



**CITY OF CASTROVILLE CITY COUNCIL
SPECIAL CALLED MEETING
1209 FIORELLA
TUESDAY
JULY 14, 2020
5:00 P.M.**

In accordance with the order of the Office of the Governor issued on March 16, 2020, the City Council of the City of Castroville will conduct a telephone meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19).

The public may participate in this meeting by dialing in to with the following telephone number:

1 866-899-4679 and **enter access code 303-619-365** when prompted.

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. Written questions or comments may be submitted up to two hours before the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance of the Texas Public Information Act upon request.

The City Council of the City of Castroville will meet at the special called meeting at 5:00 p.m. in the Council Chambers at City Hall on the following items listed on the agenda.

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Citizen Comments
The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. Written questions or comments may be submitted up to two hours before the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance of the Texas Public Information Act upon request.
- VI. Consent Agenda
 - A. Minutes for June 17, 2020 Special Called Council Meeting.
 - B. Minutes for July 1, 2020 Special Called Council Meeting.
- VII. Discussion and appropriate action on approving the Gas Operations and Maintenance Contract with CPS.
(John Gomez, Public Works Director)

- VIII. Discussion and appropriate action on a petition submitted by Hwy 90 Castroville Partners LTD for the annexation of 131.613, 269.407, 14.131, 1.148 (Lot 2, Walmart Store No. 4120-00), and 1.018 (Lot 4, Walmart Store No. 4102-00) acres in the L.M. Collard Survey Number 97, Abstract 1259, Medina County also known as Alsatian Oaks Development; Property is located adjacent to Walmart 1151 Hwy 90 E, Castroville, Texas.
- IX. Discussion and appropriate action on an ordinance amending Ordinance 2009-006 Council Policies and Procedures. (*Debra Howe, City Secretary*)
- X. Update on Code Enforcement within the city. (*Kerl Brooks, Code Enforcement Officer*)
- XI. Discussion and appropriate action on a resolution authorizing the submission of an application for financial assistance with the United States Department of Agriculture, Community Facilities Direct Loan Program; and authorizing signatures for all documents relating to the USDA Community Facilities Direct Program. (*David Kirkpatrick, Airport Manager*)
- XII. Discussion on process for updating the City Thoroughfare Plan with a committee of stakeholders including the County, School District, and TxDOT. (*Darrin Schroeder, Mayor Pro Tem*)
- XIII. Discussion on generating the monthly/quarterly newsletter.
- XIV. Executive Session:
(1) Pursuant to the Texas Government Code, Section 551.071 (entitled "Consultation with Attorney") City Council shall convene in Executive Session to consult with the City Attorney, regarding pending or contemplated litigation; or a settlement offer; or a matter in which the City Attorney, under the state bar's rules of conduct, is required to disclose confidentially to City council, as follows:
a. Rebekah Ann Parker vs. City of Castroville Cause No. 19-03-25655-CV
- XV. Reconvene in Open Session.
- XVI. Consider possible action or give direction on captioned items legally discussed in Executive Session.
- XVII. Updates on safety measures for city staff and the public during the COVID 19 pandemic.
- XVIII. Discussion on future agenda items.
- XIX. Adjourn.

ACCESSIBILITY STATEMENT

The City Hall is wheelchair accessible. The exit and parking ramps are located at the rear of the building.

NON-DISCRIMINATION STATEMENT

The City of Castroville does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the employment or the provision of services.

The City Council of the City of Castroville reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act.

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, Castroville, Texas on July 10, 2020 before 5:15 p.m.



Debra Howe
City Secretary

**CITY OF CASTROVILLE CITY COUNCIL
SPECIAL CALLED COUNCIL MEETING**

1209 Fiorella

City Council Chambers

Wednesday

June 17, 2020

5:00 p.m.

MINUTES

I. CALL TO ORDER

The meeting was called to order at 5:00 p.m. by Mayor Santleben.

II. ROLL CALL

Present:

Mayor Phyllis Santleben

Mayor Pro Tem Darrin Schroeder

Councilmember Sheena Martinez

Councilmember Paul Carey

Councilmember Phil King

Councilmember Todd Tschirhart

Leroy Vidales, Interim City Administrator/Finance Director

Debra Howe, City Secretary

John Gomez, Public Works Director

Devin Fredrickson, Parks and Recreation Director

III. Citizen Comments

The City Council will hear comments from any citizen or visitor. Speakers must address their comments to the presiding officer rather than individual council members or staff; stand at the podium, speak clearly into the microphone and state your name and residential address before speaking. Speakers will be allowed a maximum of 3 minutes for testimony. Speakers making personal, impertinent, profane or slanderous remarks will be given one warning before losing the privilege to speak or may be removed from the room. Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations/distractions will not be permitted. No placards, banners, or signs will be permitted in the Chambers or in any other room in which the council is meeting. In accordance with the State Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. Action can only be taken at a future meeting.

