand down and the Department is looking at other spots just to see what it is they can do better or if they can make some corrections to improve the traffic and everything else.

Mayor Countryman asked if the six DWI's include the County or is this just in the City. Chief Solomon said they were just the City's DWI's.

- D. Court Department Report – Mrs. Kimberly Duckett, Court Administrator, presented her report to City Council. Mrs. Duckett advised the number for citations collected in June was \$233, the revenue was \$30,546.14. Mrs. Duckett stated the Warrant Officer collected \$3,923 and cleared 47 warrants, which includes people coming in and paying,

making appearances at the jail, and also them working on a whole new purge system that will include pulling anyone off the shelves that have been deceased or people that received a citation with insufficient evidence and should not have been prosecuted and gone into a warrant. Mrs. Duckett said they have been working diligently starting at “A” and working to pull any old files they can. Mrs. Duckett said the warrant numbers are very good along with the total revenue collections as well. Mayor Countryman asked if Mrs. Duckett thought she was about halfway through the warrants. Mrs. Duckett said they are only on “B.” Mrs. Duckett said the Warrant Officer goes file by file, checking the system to make sure the name and related information are all correct. Mrs. Duckett said if the person comes back with no information, that means they were stopped for no drivers license and they did not have enough information to process a warrant. John Champagne asked if the Warrant Officer’s focus is to continually resolve the warrant backlog. Mrs. Duckett said that was definitely what he was doing.

- E. Utility/Development Report – Mr. Tramm advised one of the items that he wanted to draw some attention to was discussed last month regarding the number of 120+ days that accounts are in arrears that go back to 2007. Mr. Tramm said he was working with Mr. Yates and the financial officer and Auditor to properly address what City Council has already given direction on. Mr. Tramm said between now and the end of this fiscal year or at least through the Audit process, they will have that matter properly addressed. Mr. Tramm said he just wanted City Council to know that this was being worked on. Mr. Tramm said for the other accounts that are in arrears 60-90 days, he will be working with the utility office to get that information. Mr. Tramm said he wants to research the City’s policy on water deposits to make sure they are holding a proper amount. Mr. Tramm said there are some situations where people have fallen behind and they are working through a process, they are technically 60-90 days behind, they are still in the process of bringing their account up to date, and as long as they follow that through, they will be brought into compliance in a matter of time. Mr. Tramm said they understand that people are human and there are times when they might not comply. Mr. Tramm said this month they upgraded the telephone system and now it is much easier to direct calls from station to station. Mr. Tramm said the Utility Office will receive the most calls because people will call here for that office or they are not sure who they need to talk to, and it will default to them.

John Champagne asked if the phone system was changed a year or two ago. Ms. Hensley said they have been trying to get the phone system updated and now they have finally gotten it finalized and completed. Mr. Tramm said the new phones have several features that were presented during a staff meeting that will take a little bit to get used to. Mr. Tramm said the speakers are much clearer, stating they had a conference call earlier and they did not get the background noise they had previously heard. Mr. Tramm said there is a feature when you miss a phone call, it will record the message and generate a text to be sent via email in addition to going to voice mail. Mr. Tramm said he had missed a telephone call from Council Member Champagne. Mr. Tramm intended on returning his call, but it slipped his mind, then on his way home, he was able to look up the email to return the call. Mr. Tramm said the phone system also provides the ability to record conversations onto a USB drive when the need arises.

Tom Cronin asked about the water accounts and whether the City has identified people that have an economic need that struggles to pay their water bill every month. Tom Cronin said the reason he is asking is because he was wanting to do something like Entergy does where you can overpay your bill and the funds can be put into some type of escrow account and if they identify someone who truly has an economic need and struggles every month to pay their water bill, maybe the citizens can help by overpaying their bill and move funds over to them if it is possible to identify a true need. Mr. Tramm said it is quite possible to at least generally identify to some degree, and when he meets with the utility clerk, he can discuss that information with her. Mr. Tramm said he did know from his background, a lot of times those are the same people and accounts that tend to pay their bill later because they are living paycheck to paycheck, then they end up paying more because they get a late fee. Mr. Tramm said you can usually identify those people because they might be paying a late fee every month, but they have never been disconnected and they are good, hardworking people trying to pay their bill. Mr. Tramm said someone like that might be very easy to identify because the utility office has contact with these people when they come in to pay their bill. Mr. Tramm said he felt the utility clerk probably has a good idea of who some of those people might be. Mr. Tramm said he will ask that question if it is something that might be worked out and he will get back to City Council with the information.

Mr. Tramm commented on the bottom line of the Buffalo Springs Sewer Plant over a three-month period had a total of 9,000 gallons used. Mr. Tramm said there is a recycling system there at the facility and water that is processed during treatment at the plant uses the effluent from the plant to be able to cycle it through. Mr. Tramm said in order to process as the State requires, you need to have a water supply to pick up the gas and bring it into the treatment. Mr. Tramm said the water they see being used is for the personnel out there. Mr. Muckleroy said last year at this time it was 165,000 and they have brought it down significantly. Mr. Muckleroy said they are still repairing the two-wire system, stating they got four sections done last month. Mr. Muckleroy said they have brought down the raw usage quite a bit.

- F. Water Report Mr. Mike Williams, with Gulf Utility Service, Inc., presented his report to City Council. Mr. Williams advised they had six district alerts last month, with most of them being weather and electricity-related issues. Mr. Williams mentioned two alerts, one being on June 2, 2019, with a high wet well at Lift Station 1. Mr. Williams said they were able to pull the pumps and they found some rocks and debris inside, so they cleaned out the rocks and debris and the pump was reset. Mr. Williams said the second alert on June 10, 2019, was because they had a power outage when someone hit a power line on FM 1097 which took out Water Plant 3, Lift Stations 2, 7, 8, 9, 10 and 13. Mr. Williams said they were able to manage to continue service and helped them to identify an issue where the generator did not supply power to a certain part of the plant and they were able to get that fixed as well.

Mr. Williams reported the daily effluent trend flow for the month May-June was 4,382,000 gallons, with the daily peak flow occurring on June 3, 2019, at 321,000 gallons and the average daily flow was 141,400 gallons. Mr. Williams said all the samples taken during the month of June complied and they reported a total of 4.35 inches of rain.

Mr. Williams said the total water pumpage for the month of June was 12,002,000 gallons, flushing was a total of 332,000 gallons and they sold a total of 10,311,000 gallons. Mr. Williams said that brings the City to an 89% accountability, which is much lower than they are used to seeing. Mr. Williams said they have searched for leaks and they are trying to identify all the issues. Mr. Williams said they have also

had a lot of water theft which they are trying to crack down on. Mr. Williams said they are trying to track down where the water is going, and it is a bit of an anomaly because they usually have 95-96% accountability.

Mr. Williams said the water sold versus the water treated for this month out of everything sold, they had a 42% return to the wastewater treatment plant for retreatment. Mayor Countryman asked if they were still seeing quite a bit of water theft. Mr. Williams said they are still receiving reports of theft, which is just the ones they can catch, so there is probably more that are not caught.

John Champagne asked Richard Tramm what a typical percentage is for water produced versus water billed from his experience. Mr. Tramm said it varies a lot based on the size of the utility system as well as the age and maintenance of the system. Mr. Tramm said he has seen different utilities ranging from about one to two percent loss to 30 percent loss. Mr. Tramm said with one or two percent loss unless you have a small system, it is not usually realistic, but then 30 percent is just ludicrous because you are not properly maintaining the system. Mr. Tramm said on a system of this type, he would expect something between five to eight percent on a normal basis. Mr. Tramm said since the City has electronic meters and is moving forward in the future with the ultrasonic meters, you may see the percentage over time come down. Mr. Tramm said since the ultrasonic meters are more sensitive and will pick up a continuous or low flow, such as a soaker hose or a small water leak that might not be picked up by a traditional meter but can be picked up by an ultrasonic meter.

T.J. Wilkerson asked about the daily inspection of water and said he knows on FM 1097 and all the people on the north side, their water has had some issues and it has been white for the last few days. T.J. Wilkerson said they have been running the water, but the white color still has not cleared up. Mr. Williams said Friday night they had an issue at Water Plant 3, the probes had failed at the plant so there was nothing there to tell the Well to turn on and then when it got to the low-level alarm float, that float failed as well. Mr. Williams said it finally hit an alarm that there was an issue with the low-level lock and by that time all the pumps shut off as a safety measure to prevent air into the pump. Mr. Williams said they got out there and started manually feeding water

into the tank and replaced the floats, then they started flushing the lines. Mr. Williams said the white cloudiness they are seeing in the water is air that is trapped in the line, so if they were to pour that water into a glass, it would slowly disappear. Mr. Williams said normally they would not have gone so far as losing pressure, but Water Plant 2 was offline for a tank repair because they had some holes repaired in the storage tank that was leaking. T.J. Wilkerson asked if they need to keep running the water to get the air out of the line. Mr. Williams said yes, the air should work its way out of the line, but if they have any kind of discoloration in the water they should let Public Works know and they will do their best to get the rest of the air out of the line. Mr. Williams said air is the hardest thing to get out because it will linger in the line, but there is nothing harmful in the water.

Tom Cronin asked how the grease trap business is running. Mr. Williams said the grease trap business is flowing. Tom Cronin asked if it was organized and whether he is happy with how it is going. Mr. Williams said he was very pleased with the results this month compared to the first month when they went out and had many failures. Mr. Williams said the second month they went out and only had two failures. Mr. Williams said the word is getting out on what they are looking for and most everyone took the notice and took care of their issues. Mayor Countryman asked if they were checking 100% of the City. Mr. Williams said that was correct.

- G. Engineer's Report - Mr. Roznovsky presented his report to City Council. Mr. Roznovsky advised regarding the Baja Road Project, they are still working with the bonding company to get a new agreement for the new contractor to come in, and once that is signed hopefully within the next week, they will have a Notice to Proceed and a preconstruction meeting with the new contractor to get the project going. Mr. Roznovsky said regarding the MLK-Phase II project, the survey work has been completed in the field to get it out of the way for the lead time to hit the schedule. Mr. Roznovsky said on both of these projects, especially once they get the agreement signed for Phase I, they will work with T.J. Wilkerson and set up a Town Hall Meeting for the Baja residents to keep them advised of what is to come and the timeline between the Phase I and Phase II projects and then as they get further along, the GLO projects.

Mr. Roznovsky advised Atkins Creek will be discussed later, stating they had received bids with some good prices. Mr. Roznovsky said SH-105 Waterline Replacement Project was submitted to the Texas Water Development Board (TWDB) for final review and approval. Mr. Roznovsky said regarding the Lift Station 1 Replacement Project, they are still working with the TWDB regarding their comments, so they are working through the issues. Mr. Roznovsky said the Phase II 18-Inch line deposit was received and they held the preconstruction meeting and issued the Notice to Proceed on July 16th. Mr. Roznovsky said the City received notice yesterday that they received the contract from the State for the \$2.3 million-dollar grant that includes a handful of projects, mostly centered around Baja and MLK area, but also for an additional generator at Water Plant 3.

Mr. Roznovsky said regarding development, they just spoke to Wendy's and they have not submitted plans since November of last year, but they talked to them this week and they have started back up, so they expect to submit revised plans within the next few weeks. Mr. Roznovsky said plan approval was issued for the Samdana donut shop, and they returned comments earlier this week for The Montgomery Shoppes Retail Center. Mr. Roznovsky said Christian Brothers will probably hit the brakes a little bit until they close on the property.

Mr. Roznovsky said the one-year warranty inspection is coming up for Villas of Mia Lago Section 2 in mid-August. Mr. Roznovsky said the Louisa Lane Development is proceeding with the land swap that they had discussed at the end of last year, so they have submitted the description of the properties which are being reviewed by staff to move forward with a subsequent agreement.

Mr. Roznovsky said with the recent Legislation, one of the Bills they are looking at and working with City Staff is House Bill 3167 regarding plan and plat review process that cities have to follow and make sure the City is in compliance and does not need to change anything to meet the rules. Mr. Roznovsky said it mainly refers to timing, which the City has not had an issue with timing. Mr. Roznovsky said they have 30 days to submit the first review and 15 days thereafter, and the City has been within that time. Mr. Roznovsky said the main one they are looking at is the differentiating of

signing authority approvals and working through who needs to sign, and it refers that any comments made must be specifically tied to a rule. John Champagne said he glanced at the information and part of it states they are not allowed to re-review the plat. Mr. Roznovsky said you can, and said the whole thing is it is all about the timing. Mr. Roznovsky said if they get comments for approval or disapproval within the timeline, one of the issues that can happen is the timeline when it comes to meetings. Mr. Roznovsky said one of their questions is if the entity does not meet in that timeline of 15 days, for example, a plat going to the Planning and Zoning Commission, how would that work if they meet monthly and would it would require a special meeting. Mr. Roznovsky said those are the type of things they are working on and trying to figure out the details with staff and the City Attorney. John Champagne said at first blush he likes this and asked Mr. Roznovsky if he feels the City has been in compliance with this new law. Mr. Roznovsky said he did not think the timing would be an issue, the part that is different is currently the civil site plans for the development get signed by the City Engineer and it states that it has to be signed by the presiding officer and secretary, or a majority of the elected officials. John Champagne said now the City will be on the clock. Mr. Roznovsky said that was correct. John Champagne said he liked it. Mr. Roznovsky said in the City of Houston they might sit on things for months and you can't get anything from them, in this case, if there is no correspondence and reply, it is assumed approved. John Champagne said with developers you never get it fast enough, which he gets.

Mr. Roznovsky said they have discussed a couple of times the GST repairs at Water Plant 2, so those have been completed and the vacuum tests are being pulled so that can go back online in the next few days.

Mayor Countryman asked about the bottleneck with the Exxon Station and if it was still the trash dumpster. Mr. Roznovsky said that was his understanding and said there has been a recent conversation earlier today on the matter in order to get a turn lane at Exxon on the southbound side. Mr. Roznovsky said the developer was on board with going in the right of way and he was going to do a complete redevelopment of the corner and lower his site so it was doable, and then donate nine or 10 feet of right-of-way so the turn lane could be created. Mr. Roznovsky said the biggest issue that he

ran into was that nine or 10 feet is where he puts his dumpster and he has nowhere else to place the dumpster. Mayor Countryman said he does have area on the west side of the property and they have talked about maybe them and Shipley's Donuts going in together and Mr. Yates offering incentives, but she did not know if Mr. Yates ever presented them to Exxon, and that is something they should look at picking up the ball and running with. Mr. Tramm said he would check with Mr. Yates and see where they are at. Mr. Tramm said he thought on that property there was also a potential grease trap issue. Mayor Countryman said she had not heard that she just heard the owner did not want to give up the parking spot and to the west side of the building there is not any parking. Mayor Countryman said there is concrete from the street to less than the middle of his parking lot next to Shipley's. Mayor Countryman said she would be glad to get with Mr. Tramm to review the information.

Mr. Roznovsky said they were also working on the FM 149 headed northbound turn lane. Mr. Roznovsky said TxDOT sent their comments back to the revised description language that they wanted in the legal description of the property, changing "feet" to "foot" and commas. John Champagne said his thought is since the City will gain so much by the potential of having this lane, why shouldn't we do everything we can to position the dumpster on the west side, if it means the City getting involved and putting in a concrete pad for the dumpster, then let's get going. Mayor Countryman said they even talked about the incentive of giving them free trash for a year.

- H. Financial Report – Mr. Tramm presented the report to City Council. Mr. Tramm said there is only a summary report this month since the bookkeeper is working on the budget issues, so he will get the full report to City Council as soon as possible. Mr. Tramm said he would be happy to answer any questions or meet with City Council to go over the information.

John Champagne moved to accept the Departmental Reports as presented. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

5. Consideration and possible action to Accept Excess Collections for 2018 Debt Service and Certification for Debt Service Collection Rate for 2019-2020.

Mr. Tramm advised they had received correspondence from the County Tax Assessor/Collector that the excess tax collection rate for 2018 was zero dollars, so they collected 100% of the amount they set out for and the anticipated collection rate for 2019 is 100%, so it is State Law for cities to be notified of the certification so the City can accept the report.

John Champagne moved to accept the Excess Collections for 2018 Debt Service and Certification for Debt Service Collection Rate for 2019-2020. T.J. Wilkerson seconded the motion, the motion carried unanimously. (3-0)

6. Consideration and possible action regarding a sign height variance of two feet to be located at 13944 Liberty Street as submitted by Madsen/Richards Development.

Mr. Allen Madsen and Cody Richards, owners of Madsen/Richards Development were present for the discussion. Mr. Madsen advised both he and Cody Richards own the property 13944 Liberty Street, which is the automotive shop and Smart Canine project. Mr. Madsen said they ran into a situation for building a sign which they had always planned to build in their original submittals. Mr. Madsen said they have two sides of FM 149 which they can either go to the right side, which they had submitted for a pole sign and had it approved by the City, however, as the City went through it, after the City gave approval and they ordered the sign, the City advised him he had to skirt the sign. Mr. Madsen said on the right side of their building it is a designated washout and goes into Stewart Creek, so if they put in a box, they will basically be making a water dam, so he asked for a variance for two feet height to go to the other side for the detention pond where there is a fence, so he needs the two feet so they can get the sign above the fence and visible. Mr. Madsen said since there is no washout he can put on skirting, which is why he asked for the variance. Mr. Tramm said Mr. Madsen had come into City Hall and spoke to him and Mr. McCorquodale about the process. Mr. Tramm said because of the location there, the fence would obstruct the sign, so he is just trying to raise it above the fence, so it is visible on FM 149 on the north and south side. Mr. Tramm said the sign ordinance requires a height variance to come back to City Council and said he did not have the authority to give the variance. John Champagne said Mr. Tramm did have the authority to give his opinion as well as Mr. McCorquodale. Mr. Tramm said he thought this variance was worthy of being granted in that area because it will help the business and it won't detract from the area,

in his opinion. Mr. Tramm said there is an area requirement that the sign will meet even with the additional height, and it will meet the monument requirements by being boxed in. Mr. Tramm said his recommendation would be to approve the variance. Tom Cronin asked if the property was located right by the bus barn. Mr. Madsen said yes, which is the other thing, they do not trim their trees, so they have done a lot of maintenance to keep the vegetation down. Mr. Madsen said if they put the sign on the other side, even if they got the height variance, they will have a problem because they do not take care of the trees. Mr. Madsen said they are trying to help the patrons who are running a good business and make sure everything is going well. John Champagne asked how long they have been at that location. Mr. Madsen said it has been over two years now since their business built in and they have leased it for a year. Mr. Richards said October 2017 they purchased the land. Mr. Madsen said it has been a task, but a good task and is worth it. Mr. McCorquodale said he was good with the variance and said the unique thing about his site is that most commercial property doesn't have a seven-foot fence that goes up to the front line all the way out to the street.

After discussion, John Champagne moved to grant a sign height variance of two feet for 13944 Liberty Street as submitted by Madsen/Richards Development. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

7. Consideration and possible action regarding acceptance and award of bid for FEMA - Atkins Creek Water, Sanitary Sewer and Storm Sewer Repairs Project.

Mr. Roznovsky stated they were making the recommendation for an award to Solid Bridge for the base bid and alternate bid in the amount of \$290,840.40. Mr. Roznovsky said they have worked with Solid Bridge before and would recommend them.

Tom Cronin asked if they had issues in trying to get capable contractors. Mr. Roznovsky said the history on this project is it was originally bid in May 2019 and received no bids, then they rebid in June 2019, with one bid by a contractor, Solid Bridge Construction, and his price was in the amount of \$488,000. Mr. Roznovsky said they went back and looked at the scope of how they could adjust the project and that is what they came up with, on the bid tab that shows the two lower bids, they were bid in the \$290,000's and modified scope, and then the two higher bids at around \$500,000 on the original scope, so they rebid with both options to see if

the prices came in different. Mr. Roznovsky said the estimate on this bid was \$263,000, so \$290,000 is a little bit high. Mr. Roznovsky said the City's share of this project is 10% because this is a FEMA project, so the City is looking at a \$3,000 difference for the City.

T.J. Wilkerson moved to approve the City Engineer's recommendation of Solid Bridge Construction, LLC to be awarded the contract for this item. John Champagne seconded the motion.

Discussion: T.J. Wilkerson asked to confirm that Mr. Roznovsky has worked with this company before. Mr. Roznovsky said they currently have another project working with them on the north side of Houston. T.J. Wilkerson asked if there was anything in Montgomery County. Mr. Roznovsky said they are not doing work in Montgomery. Tom Cronin asked to confirm that they did not have any issues with the company. Mayor Countryman asked if they had solid crews that will show up. Mr. Roznovsky said they were a little bit delayed due to weather when they had a wet period during the beginning of the year, but since then, they have gotten back on track.

The motion carried unanimously. (3-0)

T.J. Wilkerson asked if there would be an inspector at the site. Mr. Roznovsky said they would have an inspector on-site.

8. Consideration and possible action regarding installation of two or three speed humps and corresponding signage on Bessie Price Owen Drive.

Mr. Muckleroy advised there were a couple of options with this item, stating he had been asked by John Champagne to look at the placement of speed humps because they have people driving too fast on that road. Mr. Muckleroy said he went and looked at the road and said they could do two or three speed humps, and said he thought they could get away with only two. Mr. Muckleroy said he spoke to the Police Chief regarding this item and he would like the opportunity to maybe do some work on his end and put out the speed trailer and do some enforcement. Mr. Muckleroy said it was his recommendation to allow the Police Chief to do some work on the matter, stating the Chief was not a fan of speed humps, and that nobody is a

fan of them. Mr. Muckleroy said if they don't succeed, then they could revisit the matter. Tom Cronin asked the Police Chief how much time he needed to work on this matter. Chief Solomon said he would ask for 90 days to work on the matter. John Champagne asked what the metric was that they would use to measure the effectiveness. Chief Solomon said right now they need to know exactly what is going on. Chief Solomon said normally when you start doing these things, you will get a reaction from the people in the neighborhood that you are warning about speeding. Chief Solomon said they have the speed trailer they will be putting out along with officers being out in those areas to see if they can get the traffic to slow down. Chief Solomon said they are going to need the time of day when the problem is occurring, is it all day or just specific times during the day or night when the speeding occurs to help them be there when those things are most likely to happen. John Champagne said he would say, anecdotally, morning and afternoon when people are coming from work. John Champagne said he was working in his garage on a Saturday and he was surprised at the speeding during the course of the middle of the day, saying that it was not as much in terms of the number, but the speeds are in excess of 40-50 miles per hour. John Champagne said if a dog gets loose or a child gets loose, you will have a problem with vehicles going that fast. John Champagne said as much as he hates speed humps, he hates the alternatives. John Champagne said he was open to this interim situation and if it works, thank goodness. Mayor Countryman asked what the speed limit was at that location. John Champagne said it is 20 miles per hour. Tom Cronin asked if the intent would be to warn initially, or issue citations. Chief Solomon said the intent would be what they just put in their new traffic policy; discretion will be left up to the officer stating there are some criteria the officer would go by. Chief Solomon said they know why they are there, to enforce the speed limit. Mr. Muckleroy said they can also get some suggestions from the Police Chief regarding some permanent signage for that area. Mayor Countryman said maybe they could get some "caution children" signage. John Champagne said he wrote to some people that put up signage that displays the speed the vehicles are going, but they are very expensive. John Champagne said he just wants the speeds reduced before something happens. Chief Solomon said they will look and see what signs they have in the neighborhood and if they have "kids at play signs" because there are curves in the road, which is part of the deal with the speed humps. Chief Solomon said he has worked a few accidents where people have driven through at night and the next thing you know, they end up in somebody's house because of the speed humps.

Mayor Countryman asked if they needed to table this item or take no action. Mr. Foerster said they could table the item or take no action and wait for 90 days to see what has transpired.

John Champagne moved to accept Police Chief Solomon and Mr. Muckleroy's recommendation to monitor the situation for 90-days with the opportunity to revisit the matter in 90-days. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

9. Discussion regarding prohibit fishing in the Memory Park Pond.

Mr. Tramm advised this issue has come up a couple of times. Mr. Tramm said the Memory Park pond has ornamental Koi fish that have been placed in the pond. Mr. Tramm said there have been people chased off by the Police Department and one was cited as trespassing, but when the ticket came to Court, after discussion with the Judge and Prosecutor, they decided that was not the appropriate way to remedy the situation. Mr. Tramm said they have a right to be on the property, it was their activity that the City would not want them to do. Mr. Tramm said there was no ordinance currently in place to prevent them from fishing, so if City Council wants to do that, the recommendation would be to consider adding an ordinance to prohibit fishing with a fine and penalty of around \$200, so there is some type of deterrent for people who are inclined to do that. Mr. Tramm said he would be happy to take direction from City Council to work with the City Attorney to bring that back to City Council.

John Champagne said everyone is supposed to leave Memory Park at sunset and there are several people that tend to park in the library parking lot and hang out in the Park for long periods of time. John Champagne said that might be a finable event as well. Mayor Countryman said there are sign poles already at Memory Park stating the previous "no fishing" signs might have washed away. Tom Cronin asked if these individuals that are fishing are adults or juveniles or both. Mr. Tramm said he thought they were both juveniles and adults, but he did not have specific information. Mr. Tramm said if that is the direction City Council wants to go, he would be happy to work with the City Attorney. City Council concurred that Mr. Tramm would work with the City Attorney.

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.

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

- a) Section 551.071 – Consultation with City Attorney regarding pending claims and contracts.

Mayor Countryman adjourned into Closed Executive Session at 7:22 p.m.

11. Reconvene into Open Session.

Mayor Countryman reconvened into Open Session at 7:55 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

12. Consideration and possible action regarding approving an Agreement to complete Dr. Martin Luther King Jr. Drive and Baja Road with Cincinnati Insurance Company, MMG Contractors and the City.

Mr. Foerster proposed a motion to City Council for their consideration, stating the proposed motion is that the City Council approve an agreement for performance and completion of the MLK and Baja Road Project subject to the final details related to the payment being worked out by the City staff and City Attorney.

T.J. Wilkerson moved to approve an agreement for performance and completion of the MLK and Baja Road Project subject to the final details related to the payment being worked out by the City staff and City Attorney, as recommended by the City Attorney. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

COUNCIL INQUIRY:

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

There were no comments.

ADJOURNMENT

John Champagne moved to adjourn the meeting at 7:56 p.m. Tom Cronin seconded the motion, the motion carried unanimously. (3-0)

Submitted by:  Date Approved: _____
Susan Hensley, City Secretary

Mayor Sara Countryman

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: Escrow Agreement
Date Prepared: August 8, 2019	

Subject

Consideration and possible action regarding an Escrow Agreement between the City and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904)



Description

This Escrow Agreement is for a proposed 44-acre residential development located on Old Dobbin-Plantersville Road. The property is just outside (but adjacent to) the city limits generally southwest of the high school. The agreement is the standard form the City uses, the developer has submitted payment per the agreement.

Recommendation

Motion to approve the Escrow Agreement between the City and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904) as part of the consent agenda.

Approved By

Asst. to City Admin.	Dave McCorquodale 	Date: 8/8/19
City Administrator	Richard Tramm 	Date: 8/8/19

ESCROW AGREEMENT

BY AND BETWEEN

THE CITY OF MONTGOMERY, TEXAS,

AND

Promocon USA, LLC

Dev. No. 1904

THE STATE OF TEXAS ⊃

COUNTY OF MONTGOMERY ⊃

This Escrow Agreement, is made and entered into as of the 30 day July, 2019 by and between the CITY OF MONTGOMERY, TEXAS, a body politic, and a municipal corporation created and operating under the general laws of the State of Texas (hereinafter called the "City"), and Promocon USA, LLC, a Texas Corporation, (hereinafter called the "Developer").

RECITALS

WHEREAS, the Developer desires to acquire and develop all or part of a 44.201-acre tract, being a portion of the Zachariah Landrum Survey, Abstract 22, sometimes referred to as the West Lakes Tract, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

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

warranty services.

AGREEMENT

ARTICLE I

SERVICES REQUIRED

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

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

ARTICLE II

FINANCING AND SERVICES

Section 2.01 All estimated costs and professional fees needed by City shall be financed by Developer. Developer agrees to advance funds to City for the purpose of funding the required Utility and Economic Feasibility Study ("Study") in the amount of \$7,500.

Section 2.02 Developer agrees to submit payment of the funds for the Utility and Economic Feasibility Study to City no later than ten (10) days after the execution of this Escrow Agreement. No work will begin on the Study until funds have been received and the Study has been authorized by City Council.

Section 2.03 As part of the Study, the estimated additional Escrow Amount will be determined for plan reviews, developer coordination, construction coordination, construction inspection, warranty services, legal expenses, and administrative costs. Developer agrees to submit

payment of the Escrow Amount to City no later than thirty (30) days after the acceptance of the Study by City Council. No work outside of the Study will be performed by or on behalf of the City until the Escrow Amount has been deposited.

Section 2.04 The total amount shown above for the Utility and Economic Feasibility Study and the Escrow Amount determined in the Study is intended to be a "Not to Exceed" amount unless extenuating, unexpected fees are needed. Examples of extenuating circumstances created by the developer that may cause additional fees include, but are not limited to, greater than three plan reviews or drainage analysis reviews; revisions to approved plans; extraordinary number of comments on plans; additional meetings at the request of the developer; variance requests; encroachment agreement requests; construction delays and/or issues; failure to coordinate construction with City; failed testing during construction; failing to address punch list items; and/or excessive warranty repair items. If extenuating circumstances arise, the Developer will be informed, in writing by the City, of the additional deposit amount and explanation of extenuating circumstance. The Developer agrees to tender additional sums within 10 days of receipt of request to cover such costs and expenses. If additional funds are not deposited within 10 days all work by or on behalf of the City will stop until funds are deposited. Any funds which may remain after the completion of the development described in this Escrow Agreement will be refunded to Developer.

ARTICLE III,

MISCELLANEOUS

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

Section 3.02 If either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Escrow Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* relied upon to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents to machinery, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

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

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

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

If to City, to: City Administrator
City of Montgomery
101 Old Plantersville Rd.
Montgomery, Texas 77356

If to Developer, to: Jose Angel de la Garza Davila
Promocon USA, LLC
4134 Windswept Dr.
Montgomery, Texas 77356

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

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

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

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

Section 3.09 The provisions of this Escrow Agreement are severable, and if any provision or part of this Escrow Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Escrow Agreement and the application of such provision or part of this Escrow Agreement to other person circumstances shall not be affected thereby.

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

STATE OF TEXAS {

COUNTY OF MONTGOMERY {

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2019.

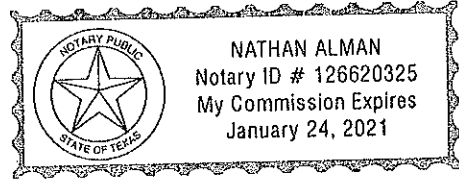
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF Montgomery {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Jose Angel de la Garza of Promocon USA LLC, a Developer, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated and as the act and deed of said organization.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30 day of July, 2019.



Nathan Alman
Notary Public, State of Texas

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

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

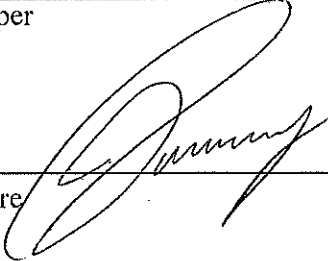
CITY OF MONTGOMERY, TEXAS

By: _____
Sara Countryman, Mayor

ATTEST:

By: _____
Susan Hensley, City Secretary

PROMOCON USA LLC
Developer

By: _____
Signature 

Title: JOSE ANGEL DE LA GARZA
OWNER

Tract 1:

All those certain tracts or parcels of land, being thirty-five and 17/100 (35.17) acres, more or less, together with all improvements thereon, in the Z. Landrum Survey, Abstract 22, Montgomery County, Texas, and being the same premises described as "Tract Number 20" in that Deed to Mrs. L. A. (Bettie) Peel by T. J. Peel, et al, dated December 31st, 1941, and recorded in Volume 226, Page 204, Deed Records of Montgomery County, Texas, said premises herein conveyed being described by metes and bounds as follows, to-wit:

All those two certain tracts or parcels of land out of and a part of the Z. Landrum Survey in Montgomery County, Texas, containing 34.9 acres and 27/100 of an acre, more or less, being known as the Joe Sims Place, being the same land deeded by Joe Sims to L. A. Peel by deed dated October 9, 1925; save and except the West end of a strip 5 $\frac{1}{2}$ vrs. wide x 375 vrs. long deeded by Joe Sims to Montgomery County for part of the old Montgomery-Dobbin Road, the East end of said strip 5 $\frac{1}{2}$ vrs. wide by 285 vrs. long not used for a road deeded back to Estate of L. A. Peel and Mrs. L. A. Peel by Montgomery County, and included in these field notes, with metes and bounds as follows:

BEGINNING at N.E. corner of said 152 acre tract, formerly known as the Jeffries tract, which is also N.E. corner of said road strip and N.E. corner of said Joe Sims 40 $\frac{1}{2}$ acre tract and S.E. corner of Emma Stewart's 3.6 acre tract, an iron pipe from which a double Post Oak 36" brs. N. 85 W. 1.2 vrs., old mkd X on East side;

~~THENCE South 89 $\frac{1}{2}$ West with North line of said 152 acre tract and North line of said road strip and Emma Stewart's South line 285 vrs. to iron pipe for corner in south road ditch of old Dobbin-Montgomery Road and N.W. corner of 27/100 acre deeded to Estate of L. A. Peel and Mrs. L. A. Peel by Montgomery County;~~

THENCE South 0-30 East 5.4 vrs. to N.W. corner of Joe Sims 5.5 acre tract on South line of said road strip, car axle for corner from which an Elm 3" brs. S. 8 W. 32.2 vrs.;

THENCE South 88 $\frac{1}{2}$ West with South line of said road strip 375 vrs. to stk. in said road from which a Persimmon 6" brs. N. 37 E. 15.8 vrs. and an iron pipe in South road ditch brs. S. 7 E. 5.4 vrs.;

THENCE South 7 East with East line of the W. C. Whitehead 71 acre tract, now W. E. Peel East line, 350.4 vrs. to N.W. corner of a 40 $\frac{1}{2}$ acre tract deeded by J. H. Hudspeth, et al, to A. A. Holmes by deed dated January 20, 1927, recorded in Volume 116, Page 578, Montgomery County Deed Records, said 40 $\frac{1}{2}$ acre tract now owned by C. E. Stanley, an iron pipe for corner from which an iron bed rail brs. N. 89 $\frac{1}{2}$ E. 3.2 vrs.;

THENCE North 89 $\frac{1}{2}$ East with Stanley's North line 621.2 vrs. to N.E. corner of his 40 $\frac{1}{2}$ acre tract on East line of said 152 acre tract, an iron pipe for corner side of corner fence post;

THENCE North 0-30 West with East line of said 152 acre tract 361 vrs. to the place of BEGINNING, containing 40.4 acres of land; LESS 5.5 acres owned by Joe Sims, leaving 34.9 acres owned by Estate of L. A. Peel and Mrs. L. A. Peel, the Joe Sims 5.5 acres EXCEPTED from the above 40.4 acres described as follows:

Being part of a 40.5 acre tract in the 152 acres in the E. Landrum League, to cover the improvements of Joe Sims and Nancy Sims.