No one requested to speak.

IV. Discussion on five-year financial revenue forecast and Capital Improvement Plan

Mayor Santleben briefed the city council on guidelines she had copied on how to identify projects and developing a strategy on prioritizing the current projects. Mayor Santleben suggested breaking the council members into groups with citizen participation and divide the projects in streets or utilities between the groups, placing them in order of priority. Mayor Pro Tem Schroeder questioned the council looking at capital improvement projects first and not determine what it would take the next year to run the city efficiently, especially due to the COVID 19 shut down and lower revenues projected. Councilmember Carey felt they would be looking at the projects twice in this type of exercise, suggesting instead to just go through all of the projects together. Mayor Santleben started listing the projects but made the decision to leave the meeting and have the Mayor Pro Tem preside over the remainder of the meeting.

Mayor Santleben left the meeting at 5:14 p.m.

Councilmember Martinez said last year one of the priorities was to improve the electrical and streets in River Bluff. She wanted the electrical to be a priority in this year's budget talks due to the system declining. Public Works Director John Gomez briefed the city council on his projects shown in the

(Cont.)

next year with a few shown further out in the five-year forecast. Mr. Gomez went through the projects and designate which projects was a priority to him for next year. Council asked for a revised list of projects and costs for review at a future meeting.

Interim City Administrator Leroy Vidales briefed the city council on projected revenues and bringing back recommendation on increases to comprehensive fees, including the new trash service increases. Councilmember Carey said the council needed to look at fees of services to get a good picture of the services the city provided. He felt the other funds – water and sewer needed to start paying their way, not being subsidized by the electric. Councilmember King spoke on the organizational chart and asked that the boards and commissions be identified differently as they were council appointed. Councilmembers discussed holding the next meeting on July 9, 2020 at 5pm.

V. **Adjourn.**

Mayor Pro Tem Schroeder adjourned the meeting at 5:40 p.m.

Mayor

ATTEST:

City Secretary

**CITY OF CASTROVILLE CITY COUNCIL
SPECIAL CALLED COUNCIL MEETING**

**1209 Fiorella
City Council Chambers**

July 1, 2020

Wednesday

5:00 P.M.

MINUTES

I. CALL TO ORDER

The meeting was called to order at 5:03 p.m. by Mayor Pro Tem Schroeder

II. ROLL CALL

Present:

Mayor Darin Schroeder

Councilmember Sheena Martinez

Councilmember Paul Carey

Councilmember Jesse Byars

Councilmember Todd Tschirhart

Leroy Vidales, Interim City Secretary

Debra Howe, City Secretary

Brian Jackson, Police Chief

Others in attendance: (via telephone)

Cynthia Trevino, City Attorney (Executive Session)

Michael Persyn, City Engineer

III. PLEDGE OF ALLEGIANCE

IV. INVOCATION

Councilmember Paul Carey gave the invocation.

Mayor Pro Tem Schroeder recessed into executive session at: 5:04 p.m.

V. EXECUTIVE SESSION

(1) Pursuant to the Texas Government Code, Section 551.074 (entitled "personnel matters") to deliberate the appointment, employment, performance, and duties of the Interim City Administrator.

Open: 5:08 p.m.

Closed: 5:30 p.m.

VI. Reconvene in Open Session

Mayor Pro Tem Schroeder reconvened into open session at 5:33 p.m.

VII. Consider possible action or give direction on captioned items legally discussed in Executive Session

Mayor Pro Tem Schroeder directed staff to reach out to SGR and to start the City Administrator search process. Council thanked Interim City Administrator Leroy Vidales for stepping in as interim and encouraged him to submit his application if wished to apply.

VIII. CITIZEN COMMENTS

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. Written questions or comments may be submitted up to two hours before the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance of the Texas Public Information Act upon request.

No one requested to speak.