BEGINNING at the N.E. corner of said 152 acre tract, which is also the N.E. corner of the Joe Sims 40 $\frac{1}{2}$ acre tract and S.E. corner of Emma Stewart's 3.6 acre tract, an iron pipe for corner from which a double Post Oak 36" brs. N. 85 W. 1.2 vrs.;

THENCE South 89 $\frac{1}{2}$ West with North line of said 152 acre tract and Emma Stewart's South line 144 vrs. to stk.;

THENCE South 0-30 East 5.4 vrs. to beginning corner, also N.E. corner of said Joe Sims 5.5 acre tract, iron pipe from which a Post Oak 30" brs. S. 5 $\frac{1}{2}$ E. 26.8 vrs.;

THENCE South 0-30 East 220 vrs. to Joe Sims S.E. corner, an iron pipe from which a Persimmon 12" brs. N. 66 W. 48.7 vrs.;

THENCE South 89 $\frac{1}{2}$ West 141 vrs. to Joe Sims S.W. corner, an iron pipe in field from which a Mulberry 8" brs. S. 23 $\frac{1}{2}$ E. 20 vrs.;

THENCE North 0-30 West 220 vrs. to Joe Sims N.W. corner in South line of a 15 foot strip he had sold the County, also the S.W. corner of a 27/100 acre tract. East end of said road strip that Montgomery County deeded to Estate of L. A. Peel and Mrs. L. A. Peel, a ford car axle for corner from which an Elm 3" brs. S. 8 W. 32.2 vrs.;

THENCE North 89 $\frac{1}{2}$ East with South line of said road strip 141 vrs. to the place of BEGINNING, containing 5.5 acres of land; all bearing trees mkd. X. Surveyed November 5, 1937.

ALSO 27/100 of an acre of land, being part of a 152 acre tract in the Z. Landrum Survey in Montgomery County, Texas, part of the East end of a strip 15 feet wide and 1050 feet long, more or less, off the North side of Joe Sims homestead tract containing 40 $\frac{1}{2}$ acres, described in deed from Joe Sims to Montgomery County for road dated July 10, 1915, recorded in Volume 83, Page 248, Montgomery County Deed Records, with metes and bounds as follows:

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

BEGINNING at the N.E. corner of said 152 acre tract, also the N.E. corner of Joe Sims 40½ acre tract and S.E. corner of a 3 acre tract now owned by Emma Stewart, stk. from which a double Post Oak 36" brs. N. 85 W. 1.2 vrs., old mkd. X on East, New X on South;

THENCE South 89½ West with North line of said 152 acre tract and South line of Emma Stewarts 3 acres and North line of said 40½ acres 285 vrs. to stk. for corner;

THENCE South ½ East 5.½ vrs. to the N.W. corner of said Joe Sims 5½ acre tract, a car axle for corner from which an Elm 3" brs. S. 8 W. 32.2 vrs. mkd. X;

THENCE North 89½ East with North line of Joe Sims 5½ acre tract 141 vrs. pass his N.E. corner at 285 vrs. East line of said 152 acre tract, also East line of said 40½ acre tract, an iron pipe for corner from which a double Post Oak 36" brs. N. 30 W. 5½ vrs. mkd old X on East and new X on South;

THENCE North 0-30 West 5.½ vrs. to the place of BEGINNING, containing 27/100 of an acre of land. Surveyed November 5, 1937. Mag. Var. 9-0 East, and being the same property conveyed from Mrs. L. A. (Bettie) Peel, a femé sole, to Mamie H. Kuehn in Deed recorded in Volume 442, Page 93 of the Deed Records of Montgomery County, Texas.

Tract 2:

A part of the ZACHARIAH LANDRUM SURVEY, A-22, Montgomery County, Texas, and part of the 5.5 acre Molly Sims tract, being more fully described in deed recorded in Volume 213, Page 423, Deed Records, and being more fully described by metes and bounds as follows:

BEGINNING at a 1" iron pipe by an old Mulberry snag at the southwest corner of said 5.5 acre Mollie Sims tract;

THENCE: N 0° 26' E, 30 ft. along Sims west line to stake;

THENCE: N 89° 55' E, 391.7 ft. across said tract to its east line;

THENCE: S 0° 25' W, 30.0 ft. to 1" iron pipe for southeast corner of said Sims tract;

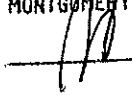
THENCE: S 89° 55' W, 391.7 ft. to the Place of Beginning and being the most southerly 30 ft. off the original Mollie Sims 5.5 acre tract;

527-00-1307

FILED FOR RECORD

99 MAY -4 PM 12: 07

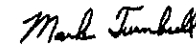
MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

 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.

MAY - 4 1999




COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Promocon USA LLC
Montgomery, TX United States

Certificate Number:
2019-521068

Date Filed:
07/25/2019

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

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
1904
Land Development at Old Dubbin- Planters-field Road

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is JOSE A. DE LA GARZA, and my date of birth is 08/02/1986.

My address is 4134 WINDSWERT DR. (street), MONTGOMERY (city), TX (state), 77356 (zip code), USA (country).

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

Executed in MONTGOMERY County, State of TEXAS, on the 30 day of JULY, 20 19.
(month) (year)

Signature of authorized agent of contracting business entity (Declarant)

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Dave McCorquodale	Exhibits: none
Date Prepared: August 8, 2019	

Subject

Consideration and possible action regarding a Feasibility Study between the City and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904)

Description

This Feasibility Study is for a proposed 44-acre residential development located on Old Dobbin-Plantersville Road. The property is just outside (but adjacent to) the city limits generally southwest of the high school. The agreement is the standard form the City uses, the developer has submitted payment per the agreement.

Recommendation

Motion to approve the Feasibility Study between the City and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904) as part of the consent agenda.

Approved By

Asst. to City Admin.	Dave McCorquodale <i>DM</i>	Date: 8/8/19
City Administrator	Richard Tramm <i>RT</i>	Date: 8/8/19

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount: N/A
Department: Administration	
Prepared By: Richard Tramm	Exhibits: Memo from Mallory Craig
Date Prepared: August 13, 2019	PID Assessed Value Worksheet
	Minutes and Certification for Ordinance

Subject

Service and assessment plan update for City of Montgomery PID No. 1


Discussion

Mallory Craig of Coats Rose Law Firm will be attending the meeting to present the required annual information on behalf of the PID.

Recommendation

Consider action to accept and approve the Service and Assessment Plan, as appropriate.

Approved By

		Date:
City Administrator	Richard Tramm 	Date: August 8, 2019

QuickRef	Building #	PropertyID	Acres	Land Sq Ft	PID Rate	Tiggered Acres	City Admin. Fee	2019 Annual Installment
R450269	B-1	7271-00-00200	0.5655	24,633	2426.06	0.5655	\$50.00	\$2,476.06
R450271	D	7271-00-00400	4.221	183,867	18108.60	4.2210	\$50.00	\$18,158.60
R450273	F-1	7271-00-00600	0.696	30,318	2985.92	0.6960	\$50.00	\$3,035.92
R471619	F-2	7271-00-00601	0.696	30,318	2985.92	0.6960	\$50.00	\$3,035.92
R471620	F-3	7271-00-00602	0.517	22,521	2217.99	0.5170	\$50.00	\$2,267.99
R471621	F-4	7271-00-00603	0.517	22,521	2217.99	0.5170	\$50.00	\$2,267.99
R471622	F-5	7271-00-00604	0.517	22,521	2217.99	0.5170	\$50.00	\$2,267.99
R471623	F-6	7271-00-00605	0.517	22,521	2217.99	0.5170	\$50.00	\$2,267.99
			18.092		57569.12	6.1785	\$400.00	\$35,778.47
Total 2018 Assessment:								\$35,778.47

MEMORANDUM

TO: City of Montgomery
FROM: Mallory Craig/Timothy Green
DATE: May 15, 2019
RE: Yearly Steps for Levying Assessment and Disbursing Funds

1. The City has adopted a Service and Assessment Plan (“SAP”), wherein the City will levy each year on buildings constructed within the City of Montgomery Public Improvement District No. 1 (“PID”) an assessment calculated pursuant to the SAP. In addition, the City has entered into a reimbursement agreement with Mike Ogerchock pursuant to which Mike is to construct certain public infrastructure to serve the land inside the PID and the City will reimburse Mike for such costs from the assessments levied within the PID.

2. Mike has constructed the first phase of the infrastructure in the PID at a cost of \$2,059,524.31. For 2018, the City levied and collected \$35,775.81 of assessments on the buildings within the PID and deducted \$400.00 as costs of collection and paid the remainder to Mike as a credit against the amount owed.

3. Beginning July 1, 2018 and each year thereafter, someone from my office will contact Mike and get an update on the construction of any new buildings within the PID and whether such new construction has triggered assessments being levied on additional property within the PID. In any case, each year we will update the SAP to reflect what, if any, new construction has occurred and forward the updated SAP to the city council for approval during August of each year. If there is new construction within the PID that triggers assessments on additional property, the updated SAP will reflect the tax id number of the new construction, and the assessment to be levied on the new construction.

4. Upon the City adopting the new updated SAP, you should forward the updated SAP to the Montgomery County Tax Assessor/Collector for billing the new assessments. We can do this for you.

5. At such time as the 2019 assessments are paid into the City (March, 2020), the City should deduct its costs relative to collecting the assessments and pay the remainder to Mike against the outstanding balance. This will continue each year until all of the land is improved in the PID (and the assessments paid on each building) or until Mike is paid in full.

MINUTES AND CERTIFICATION FOR ORDINANCE

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

I, the undersigned City Secretary of the City of Montgomery, Texas (the "City"), do hereby certify as follows:

- 1. The City Council for the City convened in a special meeting on the 13th day of August, 2019 in the regular meeting place of the City Council at 101 Old Plantersville Road, Montgomery, Texas, and the roll was called of the duly constituted officials and members of said Council, to wit:

Sara Countryman	Mayor
Jon Bickford	Councilmember
John Champagne	Councilmember
T.J. Wilkerson	Councilmember
Rebecca Huss	Councilmember
Tom Cronin	Councilmember

and all of said persons were present, except _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY ACCEPTING AND APPROVING AN ANNUAL UPDATE TO THE SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR CITY OF MONTGOMERY PUBLIC IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR PAYMENT OF THE ANNUAL INSTALLMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; AND PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

was duly introduced for the consideration of said City Council and read in full. It was then duly moved and seconded that said Ordinance be adopted; and, after due discussion, said motion, carrying with it the adoption of said Ordinance, prevailed and carried by the following vote:

AYES: ___
NOES: ___
ABSTENTIONS: ___

- 2. That a true, full and correct copy of the aforesaid Ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said Ordinance has been duly recorded in said City Council's minutes of said meeting pertaining to the adoption of said Ordinance; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said meeting pertaining to the adoption of said Ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said Ordinance would be introduced and considered for adoption at said meeting; and each of said officers and members consented, in advance, to the holding of said meeting for such purpose; that said meeting was open to the public as required by law; and that public notice of the date, hour, place, and subject of said meeting was given as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED on the 13th day of August, 2019.

Susan Hensley, City Secretary
Montgomery, Texas

(Seal)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY ACCEPTING AND APPROVING AN ANNUAL UPDATE TO THE SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR CITY OF MONTGOMERY PUBLIC IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR PAYMENT OF THE ANNUAL INSTALLMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; AND PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 30, 2014, Resolution No. 2014-2 was adopted by a majority of the members of the governing body of the City of Montgomery (the "Municipality") authorized the creation of City of Montgomery Public Improvement District No. 1 ("P.I.D. No. 1"), a public improvement district established pursuant to the Public Improvement District Act, Chapter 372, Texas Local Government Code, as amended (the "Act"); and in accordance with its finding as to the advisability of improvement projects and services within P.I.D. No. 1; and

WHEREAS, by Resolution No. 2015-03, effectively dated the 24th day of February, 2015, the governing body of the Municipality directed that the Proposed Assessment Roll be filed with the Secretary of the governing body of the Municipality for public inspection as required by the Act, directed that a hearing to be held on the 24th day of March, 2015, at 6:00 p.m. at which the governing body of the Municipality would consider approving the Service/Assessment Plan and the Assessment Roll of P.I.D. No. 1, respectively, and assessing assessments payable at the time and at the rate and in the amount proposed in the Service/Assessment Plan against each parcel of property in P.I.D. No. 1, as set forth in the Assessment Roll, and directed the Secretary of the governing body of the Municipality to give notice of the hearing in the manner required by the Act;

WHEREAS, the governing body of the Municipality conducted the hearing at 6:00 p.m. on the 24th day of March, 2015, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service/Assessment Plan, the Assessment Roll, and each proposed assessment, and offer testimony pertinent to any issue presented on the amount of the assessment, purpose of the assessment, special benefit of the assessment, and the penalties and interest on annual installments and on delinquent annual installments of the assessment;

WHEREAS, several persons appeared in support of the Service/Assessment Plan, and the levy of assessments as proposed in the Assessment Roll, including a representative of the owner of all the land located within P.I.D. No. 1;

WHEREAS, based on the evidence, information, and testimony provided to the City Council, the City Council found and determined that the Assessed Property would be specially benefited by the public improvement projects approved by the City Council and identified as the "Authorized Improvements" as set forth in the Service and Assessment Plan;

WHEREAS, based on the evidence, information, and testimony provided to the City Council, the City Council found and determined: (i) that the method of apportioning the cost of the Authorized Improvements against the Assessed Property and the real and true owners thereof as set forth in the Service and Assessment Plan is just and equitable; (ii) that such method of apportioning the cost would produce substantial equality considering the benefits to be received by and the burdens imposed on the Assessed Property; and (iii) that the assessments levied and charges declared against the Assessed Property and the real and true owners thereof as set forth in the Service and Assessment Plan are just and equitable; and

WHEREAS, after closing the public hearing on March 24, 2015, and after considering all evidence, information, and testimony provided to the City Council, and taking into consideration the fact that there were no written or oral objections to the proposed assessments, and further taking into consideration that the owners of 100% of the property liable for assessment consented to the proposed assessments, the governing body of the Municipality found and determined that the Service and Assessment Plan should be approved and the assessments should be levied as provided in the Assessment Roll;

WHEREAS, the governing body of the Municipality, after considering all evidence presented at the hearing, both written and documentary, and all written comments and statements filed with the Municipality, passed and adopted Ordinance No. 2015-02 approving the Service and Assessment Plan attached thereto;

WHEREAS, after the adoption of the Service and Assessment Plan, a portion of the property included within the boundaries of P.I.D. No. 1 has been developed and triggered the collection of the annual installment of the Assessments on 6.1785 acres;

WHEREAS, pursuant to the Act, the Municipality has caused the preparation of an annual update of the Service and Assessment Plan and the Assessment Roll (the "Annual Service Plan") for the purpose of determining the annual budget for improvements and for making updates to the Assessment Roll to reflect the installment of Assessments to be collected for 2019;

WHEREAS, the City has determined that the Annual Service Plan reflects the amount of the Annual Installment of the Assessments, previously levied pursuant to Ordinance No. 2015-02; and

WHEREAS, a written notice of the date, hour, place and subject to this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon.

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

Section 1. Terms.

Terms not otherwise defined herein are defined in the Annual Update to the Service and Assessment Plan attached hereto as Exhibit A (the "Annual Service Plan").

Section 2. Findings.

The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The governing body of the Municipality hereby finds, determines, and ordains, as follows:

(a) The Annual Service Plan should be approved;

(b) The Assessment Roll in the form attached as Appendix C to the Annual Service Plan (the "Assessment Roll") should be approved as the assessment roll for the P.I.D. No. 1 for the 2019 tax year; and

(c) The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments of the Assessments, and procedures in connection with the imposition and collection of Assessments are now and shall remain in effect and are applicable to the collection of the Annual Installments identified in the Annual Service Plan.

Section 3. Assessment Plan.

The Annual Service Plan is hereby accepted and approved.

Section 4. Assessment Roll.

The Assessment Roll attached to the Annual Service Plan is hereby accepted and approved.

Section 5. Severability.

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. Effective Date.

This Ordinance shall take effect and become effective on upon passage and execution hereof.

PASSED, APPROVED, AND ADOPTED, this 13th day of August, 2019.

City of Montgomery

Mayor

Attest:

City Secretary

(SEAL)

EXHIBIT A
ANNUAL SERVICE PLAN

CITY OF MONTGOMERY
PUBLIC IMPROVEMENT DISTRICT NO. 1
SERVICE AND ASSESSMENT PLAN

As updated
8-13-2019

CITY OF MONTGOMERY
PUBLIC IMPROVEMENT DISTRICT NO. 1

SERVICE AND ASSESSMENT PLAN

Table of Contents

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List of Appendixes

- Appendix A PID No. 1 Map
- Appendix B Estimated Costs of the Authorized Improvements
- Appendix C Assessment Roll

Section I
PLAN DESCRIPTION AND DEFINED TERMS

✓ A. Introduction

On September 30, 2014, the City of Montgomery City Council passed Resolution No. 2014-2 approving and authorizing the creation of City of Montgomery Public Improvement District No. 1 ("PID No. 1") to finance the costs of certain public improvements for the benefit of property in PID No. 1, all of which is located within the corporate limits of the City of Montgomery. This Service and Assessment Plan addresses the improvements to be provided for PID No. 1.

Chapter 372 of the Texas Local Government Code, "the Public Improvement Assessment Act" (as amended, the "PID Act"), governs the creation and operation of public improvement districts within the State of Texas. This Service and Assessment Plan has been prepared pursuant to Sections 372.013, 372.014, 372.015 and 372.016 of the PID Act. According to Section 372.013 of the PID Act, a service plan "must cover a period of at least five years and must also define the annual indebtedness and the projected costs for improvements. The plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements." The service plan is described in Section IV of this Service and Assessment Plan.

Section 372.014 of the PID Act states that "an assessment plan must be included in the annual service plan." The assessment plan is described in Section V of this Service and Assessment Plan.

Section 372.015 of the PID Act states that "the governing body of the municipality or county shall apportion the cost of an improvement to be assessed against property in an improvement district." The method of assessing the PID Costs and apportionment of such costs to the property in the PID No. 1 are included in Section V of this Service and Assessment Plan.

Section 372.016 of the PID Act states that "after the total cost of an improvement is determined, the governing body of the municipality or county shall prepare a proposed assessment roll. The roll must state the assessment against each parcel of land in the district, as determined by the method of assessment chosen by the municipality or county under this subchapter." The Assessment Roll for PID No. 1 is included as Appendix C of this Service and Assessment Plan. The Assessments as shown on the Assessment Roll are based on the method of assessment and apportionment of costs described in Section V of this Service and Assessment Plan.

Contemporaneously herewith, the City and Developer have entered into that certain Facilities and Creation Cost Reimbursement Agreement, dated March 24, 2015 (the "PID Reimbursement Agreement"). The PID Reimbursement Agreement contains a more detailed description of many of the concepts addressed in this Service and Assessment Plan, therefore, the two documents should be read as a whole in order to have a more complete understanding of the terms addressed in each of the agreements.

B. Definitions Capitalized terms used herein shall have the meanings ascribed to them as follows:

"Administrator" means the employee or designee of the City who shall have the responsibilities provided for herein or in any other agreement approved by the City Council relative to PID No. 1.

"Administrative Expenses" mean the costs associated with or incident to the administration, organization, maintenance and operation of PID No. 1, including, but not limited to, the costs of: (i) creating and organizing PID No. 1, including conducting hearings, preparing notices and petitions, and all

costs incident thereto, engineering fees, legal fees and consultant fees, and (ii) the annual administrative, organization, maintenance, and operation costs and expenses associated with, or incident and allocable to, the administration, organization, maintenance and operation of PID No. 1 and the Authorized Improvements, including the cost of each Annual Service Update Plan. Amounts collected in conjunction with Annual Installments for Administrative Expenses and not expended for actual Administrative Expenses shall be carried forward and applied to reduce Administrative Expenses in subsequent years to avoid the over-collection of Administrative Expenses.

"Annual Collection Costs" mean the following actual or budgeted costs, as applicable, related to the annual collection costs of outstanding Assessments paid in installments, including the costs or anticipated costs of: (i) computing, levying, collecting and transmitting the Assessments (whether by the City, the Administrator or otherwise), (ii) the City and the Administrator in the discharge of their duties relative to PID No. 1, and (iii) the City in any way related to the collection of the Assessments in installments, including, without limitation, the administration of PID No. 1, maintaining the record of installments, payments and reallocations and/or cancellations of Assessments, including, without limitation, any associated legal expenses, the reasonable costs of other consultants and advisors and contingencies for such costs. Annual Collection Costs collected and not expended for actual Annual Collection Costs shall be carried forward and applied to reduce Annual Collection Costs in subsequent years to avoid the over-collection of Annual Collection Costs.

"Annual Installment" means, with respect to each Parcel, each annual payment of the Assessment, as shown on the Assessment Roll attached hereto as Appendix C or an Annual Service Plan Update, and calculated as provided in Section VI of this Service and Assessment Plan.

"Annual Service Plan Update" has the meaning set forth in the first paragraph of Section IV of this Service and Assessment Plan.

"Assessed Property" means the property on which Assessments have been imposed as shown in the Assessment Roll, as the Assessment Roll is updated each year by the Annual Service Plan Update. Assessed Property includes Parcels within PID No. 1 other than Non-Benefited Property.

"Assessment" means the assessment levied against Parcels within PID No. 1 imposed pursuant to the Assessment Ordinance and the provisions herein as shown on the Assessment Roll, subject to reallocation upon the subdivision of such Parcel or reduction according to the provisions herein and the PID Act. The Assessment for a Parcel consists of the Annual Installments to be collected in all years and includes the Assessments, interest on the Assessments, and Collection Costs pertaining to the Assessment.

"Assessment Ordinance" means the ordinance approved by the City Council to approve the imposition of the Assessments.

"Assessment Revenues" mean the revenues actually received by the City from Assessments.

"Assessment Roll" means the document included in this Service and Assessment Plan as Appendix C, as updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act.

"Authorized Improvements" mean those public improvements described in Appendix B of this Service and Assessment Plan and Section 372.003 of the PID Act which are constructed pursuant to the PID Reimbursement Agreement, which are to be undertaken for the benefit of property in PID No. I.

"Authorized Improvement Costs" mean the actual or budgeted costs, as applicable, of all or any portion of the Authorized Improvements, as shown in Appendix B.

"Benefited Property" means property within PID No. 1 that receives a benefit from the Authorized Improvements, which consists of all Parcels within PID No. 1 other than Non-Benefited Property. Benefited Property is identified on the map of PID No. 1 included in Appendix A, with a list of Parcels of Benefited Property included in Appendix C.

"City" means the City of Montgomery, Texas.

"City Council" means the duly elected governing body of the City.

"Delinquent Collection Costs" mean interest, penalties and expenses incurred or imposed with respect to any delinquent Annual Installments of an Assessment in accordance with §372.018(b) of the PID Act and the costs related to pursuing collection of a delinquent Assessment and foreclosing the lien against the Assessed Property, including attorneys' fees.

"Developer" means collectively, Ogorchock Investments, L.P., a Texas limited partnership and Ogorchock ATH, LLC .

"Non-Benefited Property" means Parcels within the boundaries of PID No. 1 that accrue no special benefit from the Authorized Improvements, including Owner Association Property, Public Property and easements that create an exclusive use for a public utility provider. Property identified as Non-Benefited Property at the time the Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed. Assessed Property converted to Non-Benefited Property, if the Assessments may not be reallocated pursuant to the provisions herein remains subject to the Assessments and requires the Assessments to be prepaid as provided for in Section VI. C. 2.

"Owner Association Property" means property within the boundaries of PID No. 1 that is owned by or irrevocably offered for dedication to, whether in fee simple or through an exclusive use easement, a property owners' association.

"Parcel" or **"Parcels"** means a parcel or parcels within PID No. 1 identified by either a tax map identification number assigned by the Montgomery County Appraisal District for real property tax purposes or by lot and block number in a final subdivision plat recorded in the real property records of Montgomery County.

"PID Act" means Texas Local Government Code Chapter 372, Public Improvement Assessment Act, Subchapter A, Public Improvement Districts, as amended.

"PID No. 1" means City of Montgomery Public Improvement District No. 1.

"PID Costs" mean the portion of the Authorized Improvement Costs to be funded by PID No. 1 as explained in Section III.

"Public Property" means property within the boundaries of PID No. 1 that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, the City, a school district, a public utility provider or any other public agency, whether in fee simple or through an exclusive use easement.

"Service and Assessment Plan" means this Service and Assessment Plan prepared for PID No. 1 pursuant to the PID Act.

"Trigger Date" means with respect to an unimproved parcel, the date (i) the parcel is final platted, (ii) one or more permanent commercial structures are constructed thereon, and (iii) the city has issued a certificate of occupancy for such completed permanent structure(s); however, such date shall not be prior to September 1, 2018.

Section II
PROPERTY INCLUDED IN THE PID

PID No. 1 is located within the corporate limits of the City of Montgomery, Texas and contains approximately 86.814 acres of land. A map of the property within PID No. 1 is shown on Appendix A to this Service and Assessment Plan. The property within PID No. 1 is proposed to be developed with warehouses or office warehouses.

Table II-A
Proposed Commercial Development

Description	No. of Platted/Improved Acres
Various Commercial Reserves	72

The current Parcels in PID No. I are shown on the Assessment Roll and the map included as Appendix A.

The estimated number of Platted/Improved Acres at the build-out of PID No. 1 is estimated to be as follows:

72 net acres of commercial reserves (excluding road right-of-way).

Section III
DESCRIPTION OF THE AUTHORIZED IMPROVEMENTS

Section 372.003 of the PID Act defines the improvements that may be undertaken by a municipality or county through the establishment of a public improvement district, as follows:

372.003. Authorized Improvements

- (a) If the governing body of a municipality or county finds that it promotes the interests of the municipality or county, the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction. A project may be undertaken in the municipality or county or the municipality's extraterritorial jurisdiction.
- (b) A public improvement may include:
 - (i) landscaping;
 - (ii) erection of fountains, distinctive lighting, and signs;
 - (iii) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of

sidewalks or of streets, any other roadways, or their rights-of way;

- (iv) construction or improvement of pedestrian malls;
- (v) acquisition and installation of pieces of art;
- (vi) acquisition, construction, or improvement of libraries;
- (vii) acquisition, construction, or improvement of off-street parking facilities;
- (viii) acquisition, construction, improvement, or rerouting of mass transportation facilities;
- (ix) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;
- (x) the establishment or improvement of parks;
- (xi) projects similar to those listed in Subdivisions (i)-(x);
- (xii) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- (xiii) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement; and
- (xiv) payment of expenses incurred in the establishment, administration and operation of the district.

After analyzing the public improvement projects authorized by the PID Act, the City has determined that the Authorized Improvements as described in Appendix B and shown on the diagram included as Appendix C should be undertaken by the City for the benefit of the property within PID No. 1. The estimated Authorized Improvement Costs are shown by Table III-A.

Table III-A
Estimated Authorized Improvement Costs

Authorized Improvements	Total PID No. 1 Estimated Cost
Improvements	
Roadway improvements	\$2,766,910
Water distribution system improvements	421,150
Storm sewer collection system improvements	132,487
Wastewater collection system improvements	563,752
Engineering, surveying	440,319
Soft costs including city, professional and miscellaneous fees	119,200
FM 1097 widening, striping, TxDot	131,528

General contingency	355,505
Subtotal:	<u>4,930,851</u>

Estimated PID Creation Costs	\$50,000
Total Estimated Authorized Improvement Costs	<u>\$4,980,851</u>

The costs shown in Table III-A are current estimates and may be revised in Annual Service Plan Updates.

The Authorized Improvements include on-site improvements and limited off-site improvements.

On-site Improvements

The on-site roadway improvements include:

Summit Park Drive and other internal streets – The project consists of construction approximately 4,900 linear feet of 24’ wide concrete streets (8” concrete) with 6’ shoulders (6” concrete) on each side within a dedicated street right-of-way inside PID No. 1.

The on-site water distribution system improvements consist of approximately 8,400 linear feet of 12-inch water line within the proposed street right-of-ways and easements within PID No. 1. The water lines will connect to an existing City of Montgomery main along the south side of FM 109.

The on-site storm sewer collection system improvements include

The onsite storm sewer collection systems include approximately 4,900 linear feet of ditch cut in within the proposed street right-of-way inside PID No. 1 to direct flow to the existing creeks within the development.

The on-site wastewater collection system improvements consist of approximately 5,000 linear feet of 8-inch wastewater lines within the proposed street right-of-ways within PID No. 1. A portion of these lines will connect to a proposed lift station using approximately 650’ linear feet of 4” force main to pump the wastewater to a proposed sanitary main. All proposed lines will ultimately connect to an existing main on the south side of FM 1097.

Off-site Improvements

The offsite roadway improvements include a portion of FM 1097 being re-striped for a turn lane to allow safe access into the proposed Summit Park Drive.

Additional details of the Authorized Improvements are shown in Appendix B attached to this Service and Assessment Plan.

Table III-B shows the allocation of the Authorized Improvements costs to PID No. 1.

Table III-B
Allocation of the Authorized Improvement Costs

Authorized Improvements	Total Estimated Cost	Percentage Allocated	Total PID No. 1 Estimated Cost
Improvements benefiting PID No.1			
Roadway improvements		100%	\$2,766,910
Water distribution system improvements		100%	421,150
Storm sewer collection system improvements		100%	132,487
Wastewater collection system improvements		100%	563,752
Engineering, surveying		100%	440,319
Soft costs including city, professional and miscellaneous fees		100%	119,200
FM 1097 widening, striping, TxDot		100%	131,528
General contingency		100%	355,505
Subtotal:			4,930,851
 Estimated PID Creation Costs		 100%	 50,000
Total Estimated Authorized Improvement Costs			\$4,980,851

The costs shown in Tables III-A and III-B are estimates and may be revised in Annual Service Plan Updates. The detailed costs of the Authorized Improvements are shown in Appendix B to this Service and Assessment Plan. Savings from one line item may be applied to a cost increase in another line item. These savings may be applied only to increases in costs of the Authorized Improvements.

Section IV SERVICE PLAN

A. Sources and Uses of Funds

The PID Act requires a service plan to cover a period of at least five years. The service plan is required to define the annual projected costs and indebtedness for the Authorized Improvements undertaken within PID No. 1. As of the date of this Service and Assessment Plan approximately 15% of the Authorized Improvements have been constructed and funded by the Developer. PID No. 1 will not directly fund any of the Authorized Improvements. Instead, in accordance with the PID Reimbursement Agreement the Developer will construct the Authorized Improvements and the City will reimburse the Developer solely from the net proceeds of the Assessments. The plan shall be reviewed and updated annually for the purpose of determining the annual budget for the Authorized Improvements. The annual update to this Service and Assessment Plan is herein referred to as the "Annual Service Plan Update."

Table IV-A shows the sources.

Table IV-A
Sources and Uses of Funds

Sources of Funds:			
	Reimbursed by the PID	Not Reimbursed by the PID	Total
Funded By Developer:	\$3,000,000	\$1,980,851	\$4,980,851
Uses of Funds:			
Construction Costs:	\$2,950,000	\$1,980,851	
Creation Costs:			
Costs paid by Developer:	\$50,000	\$0	
Total:			\$4,980,851

This sources and uses of funds table is subject to revision and the actual sources and uses of funds for any line item may be different than shown above. The sources and uses of funds shown in Table 1V-A shall be updated each year in the Annual Service Plan Update to reflect any budget revisions or actual costs of the Authorized Improvements.

B. Annual Costs and Indebtedness

The annual projected costs and annual projected indebtedness is shown by Table 1V-B. The annual projected costs and indebtedness is subject to revision and shall be updated each year in the Annual Service Plan Update to reflect any changes in the PID Costs expected for each year and the cumulative amounts owed to the Developer. Notwithstanding the preceding, the Developer shall be reimbursed solely from the net proceeds (after payment of all costs of the City) of the Assessments which will be significantly less than total projected costs of the Authorized Improvements.

Table IV-B
Annual Projected Costs and Indebtedness

Year	Annual Projected Costs
2015	\$2,054,355
2016	
2017	
2018	
2019	\$990,964
2020	
2021	\$1,953,442
2022	
2023	
Total	\$4,998,761

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Section V
ASSESSMENT PLAN

A. Introduction

The PID Act requires the City Council to apportion the PID Costs on the basis of special benefits conferred upon the property because of the Authorized Improvements. The PID Act provides that the PID Costs may be assessed: (i) equally per front foot or square foot; (ii) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or (iii) in any other manner that results in imposing equal shares of the cost on property similarly benefited. The PID Act further provides that the governing body may establish by ordinance or order reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed and the methods of assessing the special benefits for various classes of improvements. Section V of this Service and Assessment Plan describes the special benefit received by each Parcel of Assessed Property as a result of the Authorized Improvements, provides the basis and justification for the determination that this special benefit exceeds the amount of the Assessments, and establishes the methodology by which the City Council allocates the special benefit of the Authorized Improvements to Parcels in a manner that results in equal shares of the PID Costs being apportioned to Parcels similarly benefited. The determination by the City Council of the assessment methodology set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Developer and all future owners within the Assessed Property.