City Secretary Howe read an email from former City Councilmember Jesse Byars regarding agenda item XI on the procedures on vacancy of a mayor. Mr. Byars supported Mayor Pro Tem Schroeder if he wished to step into the position as Mayor and if not, he hoped if the city council voted to open it up to the citizens to choose someone who would be good for the city and had no personal agenda.

IX. CONSENT AGENDA

- A. Minutes for June 09, 2020 Special Called Council Meeting.
- B. Minutes for May 27, 2020 Planning and Zoning Commission Meeting.

A motion was made by Councilmember Carey and duly seconded by Councilmember King to approve the consent agenda. A vote was taken (5:0 all ayes) the motion carried by all present.

X. Acceptance of letter of resignation from Mayor Phyllis Santleben

Mayor Pro Tem Schroeder thanked former Mayor Santleben for her service on the city council as District 1 representative for two years, and as Mayor for the last 13 months. **A motion was made by Councilmember King and duly seconded by Councilmember Martinez to formally accept the letter of resignation from Mayor Phyllis Santleben. A vote was taken (5:0 all ayes) the motion carried by all present.**

XI. Discussion on procedures on vacancy of mayor, assigned duties of the mayor pro tem and possible action. (Cynthia Trevino, City Attorney)

City Attorney Cynthia Trevino was to present the agenda item but was unable to do a call-in in open session. Mayor Pro Tem Schroeder went through the options that council could take. Option #1 was to continue with the Mayor Pro Tem assuming certain duties and still be a voting member. Option #2 to appoint someone from the city council to fill the position, opening up a different seat. Option #3 to accept applications from the public to fill the position until May 2021 Election. Mayor Pro Tem Schroeder felt he could fulfil the duties as Mayor Pro Tem and was in favor of keeping the same.

Councilmembers Martinez, Carey, King, and Tschirhart agreed. City Secretary Howe said at anytime they felt they needed to change they could act on one of the other options. **No formal action was taken.**

XII. Discussion and possible action on funding request of support of graduation seniors from Chamber of Commerce. (Chrystal Molina, Chamber of Commerce)

This request from Chamber of Commerce Representative Chrystal Molina was withdrawn.

XIII. Public Hearing on a request for a preliminary vacate and re-plat of Country Village Estates, Phase 1, located at 123 Country Lane, Castroville Texas.

Opened: 5:49 p.m. (Citizens who spoke did so by telephone)

Roxanne Forrest, 147 Village Path, spoke against the preliminary plat. Ms. Forrest had concerns on only one entrance shown, possible flooding issues and additional traffic problems. Ms. Forrest also said the current lift station had to be repaired on a regular basis and did not know if additional homes could be services. Ms. Forrest said two years ago when the first preliminary plat was submitted with two entrance which would help with the traffic issues and allow emergency vehicles to safely enter and exit the subdivision. Ms. Forrest wanted to know what happened to that draft and who would be responsible for any drainage issues in the future.

Terry Groff, 1202 Country Lane, spoke against the preliminary plat. Mr. Groff was against only having one entrance and felt there would be issues with flooding. Mr. Groff was unsure of any sewer issues but was concerned with school buses getting into the subdivision and being able to get out. Mr. Groff pointed out the City Engineer had concerns and didn't think the preliminary plat submitted met the city ordinances.

Carla Muennink, 123 Village Path, spoke against the preliminary plat. Ms. Muennink said the current subdivision had four entrances and they had problems with traffic cutting through from Hwy 90 to FM 471 to by-pass traffic lights now. She felt with 86 new homes the traffic issues would continue to grow. Ms. Muennink felt if the city council allowed only one entrance it would be short sighted on the city's part and cost the citizens in the future for impact studies. This cost should be passed on to the developer, now.

Dawn Groff, 1206 Country Lane, reiterated her husband's concerns of one entrance, children's safety, flooding, and more traffic issues. Ms. Groff said she was not against the homes to be built just wanted the city to look at the other issues.

John Sedlock, 121 Village Path, spoke against the preliminary plat. Mr. Sedlock suggested having an independent impact study be completed as San Antonio required. Mr. Sedlock said it would look at the traffic, roadway, safety issues and the environmental impact. Ms. Sedlock felt the subdivision needed to have a stand-alone system not piggyback off the old infrastructure.

Timothy Taylor, 127 Village Path, spoke against the preliminary plat and agreed with all the other callers on the issues.