B. Special Benefit

Benefited Property receives a benefit from the Authorized Improvements. Among the Benefited Property, the Assessed Property will receive a direct and special benefit from the Authorized Improvements, and this benefit will be equal to or greater than the amount of the Assessments. The Authorized Improvements (more particularly described in line-item format on Appendix B to this Service and Assessment Plan) and the costs incurred in the establishment, administration, and operation of the PID No. 1 shown in Table IV-A are authorized by the Act. These improvements are provided specifically for the benefit of the Assessed Property.

The owners of all of the Assessed Property has acknowledged and agreed to the determinations and findings as to benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance, specifically including the special benefit conferred on the Assessed Property by the Authorized Improvements, as well as any other terms and provisions within these documents, and has, therefore, consented to the imposition of the Assessments to pay the PID Costs. The owners are acting in their own interests in consenting to this imposition, because the special benefit conferred upon the Assessed Property by the Authorized Improvements exceeds the amount of the Assessments.

The public improvements provide a special benefit to the Assessed Property as a result of the close proximity of these improvements to the Assessed Property and the specific purpose of these improvements of providing infrastructure for the Assessed Property. In other words, the Assessed Property could not be used in the manner proposed without the construction of the

Authorized Improvements. The Authorized Improvements are being provided specifically to meet the needs of the Assessed Property as required for the proposed use of the property.

The Assessments are being levied to provide the Authorized Improvements, which are required for the highest and best use of the Assessed Property (i.e., the use of the property that is most valuable, including any costs associated with that use). Highest and best use can be defined as "the reasonably probable and legal use of property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." (*Dictionary of Real Estate Appraisal, Third Edition.*) The Authorized Improvements are expected to be required for the proposed use of the Assessed Property to be physically possible, appropriately supported, financially feasible, and maximally productive.

The Developer has evaluated the potential use of the property and has determined that the highest and best use of the property is the use intended and the legal use for the property as described in Section II of this Service and Assessment Plan. The use of the Assessed Property as described herein will require the construction of the Authorized Improvements.

Funding of the PID Costs by the Developer and reimbursement of the Developer by PID No. 1 is determined to be the most beneficial means of providing for the Authorized Improvements. Since the Authorized Improvements are required for the highest and best use of the Assessed Property, and PID No. 1 provides the most beneficial means of providing the Authorized Improvements, the Assessments result in a special benefit to the Assessed Property, and this special benefit exceeds the amount of the Assessments. This conclusion is based on and supported by the evidence, information, and testimony provided to the City Council.

In summary, the Assessments result in a special benefit to the Assessed Property for the following reasons:

1. The Authorized Improvements are being provided specifically for the use of the Assessed Property, are necessary for the proposed best use of the property and provide a special benefit to the Assessed Property as a result;
2. The Developer has consented to the imposition of the Assessments for the purpose of providing the Authorized Improvements and the Developer is acting in its interest by consenting to this imposition;
3. The Authorized Improvements are required for the highest and best use of the property;
4. The highest and best use of the Assessed Property is the use of the Assessed Property that is most valuable (including any costs associated with the use of the Assessed Property);
5. Financing of the PID Costs by PID No. 1 is determined to be the most beneficial means of providing for the Authorized Improvements; and,
6. As a result, the special benefits to the Assessed Property from the Authorized Improvements will be equal to or greater than the Assessments.

C. Assessment Methodology

1. The PID Costs may be assessed by the City Council against the Assessed Property so long as the special benefit conferred upon the Assessed Property by the Authorized Improvements equals or exceeds the Assessments. The PID Costs may be assessed using any methodology that results in the imposition of equal shares of the PID Costs on Assessed Property similarly benefited.
2. For purposes of this Service and Assessment Plan, the City Council has determined that the PID Costs shall be allocated to the Assessed Property equally on the basis of \$41,666.66 per acre of platted acreage that encompasses a completed permanent structure for which the City has issued a Certificate of Occupancy and that such method of allocation will result in the imposition of equal shares of the PID Costs to Parcels similarly benefited.
3. Having taken into consideration the matters described above, the City Council has determined that allocating the PID Costs among Parcels based on improved acreage containing a completed permanent structure for which the City has issued a certificate of occupancy. Accordingly, Assessments are allocated to each Parcel of Assessed Property on the basis of it being fully developed, a final plot has been recorded, commercial structure(s) have been completed and a certificate of occupancy has been issued.
4. The following table (Table V-A) shows the calculation of the Assessment per acre. There are a total of 72 acres expected to be developed and improved on the Assessed Property. The total Assessments, which represent the aggregate sum of the total Annual Installments, are equal to \$3,000,000 as shown in Table IV-C. As a result the Assessment per acre is \$41,666.66 as shown in Table V-A below.

TABLE V-A

Assessment per Improved Acre

<u>Description</u>	<u>Assessments</u>
Total Amount	\$3,000,000.00
Estimated total acreage	72
Assessment per acre	\$41,666.66

Table V-B in the following page shows the estimated Annual Installment per acre from the Trigger Date through the fifteen (15) year amortization of the Assessment.

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TABLE V-B
Annual Installment per Improved Acre from Trigger Date*

Year	Principal	Interest	Total Payment	Plus Administrative Expenses **
1	1,790.12	2,500.00	4,290.12	\$50.00
2	1,897.52	2,392.59	4,290.12	\$50.00
3	2,011.37	2,278.74	4,290.12	
4	2,132.06	2,158.06	4,290.12	
5	2,259.98	2,030.14	4,290.12	
6	2,395.58	1,894.54	4,290.12	
7	2,539.31	1,750.80	4,290.12	
8	2,691.67	1,598.44	4,290.12	
9	2,853.17	1,436.94	4,290.12	
10	3,024.36	1,265.75	4,290.12	
11	3,205.82	1,084.29	4,290.12	
12	3,398.17	891.94	4,290.12	
13	3,602.06	688.05	4,290.12	
14	3,818.19	471.93	4,290.12	
15	4,047.28	242.84	4,290.12	
Total	41,666.66	22,685.05	64,351.80	

* The Assessment shall run from the Trigger Date and shall be amortized over fifteen annual payments including principal and interest at 6% per annum. In addition, each year the City shall charge an Administrative Expense of \$50.00 per Parcel of Assessed Property to reimburse the City for its Administrative Expenses. In the event such fee for Administrative Expense is not sufficient to reimburse the City for its Administrative Expenses, the City shall deduct such expenses from the monies otherwise to be paid to Developer. The first year of the Assessment shall be levied in 2018, and shall be included in the 2018 tax bills.

** To be determined based on number of Parcels included as Assessed Property.

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Section VI
TERMS OF THE ASSESSMENTS

A. Amount of Assessments

The Assessment for each Parcel is shown on the Assessment Roll, and no Assessment shall be changed except as authorized by this Service and Assessment Plan (including the Annual Service Plan Updates) and the PID Act. The Assessments shall not exceed the amount required to repay the Developer including interest and Collection Costs.

B. Reallocation of Assessments

1. Subdivision

Upon the subdivision of any Parcel, the Assessment for the Parcel prior to the subdivision shall be reallocated among the new subdivided Parcels according to the following formula:

$$A = B \times (C \pm D)$$

Where the terms have the following meanings:

A = the Assessment for each new subdivided Parcel

B = the Assessment for the Parcel prior to subdivision

C = the estimated number of units to be built on each newly subdivided Parcel

D = the sum of the estimated number of units to be built on all of the new subdivided Parcels

The calculation of the estimated number of units to be built on a Parcel shall be performed by the Administrator and confirmed by the City Council based on the information available regarding the use of the Parcel. The estimate as confirmed shall be conclusive. The number of units to be built on a Parcel may be estimated by net land area and reasonable density ratios.

The sum of the Assessments for all newly subdivided Parcels shall equal the Assessment for the Parcel prior to subdivision. The calculation shall be made separately for each newly subdivided Parcel. The reallocation of an Assessment for a Parcel may not exceed the Assessment prior to the reallocation and to the extent the reallocation would exceed such amount, it shall be prepaid by such amount by the party requesting the subdivision of the Parcels. Any reallocation pursuant to this section shall be reflected in an Annual Service Plan Update approved by the City Council.

2. Consolidation

Upon the consolidation of two or more Parcels, the Assessment for the consolidated Parcel shall be the sum of the Assessments for the Parcels prior to consolidation. The reallocation of an Assessment for a Parcel may not exceed the Assessment prior to the reallocation and to the extent the reallocation would exceed such amount, it shall be prepaid by such amount by the party requesting the consolidation of the Parcels. Reallocation pursuant to this section shall be reflected in an Annual Service Plan Update approved by the City Council.

C. Mandatory Prepayment of Assessments

1. If at any time the Assessment on a Parcel exceeds the Maximum Assessment per

Commercial Unit calculated for the Parcel as a result of any reallocation of an Assessment authorized by this Service and Assessment Plan and initiated by the owner of the Parcel, then such owner shall pay to the City prior to the recordation of the document subdividing the Parcel the amount calculated by the Administrator by which the Assessment for the Parcel exceeds the Maximum Assessment per Commercial Unit for the Parcel. The City shall not approve the recordation of a plat or other document subdividing a Parcel without a letter from the Administrator either (a) confirming that the Assessment for any new Parcel created by the subdivision will not exceed the Maximum Assessment per Unit for each Parcel, or (b) confirming the payment of the Assessments, plus all Prepayment Costs, as provided for herein.

2. If a Parcel subject to Assessments is transferred to a party that is exempt from the payment of the Assessment under applicable law, or if an owner causes a Parcel subject to Assessments to become Non-Benefited Property, the owner of such Parcel shall pay to the City the full amount of the Assessment on such Parcel, prior to any such transfer or act.
3. The payments required above shall be treated the same as any Assessment that is due and owing under the Act, the Assessment Ordinance, and this Service and Assessment Plan, including the same lien priority, penalties, procedures, and foreclosure specified by the Act.

D. Reduction of Assessments

1. If after all Authorized Improvements have been completed, the total Authorized Improvement Costs is less than the total Assessments, then the Assessments and Annual Installments for each Parcel shall be reduced by an equal percentage such that the sum of the resulting reduced Assessments and Annual Installments for all Parcels equals the amount required to repay the Authorized Improvement Costs and interest thereon, and Collection Costs. The Assessment for each Parcel shall be reduced by an equal percentage such that the sum of the resulting reduced monies owed Developer is equal to the outstanding principal amount of the Assessments.
2. If all the Authorized Improvements are not undertaken, resulting in the total amount owed Developer being less than the total amount of Assessments, then the Assessments and Annual Installments for each Parcel shall be appropriately reduced by the City Council to reflect only the amounts required to repay Developer, including interest and Collection Costs. The City Council may reduce the Assessments and the Annual Installments for each Parcel (i) in an - amount that represents the Authorized Improvements provided for each Parcel, or (ii) by an equal percentage, if determined by the City Council to be the most fair and practical means of reducing the Assessments for each Parcel, such that the sum of the resulting reduced Assessments equals the amount required to repay the Developer, including interest and Collection Costs. The Assessment for each Parcel shall be reduced pro rata to the reduction in the Assessments for each Parcel such that the sum of the resulting reduced Assessments is equal to the outstanding principal amount owed Developer.

E. Payment of Assessments

1. Payment in Full

- (a) The Assessment for any Parcel may be paid in full at any time.
- (b) If an Annual Installment has been billed prior to payment in full of an Assessment, the Annual Installment shall be due and payable and shall be credited against the payment-in-full amount.
- (c) Upon payment in full of the Assessment, the City shall deposit the payment in accordance with the applicable governing document; whereupon, the Assessment shall be reduced to zero, and the owner's obligation to pay the Assessment and Annual Installments thereof shall automatically terminate.
- (d) At the option of the owner, the Assessment on any Parcel may be paid in part. Upon the payment of such amounts for a Parcel, the Assessment for the Parcel shall be reduced, the Assessment Roll shall be updated to reflect such partial payment, and the obligation to pay the Annual Installment for such Parcel shall be reduced to the extent the partial payment is made.

2. Payment in Annual Installments

The Act provides that an Assessment for a Parcel may be paid in full at any time. If not paid in full, the Act authorizes the City to collect interest and Collection Costs in Annual Installments. An Assessment for a Parcel that is not paid in full will be collected in Annual Installments each year in the amounts shown in the Assessment Roll, as updated as provided for herein, which include interest and Annual Collection Costs. Payment of the Annual Installments shall commence with tax bills mailed.

Each Assessment shall be paid with interest of no more than six percent per annum. The Assessment Roll sets forth for each year the Annual Installment for each Parcel based on an estimated interest rate of 6% and additional interest at the rate of 0.5% for administrative expenses. Furthermore, the Annual Installments may not exceed the amounts shown on the Assessment Roll.

F. Collection of Annual Installments

No less frequently than annually, the Administrator shall prepare, and the City Council shall approve, an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include an updated Assessment Roll and a calculation of the Annual Installment for each Parcel. Annual Collection Costs shall be allocated among Parcels in proportion to the amount of the Annual Installments for the Parcels. Each Annual Installment shall be reduced by any credits applied, such as interest earnings on any account balances, and any other funds available to the City for such purpose. Annual Installments shall be collected by the City in the same manner and at the same time as ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City. The City Council may provide for other means of collecting the Annual Installments to the extent permitted under the PID Act. The Assessments shall have lien priority as specified in the Act.

Any sale of property for nonpayment of the Annual Installments shall be subject to the lien established for the remaining unpaid Annual Installments against such property and such property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the non-

delinquent Annual Installments against such property as they become due and payable.

Section VII THE ASSESSMENT ROLL

Appendix C identifies each Parcel within PID No. 1, the Benefited Property, the Assessed Property and Non-Benefitted Property. The Assessment Roll includes each Parcel of Assessed Property, the Assessment imposed on each Parcel, the Assessments, and the Annual Installments to be paid each year for each Parcel if the Assessment is not paid in full for any Parcel. The Assessment on each Parcel is based on the number of units expected to be built on each Parcel, and the Assessment per unit results, as explained herein.

Each Parcel of Assessed Property has been evaluated by the City Council (based on the developable area, proposed Owner Association Property and Public Property, best and highest use of the property, and other development factors deemed relevant by the City Council) to determine, the number of dwelling units anticipated to be developed on a Parcel. Each dwelling unit is then multiplied by the Assessment per unit set forth in Table V-B of this Service and Assessment Plan, and the total of such amounts for all dwelling units for the Parcel shall constitute the "Assessment" for the Parcel as set forth on the Assessment Roll. The Assessment Roll shall be updated upon the preparation of each Annual Service Plan Update to reflect, for each Parcel, subdivisions, consolidations, prepayments, and reductions authorized by this Service and Assessment Plan.

The Administrator shall prepare, and the City Council shall review and approve, annual updates to the Assessment Roll as the Annual Service Plan Update to reflect the following matters, together with any other changes helpful to the Administrator or the City and permitted by the Act: (i) the identification of each Parcel as Benefited Property, Assessed Property, and NonBenefitted Property; (ii) the Assessment for each Parcel, including any adjustments authorized by this Service and Assessment Plan or in the Act; (iii) the Assessment for each Parcel, including any adjustments authorized by this Service and Assessment Plan or in the Act; (iv) the Annual Installment for the Parcel for the year (if the Assessment is payable in installments); and (v) payments of the Assessment, if any, as provided by Section VI.0 of this Service and Assessment Plan.

Section VIII MISCELLANEOUS PROVISIONS

A. Administrative Review

An owner of an Assessed Parcel claiming that a calculation error has been made in the Assessment Roll, including the calculation of the Annual Installment, shall send a written notice describing the error to the City not later than thirty (30) days after the date any amount which is alleged to be incorrect is due prior to seeking any other remedy. The Administrator shall promptly review the notice, and if necessary, meet with the Assessed Parcel owner, consider written and oral evidence regarding the alleged error and decide whether, in fact, such a calculation error occurred.

If the Administrator determines that a calculation error has been made and the Assessment Roll should be modified or changed in favor of the Assessed Parcel owner, such change or modification shall be presented to the City Council for approval, to the extent permitted by the Act. A cash refund may not be made for any amount previously paid by the Assessed Parcel owner (except for the final year during which the Annual Installment shall be collected or if it is determined there are sufficient funds to meet the expenses of the PID No. 1 for the current year), but an adjustment may be made in the amount of the

Annual Installment to be paid in the following year. The decision of the Administrator regarding a calculation error relating to the Assessment Roll may be appealed to the City Council. Any amendments made to the Assessment Roll pursuant to calculation errors shall be made pursuant to the PID Act.

The decision of the Administrator, or if such decision is appealed to the City Council, the decision of the City Council, shall be conclusive as long as there is a reasonable basis for such determination. This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to any other appeal or legal action by such owner.

B. Termination of Assessments

Each Assessment shall be extinguished on the date the Assessment is paid in full, including unpaid Annual Installments and Delinquent Collection Costs, if any. After the extinguishment of an Assessment and the collection of any delinquent Annual Installments and Delinquent Collection Costs, the City shall provide the owner of the affected Parcel a recordable "Notice of Cancellation of PID No. 1 Assessment."

C. Amendments

The City Council reserves the right to the extent permitted by the Act to amend this Service and Assessment Plan without notice under the Act and without notice to property owners of Parcels: (i) to correct mistakes and clerical errors; (ii) to clarify ambiguities; and (iii) to provide procedures for the collection and enforcement of Assessments, Collection Costs, and other charges imposed by the Service and Assessment Plan.

D. Administration and Interpretation of Provisions

The City Council shall administer PID No. 1, this Service and Assessment Plan, and all Annual Service Plan Updates consistent with the PID Act, and shall make all interpretations and determinations related to the application of this Service and Assessment Plan unless stated otherwise herein, such determination shall be conclusive.

E. Severability

If any provision, section, subsection, sentence, clause or phrase of this Service and Assessment Plan or the application of same to an Assessed Parcel or any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Service and Assessment Plan or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Service and Assessment Plan that no part hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other part hereof, and all provisions of this Service and Assessment Plan are declared to be severable for that purpose.

If any provision of this Service and Assessment Plan is determined by a court to be unenforceable, the unenforceable provision shall be deleted from this Service and Assessment Plan and the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the City.

Appendix A

MAP OF PID No. 1

Appendix B

ESTIMATED COSTS OF AUTHORIZED IMPROVEMENTS

Appendix C

ASSESSMENT ROLL

<u>CURRENT PLATTED RESERVES:</u>	<u>ASSESSMENT</u>
Reserve A – 1.238 Acres	\$51,583.33
Reserve B – 2.262 Acres	\$94,249.98
Reserve C – 2.139 Acres	\$89,124.99
Reserve D – 4.221 Acres	\$175,874.97
Reserve E – 2.863 Acres	\$119,291.65
Reserve F – 5.346 Acres	\$222,749.96

Montgomery Summit Business Park, a subdivision of 21.227 acres recorded in Cabinet Z, Sheet Nos. 3061-3062 File No. 2014-095246 of the Map Records of Montgomery County.

Future platted reserves within the PID, which reserves will encompass approximately 56 acres. Assessment will run from Trigger Date on each platted reserve and be calculated based upon the acreage within the reserve.

2019 Annual Installment
(Second Annual Installment on Each Tract)

Quick Ref	Bdg #	Property ID	Address Line 1	Zip Code	Legal Description	Acres	PID Rate	Triggered Acres	City Admin. Fee	2018 Annual Installment
R450269	B-1	7271-00-00200	15349 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 2, RES B (BLDG B-1 SUITE 101-104), ACRES 0.5655	0.5655	2426.06	0.5655	\$50.00	\$2,476.06
R450271	D	7271-00-00400	22394 FM 1097 W	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES D, ACRES 4.221	4.221	18108.60	4.2210	\$50.00	\$18,158.60
R450273	F-1	7271-00-00600	15498 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-1, SUITE 101-104), ACRES 0.696	0.696	2985.92	0.6960	\$50.00	\$3,035.92
R471619	F-2	7271-00-00601	15522 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-2, SUITE 201-204), ACRES 0.696	0.696	2985.92	0.6960	\$50.00	\$3,035.92

R471620	F-3	7271-00-00602	15584 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-3, SUITE 301- 303), ACRES 0.517	0.517	2217.99	0.5170	\$50.00	\$2,267.99
R471621	F-4	7271-00-00603	15636 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-4, SUITE 401- 403), ACRES 0.517	0.517	2217.99	0.5170	\$50.00	\$2,267.99
R471622	F-5	7271-00-00604	15514 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-5, SUITE 501- 503), ACRES 0.517	0.517	2217.99	0.5170	\$50.00	\$2,267.99
R471623	F-6	7271-00-00605	15556 SUMMIT BUSINESS PARK DR	77356	S727100 - Montgomery Summit Business Park, BLOCK 1, RES F (BLDG F-6, SUITE 601- 603), ACRES 0.517	0.517	2217.99	0.5170	\$50.00	\$2,267.99
						18.092	57569.12	6.1785	\$400.00	\$35,778.47
									Total 2018 Assessm ent:	\$35,778.47

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount:
Department: Administration	
Prepared By: Jack Yates	Exhibits: Budget calendar
Date Prepared: August 6, 2019	

Subject

Calling a public hearing for the 2019-2020 budget.


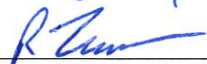
Discussion

This is to call the required public hearing. To meet with the time of publication hearing requirements is recommended to call public hearing for September 10, the first trainer city Council meeting of the month.

Recommendation

Motion to set September 10 for the public hearing date for the 2019 – 2020 budget.

Approved By

Jack Yates		Date: August 6, 2019
Richard Tramm		Date: August 8, 2019

2020 Budget Preparation Calendar

Date	All	Responsible Party
July 5	Staff Budgets Due, Preliminary Tax Roll Estimate	Staff
August 5th - 9th	Preliminary Budget to Council	Staff
August 20th	Council Budget Workshop 6 pm	City Council, Administrator and Dept. Heads
August 22nd	Council Budget Workshop 6 pm	City Council and Administrator
July 25th	Certification of Tax Roll	Mont. Central Appraisal District
August 9th	Proposed budget filed with City Secretary (must be 30 days before tax levy)	Mayor
August 5th	Calculation of Effective Tax Rate	Mont. Central Appraisal District
August 13th	Call public hearings on Effective Tax Rate	City Council
August 13th	Call Public Hearing on Budget	City Council
No later than August 19th	Publish notice of SIMPLIFIED TAX RATE NOTICE ** One quarter page notice that provides the proposed effective rate and hearing notice. Published no later than September 1st in the paper and posted on the City's web page until the final tax rate is adopted.	MCAD
August 19th	Publish notice of date of public hearing on proposed budget (must be 10-30 days before hearing)	City Secretary
August - Pending	Council Budget Workshop (6pm) (if needed)	City Council and Administrator
September 10th	Public hearing on proposed budget (6pm) (must be at least 15 days after filing of proposed budget)	City Council
August 27th	1st public hearing on Effective Tax Rate (two public hearings required)	City Council
September 3rd	2nd Public Hearing on Effective Tax Rate (two public hearings required)	City Council
September 10th	Adopt budget for FY 2019-2020 (must be adopted before setting the tax rate)	City Council
September 10th	Adopt tax rate (must be adopted by September 18th to ensure Tax Statements are mailed early as possible)	City Council

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount:
Department: Administration	
Prepared By: Jack Yates	Exhibits: 2019 Property Tax Rates in city of Montgomery worksheet from County Treasurer
Date Prepared: August 6, 2019	

Subject

Consideration of acknowledgment and acceptance of the Effective Tax Rate and the Rollback Rate calculations as presented by the County Treasurer

Discussion

This is the acknowledgment of the Effective Tax Rate and Rollback Rate is shown on the attached worksheet County Treasurer. Effective Tax Rate is .3944 and the Rollback Rate is .4983.

The Effective Tax Rate is what the tax rate would be to collect the same amount of taxes as in 2018 – 2019. With the increase of approximately \$56,000,000 of taxable value, the Effective Tax Rate would be .3944.

The Rollover Rate is the available tax rate the City could collect legally based on on percentage of increase allowed each year under the law. The Council decided that the growth of the assessment is roughly equal to the growth in the city services needed so that the Council is considering reducing the current .4000 tax rate.

The way it worked out this year is that the increase of approximately \$56,000,000 in the assessment value results in \$224,000 in total revenues is for the City, further broken down by .2058 general fund maintenance and operation resulting \$115,248 of additional funds and .1942 to debt service \$108,752 of additional funds

Recommendation

2019 Property Tax Rates in City of Montgomery

This notice concerns the 2019 property tax rates for City of Montgomery. It presents information about three tax rates. Last year's tax rate is the actual tax rate the taxing unit used to determine property taxes last year. This year's *effective* tax rate would impose the same total taxes as last year if you compare properties taxed in both years. This year's *rollback* tax rate is the highest tax rate the taxing unit can set before taxpayers start rollback procedures. In each case these rates are found by dividing the total amount of taxes by the tax base (the total value of taxable property) with adjustments as required by state law. The rates are given per \$100 of property value.

Last year's tax rate:

Last year's operating taxes	\$522,528
Last year's debt taxes	\$493,075
Last year's total taxes	\$1,015,603
Last year's tax base	\$253,900,750
Last year's total tax rate	\$0.4000/\$100

This year's effective tax rate:

Last year's adjusted taxes (after subtracting taxes on lost property)	\$1,012,130
÷ This year's adjusted tax base (after subtracting value of new property)	\$256,598,213
=This year's effective tax rate	\$0.3944/\$100

(Maximum rate unless unit publishes notices and holds hearings.)

This year's rollback tax rate:

Last year's adjusted operating taxes (after subtracting taxes on lost property and adjusting for any transferred function, tax increment financing, state criminal justice mandate, and/or enhanced indigent healthcare expenditures)	\$1,132,072
÷ This year's adjusted tax base	\$256,598,213
=This year's effective operating rate	\$0.4412/\$100
x 1.08=this year's maximum operating rate	\$0.4764/\$100
+ This year's debt rate	\$0.2465/\$100
= This year's total rollback rate	\$0.7229/\$100
-Sales tax adjustment rate	\$0.2246/\$100
=Rollback tax rate	\$0.4983/\$100

Statement of Increase/Decrease

If City of Montgomery adopts a 2019 tax rate equal to the effective tax rate of \$0.3944 per \$100 of value, taxes would increase compared to 2018 taxes by \$57,735.

Schedule A - Unencumbered Fund Balance

The following estimated balances will be left in the unit's property tax accounts at the end of the fiscal year. These balances are not encumbered by a corresponding debt obligation.

Type of Property Tax Fund	Balance
DEBT SERVICE FUND	395,056

Schedule B - 2019 Debt Service

The unit plans to pay the following amounts for long-term debts that are secured by property taxes. These amounts will be paid from property tax revenues (or additional sales tax revenues, if applicable).

Description of Debt	Principal or Contract Payment to be Paid from Property Taxes	Interest to be Paid from Property Taxes	Other Amounts to be Paid	Total Payment
TAX & REVENUE CERTIFICATES OF OBLIGATIONS- SERIES 2012	125,000	108,700	250	233,950
GENERAL OBLIGATION REVENUE BOND SERIES- 2012R	105,000	73,103	250	178,353
GENERAL OBLIGATION REVENUE BOND SERIES- 2015R	85,000	13,518	180	98,698

TAX & REVENUE CERTIFICATES OF OBLIGATION- SERIES 2017A	50,000	9,534	400	59,934
TAX & REVENUE CERTIFICATES OF OBLIGATION- SERIES 2017B	80,000	19,515	400	99,915

Total required for 2019 debt service	\$670,850
- Amount (if any) paid from Schedule A	\$0
- Amount (if any) paid from other resources	\$0
- Excess collections last year	\$0
= Total to be paid from taxes in 2019	\$670,850
+ Amount added in anticipation that the unit will collect only 100.00% of its taxes in 2019	\$0
= Total debt levy	\$670,850

Schedule C - Expected Revenue from Additional Sales Tax

In calculating its effective and rollback tax rates, the unit estimated that it will receive \$611,365 in additional sales and use tax revenues.

This notice contains a summary of actual effective and rollback tax rates' calculations. You can inspect a copy of the full calculations at 400 N. SAN JACINTO CONROE, TEXAS 77301

tammy.mcrae@mctx.org.

Name of person preparing this notice: Tammy McRae

Title: TAX ASSESSOR/COLLECTOR

Date Prepared: 07/26/2019

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount:
Department: Administration	
	Exhibits: 2019 Property Tax Rates in city of Montgomery worksheet from County Treasurer, Tax Rate Review/Comparison sheet
Prepared By: Jack Yates	
Date Prepared: August 7, 2019	

Subject

Discussion of tax rate needed to fund 2019 – 2020 budget for Maintenance and Operation and Debt Service.

Discussion

This is a required item of the law to publicly discuss the O and M and the Debt Service Fund split of property taxes received.

Property taxes at the existing .4000 tax rate will bring in a total of \$1,243,270. The proposed split is .2058 for O and M to General Fund and .1942 for Debt Service.

The increased amount from last year to this year for the O and M in General Fund is \$114,212 and the increase to Debt Service Fund is \$107,774. The Council feels that this list allows growth in each of these funds enough to allow for the related expense of services due to growth in the City. For the O and M taxes received an increase in social escalations will make the increase of the General Fund budget. For the Debt Service increase allows an opportunity to set aside enough to borrow for long-term needs should the need arise.

A question that the Council may consider is to increase the O and M amount, and decreasing the Debt Service amount, to create a source of money for capital projects in the General Fund. That will be discussed and determined during budget discussions and ultimately discussed publicly.

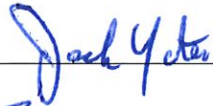

Montgomery City Council
AGENDA REPORT

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Recommendation

Have a brief discussion and simply state the discussion will continue during budget sessions and discussed again publicly before a decision is reached. All

Approved By

Jack Yates		Date: August 7, 2019
Richard Tramm		Date: August 8, 2019

TAX RATE REVIEW / COMPARISON

	Current FY 2017-2018	FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2033
Total Rate	0.004155 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002043 \$ 402,471	\$ 521,620	\$ 635,000	\$ 674,190	\$ 715,050	\$ 755,910
Debt	0.002112 \$ 416,064	\$ 539,237	\$ 656,446	\$ 696,960	\$ 739,200	\$ 781,440
Total	0.004155 \$ 818,535	\$ 1,060,858	\$ 1,291,446	\$ 1,371,150	\$ 1,454,250	\$ 1,537,350
Total Rate	0.004 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 525,450	\$ 639,662	\$ 679,140	\$ 720,300	\$ 761,460
Debt	0.001942 \$ 382,574	\$ 495,833	\$ 603,607	\$ 640,860	\$ 679,700	\$ 718,540
Total	0.004 All	\$ 1,021,283	\$ 1,243,270	\$ 1,320,000	\$ 1,400,000	\$ 1,480,000
Total Rate	0.00395 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 525,450	\$ 639,662	\$ 679,140	\$ 720,300	\$ 761,460
Debt	0.001892 \$ 372,724	\$ 483,067	\$ 588,067	\$ 624,360	\$ 662,200	\$ 700,040
Total	0.00395 \$ 778,150	\$ 1,008,517	\$ 1,227,729	\$ 1,303,500	\$ 1,382,500	\$ 1,461,500
Total Rate	0.0039 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 468,003	\$ 639,662	\$ 674,190	\$ 715,050	\$ 755,910
Debt	0.001842 \$ 362,874	\$ 490,726	\$ 572,526	\$ 634,260	\$ 672,700	\$ 711,140
Total	0.0039 \$ 768,300	\$ 958,729	\$ 1,212,188	\$ 1,308,450	\$ 1,387,750	\$ 1,467,050
		FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2033
Total Difference						
O & M	0.001	\$ 43,405	\$ -	\$ 56,100	\$ 59,500	\$ 62,900
Debt	0.001	\$ 43,405	\$ 52,839	\$ 56,100	\$ 59,500	\$ 62,900
Total Difference		\$ 43,405	\$ 52,839	\$ 56,100	\$ 59,500	\$ 62,900

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2017A				
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tammy.mcrae@mctx.org.

Name of person preparing this notice: Tammy McRae
Title: TAX ASSESSOR/COLLECTOR
Date Prepared: 07/26/2019

To: Mayor and City Council
Richard Tramm
From: Jack Yates
Subject: Preliminary Financing of large General Purposes capital improvements
Date: August 8, 2019

Considering the immediate need for planning of additional City Hall/Police Department, right hand turn lanes on SH 105 and FM149 that may happen during this fiscal year I recommend not waiting on the master plan now being developed to start each of these projects. Each of these projects are well known to be of the highest priority for the City.

I foresee needing, in this upcoming fiscal year, approximately \$175,000 to begin the substantial planning for the City Hall/Police Department addition and the purchase of the right-of-way for the two right hand turn lane's. Attached is a general-purpose project timetable that shows possible the projects timing.

No decision is immediately necessary, only to be decided during the course of this upcoming budget discussion/approval.

There are basically doing long ways of obtaining the \$175,000:

First-- is to use funds from the General Fund balance. The balance at the beginning of the fiscal year is \$1,200,000.

Second-- is to reduce the tax rate to the Debt Service Fund that is already adequately financed. This will be accomplished by increasing the O and M part of the tax rate , thus "creating" a one year increase to the General Fund that can be directed to a specific line item for each of the three projects. Remember, that once monies go into the Debt Service Fund they can only be used to pay formal debts of the City.

Attached is a Reduction of Debt Service Tax Rate sheet gives you a guide for the results of a rate reduction would be.

Third—You could do an interim loan, at possibly 3.5% interest, and pay back those funds in September, before the close of the fiscal year. The payback funds would come from the General Fund reserves that would be re-placed, if chosen by the Council, with a formal certificate of obligation borrowing could replace the general fund reserve amount and be enough to fund a building and any other improvements that the Council might want to add.

Fourth-- to borrow the substantial amount to include the completion of all three plans. However, that amount is unknown until the planning of the building/appraisal property from the right hand turn things is completed.

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GENERAL PURPOSE PROJECTS -- TIME TABLE

PROJECT	BEGINNING POINTS	SUMMER 2019	FALL 2019	WINTER 2019	SPRING 2020	SUMMER 2020	WINTER 2020	SPRING 2021
<p>Northeast corner of FM149 and SH 105 Right-hand Turn Lane</p>	<p>Get TxDOT design before acquiring any property Get TxDOT statement that they will pave/construct turn land if property is given Council agrees to need of project and commits funds (\$60,000 to \$160,000)</p>	<p>Get appraisal Get determination of turn lane needed-by TxDOT Start discussion w/ TxDOT on drawing of corner for precise area Get Utilities located and determine relocation costs Determine burial site Ques.</p>	<p>get TxDOT Agreement on that they place pavement improvements If r-o-w acquired/ donated. Get update of appraisal based on precise TxDOT drawings Make offer on property and either close on property or start eminent domain procedures</p>	<p>Finish acquisition of property Begin TxDOT donation process</p>	<p>Finish TxDOT donation process</p>	<p>Relocate any utilities needed to be moved Await TxDOT action on construction</p>	<p>Await TxDOT action on construction</p>	<p>Await TxDOT action on construction</p>
<p>Northwest corner of FM149 and SH 105 Right-hand Turn Lane</p>	<p>Dumpster site must be determined/coordinated before appraisal is done Council agrees to need of project and commits funds (\$50,000 to \$140,000)</p>	<p>Determine the area to be acquired -- with coordination of Exxon Owner Speak with Owner of Shipley's Donuts land about need to acquire easement Get Utilities located and determine relocation costs</p>	<p>Get Appraisal Make offer on property and either close on property or start eminent domain procedures</p>	<p>Finish acquisition of property Begin TxDOT donation process Finish acquisition of property Begin TxDOT donation process</p>	<p>Finish TxDOT donation process Finish TxDOT donation process</p>	<p>Relocate any utilities needed to be moved Await TxDOT action on construction Relocate any utilities needed to be moved Await TxDOT action on construction</p>	<p>Await TxDOT action on construction Await TxDOT action on construction</p>	<p>Await TxDOT action on construction Await TxDOT action on construction</p>
<p>Additional Space for City/Police Office Space</p>	<p>Council agrees to need and commits to adequate funding of project (\$600,000 to \$800,000) Cost includes new building and renovations to existing building and site improvements</p>	<p>Do internal space planning to determine if decision can be definitely agreed If internal process does not work out -- select professional space planner to do study Council determines how preliminary costs to be paid</p>	<p>Determine, by internal or professional space planner what the decision is to build and location Publicize through Newsletter and Press Release the General Purpose projects process that is underway Selection Committee do research on possible Architects to hire</p>	<p>Basic land research done on selected site to confirm adequacy of site needs Have public mtg. on intention Selection Committee narrows down choices of Architect for Council selection, with definite cost/design parameters/direction given to Architect Publicize through Newsletter and Press Release the General Purpose projects process that is underway Architect begins work</p>	<p>Architect completes work in coop. w/ Dept. Head/ C. Adm. Architect/Council agree on building/ Construction budget Council determines how payment is to be made Have public meeting(s) on proposal Advertise bids/select Contractor</p>	<p>Contractor begins four month contract time Construction complete Staff moves in building</p>		

TAX RATE REVIEW / COMPARISON

	Current FY 2017-2018	FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2033
Total Rate	0.004155 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002043 \$ 402,471	\$ 521,620	\$ 635,000	\$ 674,190	\$ 715,050	\$ 755,910
Debt	0.002112 \$ 416,064	\$ 539,237	\$ 656,446	\$ 696,960	\$ 739,200	\$ 781,440
Total	0.004155 \$ 818,535	\$ 1,060,858	\$ 1,291,446	\$ 1,371,150	\$ 1,454,250	\$ 1,537,350
Total Rate	0.004 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 525,450	\$ 639,662	\$ 679,140	\$ 720,300	\$ 761,460
Debt	0.001942 \$ 382,574	\$ 495,833	\$ 603,607	\$ 640,860	\$ 679,700	\$ 718,540
Total	0.004 All	\$ 1,021,283	\$ 1,243,270	\$ 1,320,000	\$ 1,400,000	\$ 1,480,000
Total Rate	0.00395 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 525,450	\$ 639,662	\$ 679,140	\$ 720,300	\$ 761,460
Debt	0.001892 \$ 372,724	\$ 483,067	\$ 588,067	\$ 624,360	\$ 662,200	\$ 700,040
Total	0.00395 \$ 778,150	\$ 1,008,517	\$ 1,227,729	\$ 1,303,500	\$ 1,382,500	\$ 1,461,500
Total Rate	0.0039 \$ 197,000,000	\$ 255,320,714	\$ 310,817,411	\$ 330,000,000	\$ 350,000,000	\$ 370,000,000
O & M	0.002058 \$ 405,426	\$ 468,003	\$ 639,662	\$ 674,190	\$ 715,050	\$ 755,910
Debt	0.001842 \$ 362,874	All you is is this is process is set	\$ 572,526	\$ 634,260	\$ 672,700	\$ 711,140
Total	0.0039 \$ 768,300	\$ 468,003	\$ 1,212,188	\$ 1,308,450	\$ 1,387,750	\$ 1,467,050
Total Difference		FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2033
O & M	0.001	\$ 43,405	\$ -	\$ 56,100	\$ 59,500	\$ 62,900
Debt	0.001	\$ 43,405	\$ 52,839	\$ 56,100	\$ 59,500	\$ 62,900
Total Difference		\$ 43,405	\$ 52,839	\$ 56,100	\$ 59,500	\$ 62,900

Reduction of Debt Service Tax Rate to create funds for General-Purpose Needs

Amount Created		
Total Rate	0.004	\$ 310,817,411
O & M	0.002058	\$ 639,662
Debt	0.001942	\$ 603,607
Total	0.004	\$ 1,243,270

	\$ 93,245	\$ 141,422
	0.004	\$ 310,817,411
	0.002363	\$ 732,907
	0.001637	\$ 510,362
	0.004	\$ 1,243,270
		\$ 310,817,411
	0.002513	\$ 781,084
	0.001487	\$ 462,185
	0.004	\$ 1,243,270

Amount Created		
Total Rate	0.00395	\$ 310,817,411
O & M	0.002058	\$ 639,662
Debt	0.001897	\$ 589,621
Total	0.003955	\$ 1,229,283

	\$ 79,880	\$ 138,935
	0.3955	\$ 310,817,411
	0.002355	\$ 719,542
	0.00164	\$ 509,741
	0.003995	\$ 1,229,283
		\$ 310,817,411
	0.0025	\$ 777,044
	0.00145	\$ 450,685
	0.00395	\$ 1,227,729

In

Amount Created		
Total Rate	0.0039	\$ 310,817,411
O & M	0.002058	\$ 635,000
Debt	0.001842	\$ 572,526
Total	0.0039	\$ 1,207,526

	\$ 168,463	\$ 123,395
	0.39	\$ 310,817,411
	0.0026	\$ 808,125
	0.0013	\$ 404,063
	0.0039	\$ 1,212,188
		\$ 310,817,411
	0.0024	\$ 745,962
	0.0015	\$ 466,226
	0.0039	\$ 1,212,188

Montgomery City Council
AGENDA REPORT

Meeting Date: August 13, 2019	Budgeted Amount:
Department: Administration	
Prepared By: Jack Yates	Exhibits: Draft Notice of Public Hearing that is prepared and published by the County Treasurer
Date Prepared: August 7, 2019	

Subject

Consideration of **Proposed Tax Rate for 2019**

Discussion

This is to establish a **Proposed Tax Rate** in order for the public hearings to have a basis for discussion. There has to be a public hearing if the Council wants to exceed the Effective Tax Rate.

In order to know if the exceeding is going to happen Council has to establish a Proposed Tax Rate before nose can be published with the Proposed Tax Rate being part of that advertisement.

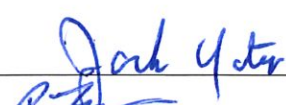
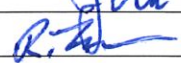
This is not at all binding upon the Council for whatever your decision may be regarding the tax rate actually set.

My recommendation is to use the existing .4000 tax rate, realizing that you can reduce the rate or increase the rate at a later time.

Recommendation

(Motion must read as follows) Motion to propose in the 2019 – 2020 budget a property tax rate of .4000.

Approved By

Jack Yates		Date: August 7, 2019
Richard Tramm		August 8, 2019

2020 Budget Preparation Calendar

Date	All	Responsible Party
July 5	Staff Budgets Due, Preliminary Tax Roll Estimate	Staff
August 5th - 9th	Preliminary Budget to Council	Staff
August 20th	Council Budget Workshop 6 pm	City Council, Administrator and Dept. Heads
August 22nd	Council Budget Workshop 6 pm	City Council and Administrator
July 25th	Certification of Tax Roll	Mont. Central Appraisal District
August 9th	Proposed budget filed with City Secretary (must be 30 days before tax levy)	Mayor
August 5th	Calculation of Effective Tax Rate	Mont. Central Appraisal District
August 13th	Call public hearings on Effective Tax Rate	City Council
August 13th	Call Public Hearing on Budget	City Council
No later than August 19th	Publish notice of SIMPLIFIED TAX RATE NOTICE ** One quarter page notice that provides the proposed effective rate and hearing notice. Published no later than September 1st in the paper and posted on the City's web page until the final tax rate is adopted.	MCAD
August 19th	Publish notice of date of public hearing on proposed budget (must be 10-30 days before hearing)	City Secretary
August - Pending	Council Budget Workshop (6pm) (if needed)	City Council and Administrator
September 10th	Public hearing on proposed budget (6pm) (must be at least 15 days after filing of proposed budget)	City Council
August 27th	1st public hearing on Effective Tax Rate (two public hearings required)	City Council
September 3rd	2nd Public Hearing on Effective Tax Rate (two public hearings required)	City Council
September 10th	Adopt budget for FY 2019-2020 (must be adopted before setting the tax rate)	City Council
September 10th	Adopt tax rate (must be adopted by September 18th to ensure Tax Statements are mailed early as possible)	City Council

Montgomery City Council
AGENDA REPORT

Meeting Date: 08-13-2019	Budgeted Amount: N/A
Department: Administration	
Prepared By: Richard Tramm	Exhibits: Memory Park Fishing Prohibition Ordinance
Date Prepared: 08-07-2019	

Subject

Proposed ordinance related to prohibiting fishing in the pond at Memory Park.

Description

At the July 23, 2019 City Council Meeting, City Council directed the City administrator and City Attorney to bring a draft ordinance to prohibit fishing at Memory Park, to include an enforceable penalty, back to City Council for future consideration. During that meeting it had been discussed that there was not a currently existing ordinance that would prohibit fishing at this location that was enforceable through the City Court.

Recommendation

A copy of the proposed ordinance to prohibit fishing at Memory Park is enclosed with this item. Please review and provide comments, as necessary. If satisfied with the proposed ordinance then consider approval of this item.

Approved By

		Date:
City Administrator	Richard Tramm <i>RT</i>	Date: August 7, 2019

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS PROHIBITING FISHING IN THE MEMORY PARK MUNICIPAL POND; PROVIDING A CRIMINAL PENALTY OF UP TO \$200.00 PER OFFENSE; DIRECTING THE POSTING OF “NO FISHING” SIGNS; PROVIDING A REPEALING CLAUSE AND SEVERANCE CLAUSE; REQUIRING COMPLIANCE WITH TEXAS OPEN MEETINGS ACT; AND PROVIDING THE EFFECTIVE DATE UPON ITS PUBLICATION.

WHEREAS, Chapter 331 of the Texas Local Government Code authorizes a Texas municipality to acquire and manage land for the purposes of a public park; and

WHEREAS, the City of Montgomery, Texas owns and operates the municipal Memory Park for the enjoyment and benefit of its citizens; and

WHEREAS, the pond in Memory Park has been stocked with ornamental Japanese Koi fish which are not a game fish but are enjoyed by the public for their beauty; and

WHEREAS, the City Council for the City of Montgomery finds that individuals have been seen fishing for the ornamental Koi fish in the Memory Park pond; and

WHEREAS, the City Council finds that it is in the best interest of its citizens that the Koi fish in the Memory Park pond should not be disturbed or removed;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS.

SECTION ONE: FISHING IN MEMORY PARK POND PROHIBITED.

It shall be unlawful for any person to catch or attempt to catch any fish or remove or attempt to remove any fish from the Memory Park municipal pond in the City of Montgomery, Texas.

SECTION TWO: CRIMINAL PENALTY FOR ILLEGAL FISHING

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction of any such violation such person shall be subject to a fine of \$50.00 to \$200.00 as provided for in section 1-13 of the Code of Ordinances for the City of Montgomery.

SECTION THREE: POSTING “NO FISHING” SIGNS.

The City Administrator is hereby directed to post signs in Memory Park which notify persons that fishing in Memory Park is prohibited.

SECTION FOUR: CODIFICATION OF THIS ORDINANCE.

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

SECTION FIVE: REPEALING CLAUSE.

Any provisions in other City ordinances that conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERANCE CLAUSE.

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

SECTION SEVEN: TEXAS OPEN MEETINGS ACT CLAUSE.

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

SECTION EIGHT: EFFECTIVE DATE.

The effective date of this Ordinance shall be upon its passage and publication as provided by law.

PASSED AND APPROVED by the City Council on this ____ day of _____, 2019.

Sara Countryman, Mayor

ATTEST:

City Secretary, Susan Hensley

APPROVED AS TO FORM:

Larry Foerster, City Attorney

Montgomery City Council
AGENDA REPORT

Meeting Date: 08-13-2019	Budgeted Amount: N/A
Department: Administration	
Prepared By: Richard Tramm	Exhibits: Proposed Ordinance
Date Prepared: 08-07-2019	

Subject

Consideration of Ordinance allowing Centerpoint Energy the ability to distribute and sell natural gas within the City of Montgomery.

Description

Centerpoint Energy is requesting the “right, privilege and franchise” to “construct, install, extend, replace, abandon, operate and maintain its facilities within public Rights-of-Way” within the City.

The City’s Attorney has previously expressed some concern over the term “gross receipts” in the draft ordinance. Centerpoint Energy is not wanting to change the language as it is part of their standard format. The City Attorney may provide comments on this at the Council Meeting.

Recommendation

A copy of the proposed ordinance regarding Centerpoint Energy is enclosed with this item. Please review and provide comments, as necessary. If satisfied with the proposed ordinance then consider approval of this item.

Approved By

		Date:
City Administrator	Richard Tramm <i>RT</i>	Date: August 7, 2019

CITY OF MONTGOMERY
ORDINANCE NO. _____

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MONTGOMERY, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY

Section 1. GRANT OF AUTHORITY. Subject to the terms, conditions and provisions of this ordinance, the right, privilege and franchise is hereby granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company", to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Montgomery, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Montgomery, as the same are now and as the same may from time to time be extended.

Section 2. DEFINITIONS.

- A. "City" shall mean the City of Montgomery, Texas.
- B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.
- C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, regulators, meters, fixtures, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply and sales of natural gas for heating, lighting, power and any other purposes for which natural gas may now or hereafter be used.
- D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE. This Franchise shall become effective on the Effective Date described in Section 21 and shall be in full force and effect for a term of thirty (30) years.

Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM. All Facilities installed by Company shall be of sound material and good quality and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities installed

by the Company shall be laid so that they do not damage existing City utilities or with any existing underground facilities by another natural gas company or other utility company. All Facilities shall be installed in accordance with applicable Federal and State regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 13 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. Company shall keep current and up-to-date maps showing the physical location of Company's facilities and make available for inspection by the City at no cost during normal working hours.

Section 5. STREETS TO BE RESTORED TO GOOD CONDITION. Company and its contractors shall give City reasonable notice, of the dates, location and nature of all work to be performed on its Facilities within the Public Rights-of-Way. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of-Way when necessary for the installation, replacement, abandonment, operation or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any fee in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

Section 6. QUALITY OF SERVICE. The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality of service rules of the Railroad Commission of Texas, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the Company shall do all things reasonably within its power to restore normal service as quickly as practicable.

Section 7. PAYMENT TO THE CITY. In consideration of the rights and privileges herein granted, the administration of the Franchise by the City, the temporary interference with the use of Public Rights-of-Way and cost and obligations undertaken by the city in relation thereto and in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy of the Streets, alleys, and public places of the City, and in lieu of any inspection fee, the Company agrees to pay to the City franchise fees in the amount and manner described herein.

Company agrees to pay to the City quarterly during the continuance of this Franchise a sum of money equal to five percent (5%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of gas within the corporate limits of the City plus seven cents (7¢) per Mcf for natural gas transported by Company for its Transport Customers during such quarter. "Transport Customer" means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of City for consumption within the corporate limits of City. The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter; provided, however, the first such payment shall be prorated as necessary to reflect only those gross receipts received and transportation volumes delivered by Company after the Effective Date of this Franchise. In no event shall the Company be required to remit to the City franchise fee amounts that for any reason whatsoever are not fully recoverable from its customers. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date.

Section 8. ANNEXATIONS BY CITY. This Franchise shall extend to and include any and all territory that is annexed by the City during the term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Montgomery. After such sixty (60) day period the payment provisions specified in Section 7 of this Franchise shall apply to gross receipts and transport fees received by the Company from customers located within such annexed territory. Company shall true-up its map of City boundaries to the City's map on an annual basis.

Section 9. NON-EXCLUSIVE FRANCHISE. Nothing contained in this Franchise shall ever be construed as conferring upon the Company any exclusive rights or privileges of any nature whatsoever.

Section 10. COMPLIANCE AND REMEDIES. (a) In the event the Company by act or omission violates any material term, condition or provision of this Franchise, the City shall notify the Company in writing of such violation. Should the Company fail or refuse to correct any such violation within thirty (30) days from the date of City's notice, the City shall, upon written notification to the Company, have the right to terminate this agreement. Any such termination and cancellation shall be by ordinance adopted by City Council; provided, however, before any such ordinance is adopted, the Company must be given at least sixty (60) days' advance written notice. Such notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise the Company that it will be provided an opportunity to be heard by City Council regarding such proposed action before any such action is taken and shall set forth the time, date and place of the hearing.

(b) Other than its failure, refusal or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, the Company shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

(c) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

Section 11. RESERVE OF POWERS. Except as otherwise provided in this Franchise, the City by the granting of this Franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers, claims and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and under the Charter and Ordinances of the City of Montgomery or other applicable law, to regulate public utilities within the City and to regulate the use of the Streets by the Company; and the Company by its acceptance of this Franchise agrees that, except as otherwise provided in this Franchise, all lawful powers and rights, whether regulatory or otherwise, as are or as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

SECTION 12. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO ANY PERSON OR PROPERTY BY REASON OF THE CONSTRUCTION AND MAINTENANCE OF THE COMPANY'S NATURAL GAS DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE OR NONFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY, A PERSON, PERSONS, COMPANY OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.

Section 13. RELOCATION OF FACILITIES. The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Section 14. GOVERNMENTAL FUNCTION. All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 15. RECORDS AND REPORTS. (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in

connection with this Franchise. All such books of accounts and records shall be kept at the company's principal office in Houston, Texas.

(b) Access by City. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the City, all books and records related to Company's operations under this Franchise shall be made available for inspection and copying no later than thirty (30) days from receipt of such request.

(c) Interest on Underpayments and Overpayments. (1) Amounts due to City for late payments shall include interest, compounded daily equal to the return on equity plus three percent (3%) granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. (2) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company shall pay simple interest on such amounts equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers. (3) Amounts due Company for past overpayments shall include simple interest equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City; provided, however, if there is a change in the approved return on equity during the time period subject to the City's audit or inquiry, then for each time period during which there was an overpayment, the approved return on equity in effect during such time period shall be used in calculating interest under this subparagraph (c). Interest payable on such sums shall be credited to customers.

Section 16. EASEMENT. In consideration for the compensation set forth in Section 7, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

Section 17. ORIGINAL JURISDICTION OVER RATES AND SERVICES. Pursuant to Section 103.003 of the Gas Utility Regulatory Act, the City hereby elects to surrender to the Railroad Commission of Texas the City's exclusive original jurisdiction over the rates, operations and services of the Company effective as of the Effective Date of this Franchise and for the term of this Franchise. Notwithstanding the above surrender of the City's exclusive original jurisdiction over the rates, operations and services of the Company, such surrender shall not affect in any manner the City's rights and privileges pursuant to the provisions of the Gas Utility Regulatory Act as currently enacted, or as amended, or in any successor legislation, or as otherwise provided at law for the City to both participate in any ratemaking proceeding at the Railroad Commission of Texas which affects the City's gas rates, and to recover from the Company any reasonable expenses incurred by the City in its participation in such a ratemaking proceeding as provided for in law.

Section 18. ACCEPTANCE. The Company shall, within thirty (30) days following the final passage and approval of this Franchise, file with the City Secretary of the City of Montgomery either 1)

a written statement signed in its name and behalf in the following form or 2) this document duly executed below by the Vice President of Regional Operations:

“To the Honorable Mayor: and City Council of the City of Montgomery:

CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, its successors and assigns, hereby accepts the attached Franchise Ordinance and agrees to be bound by all of its terms and provisions.”

CENTERPOINT ENERGY RESOURCES CORP.,
DBA CENTERPOINT ENERGY TEXAS GAS
OPERATIONS

By:

Tal R. Centers Jr, Division Vice President, Regional
Operations

Dated this _____ day of _____ 2019.

Section 19. SEVERABILITY. If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Montgomery in adopting this Franchise that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 20. NOTICES. Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

CenterPoint Energy Resources Corp.
Vice President Regulatory Relations
PO Box 4567
Houston, TX 77210-4567

With a copy to:
General Counsel, Gas Division
PO Box 2628
Houston, TX 77252-2628

Every such communication to the City or the City Council shall be sent to the:

City Administrator, City of Montgomery

P.O. Box 708
Montgomery, Texas 77356

With a Copy to:

City Secretary
P. O. Box 708
Montgomery, Texas 77356

Section 21. PUBLICATION, PASSAGE AND EFFECTIVE DATE. This Franchise, having been published, shall take effect and be in force from and after the first day of the month following thirty days after receipt by the Company's acceptance filed pursuant to Section 18 ("Effective Date"). The Company shall pay the cost of those publications.

Section 22. REPEAL OF PREVIOUS ORDINANCES. This Franchise replaces the Franchise agreement with the Company, dated October 9, 2018, granted by City of Montgomery, Texas Ordinance No. 2018-18 which ordinance is hereby repealed as of the Effective Date of this Franchise. Any claims of City or Company thereunder are hereby waived.

Section 23. COMPLIANCE WITH CHARTER AND ORDINANCES. This Franchise, the rights granted hereby and the operations and activities performed by Company pursuant hereto shall be subject to applicable provisions of the Charter of the City of Montgomery, Texas. Except to the extent otherwise expressly provided herein, the Franchise and rights granted hereby and the operations and activities performed by Company pursuant hereto, shall be subject to all valid ordinances and regulations of the City insofar as such ordinances and regulations (a) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the Franchise and right granted to Company hereby, (b) do not conflict with or are not inconsistent with the terms and provisions contained in this ordinance, (c) do not modify, preempt, or cause Company to violate the terms of a tariff approved by the Railroad Commission of Texas, Railroad Commission Rules, or the Gas Utility Regulatory Act, or (d) do not unreasonably regulate the Company's operations and activities in the City Right of Way.

Read in full and passed and adopted on first reading at a regular meeting of the City Council of Montgomery, Texas, on the _____ day of _____, 2019 and approved by the Mayor.

APPROVED:

MAYOR OF THE CITY OF MONTGOMERY

ATTEST:

CITY SECRETARY OF MONTGOMERY, TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

I, the duly appointed, qualified and acting City Secretary of Montgomery, Texas, do hereby certify that the above and foregoing ordinance passed and adopted on first reading at a regular meeting of the City Council of said Montgomery, Texas, held on the _____ day of _____, 2019; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor Sara Countryman, and _____ Council members:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | |

were present at said meeting and acted as the Council throughout; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books kept for the purpose of recording the ordinances of the City of Montgomery, Texas.

EXECUTED under my hand and the official seal of the City of Montgomery, Texas at said City, this _____ day of _____, 2019.

City Secretary
City of Montgomery, Texas

[SEAL]

Montgomery City Council
AGENDA REPORT


Meeting Date: August 13, 2019	Budgeted Amount: N/A
Department: Administrative	
Prepared By: Richard Tramm	Exhibits: Memo
Date Prepared: August 9, 2019	

Subject
Report on Boards and Planning and Zoning Commission Appointments.

Description
See attached memo for information.

Recommendation
Consider the report and provide feedback as you see fit.

Approved By

City Administrator	Richard Tramm 	Date: 8/9/19
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MEMORANDUM

TO: CITY COUNCIL
FROM: RICHARD TRAMM, CITY ADMINISTRATOR
SUBJECT: CITY BOARD OF ADJUSTMENT AND PLANNING AND ZONING
COMMISSION
DATE: AUGUST 8, 2019

Planning and Zoning Commission terms end this coming fall for 3 of the 5 commissioner positions. We are posting these positions on the City's website.

The Board of Adjustment has had a recent resignation that is being posted for replacement and will also have terms opening later this year. At a previous meeting there was discussion regarding the final authority of the Board of Adjustment decisions. I wanted to offer the thought that City Council might want to either appoint its own members to the Board of Adjustment or for the City Council to take on the authority of the Board of Adjustment for itself, as provided by Texas Local Government Code, Section 211.008(g) which states *"The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter."*

The future appointments for both of these will come back to City Council for action at a later date.



Montgomery City Council
AGENDA REPORT

Meeting Date: 08-13-2019	Budgeted Amount: N/A
Department: Administration	
Prepared By: Richard Tramm	Exhibits: Memo Regarding Montgomery EDC Sales Tax
Date Prepared: 08-09-2019	

Subject

Discuss a future election proposition for next May to abolish the Montgomery Economic Development Corporation and transfer its sales tax to the City general fund.

Description

This item was added to the agenda at the request of Councilman Cronin. I have spoken with the City Attorney, who has provided a memo that is attached for your review. The City Attorney will be available for discussion related to this item.

Recommendation

Consider a motion to approve or reject at your discretion.

Approved By

		Date:
City Administrator	Richard Tramm <i>RT</i>	Date: August 8, 2019

MEMO RE MONTGOMERY EDC SALES TAX

I have been asked to provide the city council with a memorandum on the current law which relates to sales tax collected for the Montgomery Economic Development Corporation (MEDC).

Prior to 2015, a Texas city could only collect a 1% local sales and use tax for its general fund. In order to collect the additional sales tax, many cities with the approval of the voters and as authorized by the Texas Tax Code also implemented a sales and use tax for street repair and maintenance and/or authorized a sales tax for a Type A and/or Type B economic development corporation. This provided a means of collecting up to a full 2% of the local sales tax that could be used for specified City projects.

For example, the City of Willis had a sales tax of 1% for the general fund, 0.25% for street maintenance and repair, 0.375% for its Type A Economic Development Corporation, and 0.375% of its Type B Community Development Corporation. On the other hand, the City of Montgomery currently has a 1% sales tax collected for its general fund and 0.5% collected for its Type B MEDC.

By House Bill 157, effective September 1, 2015, the Texas Legislature authorized a municipality to hold an election to impose a general revenue sales and use tax at any rate that is an increment of at least one-eighth of one percent and that would not result in a combined rate that exceeded the maximum local sales and use tax rate of two percent. Since the law was enacted, a few Texas cities have chosen to abolish their Type A and/or Type B Corporation and transfer the sales tax into the city general fund.

This abolition of a sales tax for an EDC and adoption of a larger sales tax for a city can only be accomplished by the vote of the majority of the city voters. Section 321.101 of the Texas Tax Code provides that a municipality that has a sales and use tax may increase such tax by an election in which a majority of the qualified voters of the municipality approve the increase. Section 321.409 of the Texas Tax Code provides that a municipality may by a combined ballot proposition lower or repeal any municipal sales tax, including the additional sales tax for property tax relief, and by the same proposition raise or adopt any other municipal sales tax.

Last spring, the City Council for the City of Willis found that it was in the best interest of the citizens of the Willis for the City to be flexible in its future funding priorities by reallocating the two percent sales and use tax collected in the City to the City for general revenue by repealing the local sales and use tax for the benefit of the Type A Willis Economic Development Corporation. By its election ordinance, the City of Willis called for a proposition to repeal its sales tax for street and maintenance repair and its Type A EDC, and in the same proposition ask the voters to approve the adoption of a higher sales tax for the City. The proposition was submitted to the Willis voters at the May 2019 election and passed. The proposition read as follows:

Proposition 13. The abolition of the local sales and use tax for the street and maintenance repair within the City of Willis; the abolition of the local sales and use tax for the benefit of the Type A Economic Development Corporation within the City of Willis; and the adoption of a local sales and use tax in the City of Willis at the rate of 1.625 percent.

Each city council and its voters may see the value in keeping the sales tax revenue in different categories, that is, partially in a general fund and partially for an EDC. On the other hand, some cities have chosen with voter approval to reallocate all of the sales tax into one city general fund.

The city council as the EDC's "authorizing unit" has the authority to terminate an EDC under Section 501.401 of the Tx Local Government Code. However, this can only be done if any bonds issued by the EDC have been fully paid and there are no other unfilled obligations of the EDC. The applicable law reads as follows:

Sec. 501.401. ALTERATION OR TERMINATION BY AUTHORIZING UNIT.

(a) At any time a corporation's authorizing unit, in its sole discretion, may in accordance with this subtitle:

- (1) alter the corporation's structure, organization, programs, or activities; or
- (2) terminate the existence of the corporation.

(b) The authority of an authorizing unit under this section is limited only by the law of this state on the impairment of contracts entered into by the corporation.

(c) An authorizing unit may make an alteration or may terminate the corporation's existence only by a written resolution of the authorizing unit's governing body.

Sec. 501.402. TERMINATION OF CORPORATION ON COMPLETION OF PURPOSE. The board of directors of a corporation, with the approval by written resolution of the corporation's authorizing unit, shall terminate the corporation's existence as provided by this subtitle if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all bonds issued by the corporation have been fully paid.

Any decision to terminate an economic development corporation should only be made after careful study and analysis. What may be good for Willis or another city may not be prudent for Montgomery. Should the Montgomery city council decide to present a proposal to the voters at its May 2020 election, it would need to act no later than February 2020. If the proposition passes, the Texas Comptroller would be notified of the change in the allocation of the sales. Then the city council and the EDC could by separate resolutions thereby terminate the EDC.

Larry L. Foerster, City Attorney
City of Montgomery, Texas

Montgomery City Council
AGENDA REPORT

Meeting Date: 08-13-2019	Budgeted Amount: N/A
Department: Administration	
Prepared By: Richard Tramm	Exhibits: City of Montgomery Code of Ordinances, Section 64-29 through 64-33
Date Prepared: 08-07-2019	

Subject

Consideration of a variance to Ordinance 64-31(6), requiring a surety bond with permit application, for food truck vendors during the Texas Flag Festival on August 24, 2019.

Description

I have been advised by Councilwoman Huss that multiple food truck vendors are not requesting permits due to the cost of the surety bond that is required by City Ordinance.

At this time, I am not aware of any permits requested by food truck vendors for the date of the Flag Festival (August 24, 2019) when the City is expecting additional people to be in the area for the festival.

If the City wishes to make it easier to have food trucks available for the people at the festival, then a potential option is to consider approving a variance for the surety bond requirement during the Flag Festival.

Recommendation

A copy of the ordinance related to the permitting of food trucks in the City is enclosed with this item. Please review and provide comments or discussion concerning approval or rejection of this item, as necessary.

Approved By

		Date:
City Administrator	Richard Tramm	Date: August 7, 2019

Sec. 64-29. - Required.

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing, roadside food vending or operation of a mobile food unit within the city without having first obtained a permit to engage in such business.

(Code 2002, § 22-61; Ord. No. 1996-3, art. II, § 2, 6-4-1996)

Sec. 64-30. - Classifications; term; fee.

Except as specifically provided by section 64-32, no permit shall be issued pursuant to this article except upon application accompanied by the fee as currently established or as hereafter adopted by resolution of the city council from time to time.

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004)

Sec. 64-31. - Application.

Not less than ten days prior to the effective date of any permit granted under this article, each person who shall desire a permit shall make written application therefor to the city secretary on a form prescribed by the city secretary. Each application shall be accompanied by the required application fee. Each applicant shall provide the following:

- (1) The applicant's name, address, email address and telephone number.
- (2) If the applicant is a corporation, partnership or association, the address, email address and telephone number of the applicant's principal place of business.
- (3) The class of permit requested.
- (4) A statement that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.
- (5) A full description of the merchandise to be sold or for which the purchase is to be solicited.
- (6) A bond in the amount as currently established or as hereafter adopted by resolution of the city council from time to time, executed by the applicant as principal and by a corporate surety company authorized to do business in the state, payable to the city secretary or his successor in office, and conditioned that the principal or his surety will pay damages to any person for any claim which may be caused by or arise out of the wrongful, fraudulent or illegal conduct of the applicant while in the activity for which the permit has been requested, and which bond shall remain in full force and effect for a period of two years following the expiration of the permit granted in connection therewith.

(Code 2002, § 22-63; Ord. No. 1996-3, art. II, § 5, 6-4-1996)

Sec. 64-32. - Exceptions; charities; public well-being; limited duration activities.

- (a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30 and no bond shall be required as provided by section 64-31(6), with respect to the following:
- (1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.
 - (2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
 - (3) Any organization, association or other entity holding any convention in the city and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
 - (4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- (b) Any person, association, organization or other entity claiming an exemption as provided in subsection (a) of this section, shall provide such documentation and/or other evidence as may be required by the city secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
- (c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.

(Code 2002, § 22-63.1; Ord. No. 2004-14, § 2, 8-24-2004)

Sec. 64-33. - Special requirements for mobile food units and roadside food vendors.

- (a) In addition to the requirements of section 64-31, each applicant for a permit to operate a mobile food unit, including a mobile unit for the sale of frozen desserts, or to engage in roadside food vending, shall provide a copy of a current food service permit issued by the county health department.
- (b) Each applicant for a permit to operate a mobile food unit shall, in addition to any other

requirements, provide proof of financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code ch. 601, subch. C (V.T.C.A., Transportation Code § 601.051 et seq.) for each person who shall drive or operate the mobile food unit.

- (c) Each permit for operation of a mobile food unit or to engage in roadside food vending shall be conditioned upon continuous compliance with all federal, state and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- (d) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
 - (1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code ch. 601;
 - (2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
 - (3) No mobile food unit shall be parked within 50 feet of any street corner or crosswalk;
 - (4) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;
 - (5) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 7:00 p.m.; and
 - (6) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

(Code 2002, § 22-64; Ord. No. 1996-3, art. II, § 6, 6-4-1996)