Mayor Pro Tem Schroeder read off the notices received by staff on the preliminary plat. The written responses received were from:

Robbie Klekar, 114 Country Lane, - against, concerns – increase in traffic, strain on utilities, and drainage issues.

Timothy and Oland, 127 Village Path – spoke and submitted a written response – against, (conditional approval) concerns – drainage, access points to mitigate traffic, additional sewer capacity, and light pollution from streetlights.

Terry and Dawn Groff, 1202 Country Lane, - spoke and submitted a written response – against, concerns – traffic, flooding, one entrance, children’s safety, and sewer.

Bruce and Laura Reed, 102 Harvest Moon – in favor of the preliminary plat.

Steve and Roxanne Forrest, 147 Village Path – spoke and submitted a written response – against, concerns - drainage, flooding issues, safety with only one entrance, and traffic.

John Sedlock, 121 Village Path, spoke and submitted an email - against, concerns – single entrance, traffic congestion, aged infrastructure including the lift station, flooding and smaller lots allowed.

Closed: 6:19 p.m.

XIV. Discussion and take appropriate action on a request for a preliminary vacate and re-plat of Country Village Estates, Phase 1, located at 123 Country Lane, Castroville Texas.
(Breana Soto, Community Development Coordinator)

Community Development Coordinator Breana Soto briefed the city council on the preliminary plat submitted for consideration. Ms. Soto said the recommendations made by the Planning and Zoning Commission were conditional on a secondary street for access and comments on drainage and sewer capacity being addressed in the final plat submittal. Ms. Soto said the City Engineer Mike Persyn (by phone) and Aaron Newman, Engineer for the developer were in attendance. Councilmember Tschirhart asked how many homes would be in the first phase. Mr. Newman said 54 lots were inside the city limits and a petition would be submitted for annexation of the remaining properties after the filing/recording of the plat. Councilmember Martinez said egress was very important and she was not in favor of one entrance even though there would be a designed emergency exit with a Knox box for the fire department. Mr. Newman said the submitted preliminary plat had been engineered by their interpretation of the city ordinances and the City Engineer had approved. He said he felt adding another entrance would cause more traffic issues and the subdivision did have an emergency exist with a Knox box for the fire department. Councilmember King asked if a secondary entrance were requested by council would they bring back in the final plat. Ms. Soto said any requirements would be in the final submittal. The city council discussed drainage issues brought up by the residents. Mr. Newman said to open the emergency exit as a secondary entrance fill dirt would have to be brought in due to low area. Mr. Newman said there was design issues and a 12-inch culvert could not be installed due to being so flat coming in. City Engineer Mike Persyn agreed. Councilmember King felt it could be done since they had received a variance from the street geometry standards ordinance at the last meeting. Mr. Newman said they would have to come back for additional variances to do this due to the design issues and that would slow the project down. Mr. Newman said he had presented the best option for this property he felt. The council looked at a low water crossing which existed as a natural speed bump to slow the speed of traffic if connected to the previously proposed street. Councilmember Tschirhart disagreed with Mr. Newman on traffic controlled with one entrance. Saying a second entrance would help with traffic control not hinder and asked about the sewer capacity and was there information on it. Ms. Soto said staff was going out with the City Engineer to look at and get answers on the concerns with capacity. Mr. Tschirhart confirmed the water rights

would be brought to the city for the development. Mayor Pro Tem Schroeder summarized the direction the city council was looking at was secondary street access and alleviating drainage concerns. Mr. Newman clarified he was to design a secondary street access to meet vertical grades and comply with the fire code with the city engineer's approval. Mayor Pro Tem Schroeder asked about having a hydrological study completed by the city. Mr. Newman said he had a geological study that he used for design. These requirements would be brought back in the final plat.

A motion was made by Councilmember Carey and duly seconded by Councilmember Martinez to conditionally approve a preliminary vacate and re-plat of Country Village Estates, Phase 1, located at 123 Country Lane, Castroville with special consideration of a secondary street entrance, street geometry meeting International Fire Codes and allow for a low water crossing at the western end of the subdivision. A vote was taken (5:0 all ayes) the motion carried by all present.

XV. Discussion and appropriate action on a variance request for a proposed sign located at 408 Hwy 90 West. (Breana Soto, Community Development Coordinator)

City Secretary Debra Howe said the city had received a request that day from Stephen Berchelman to postpone and bring back at a later date. This item was skipped.

XVI. Discussion and appropriate action on purchasing a Ditch Witch HX-30 through the Texas Buyboard in an amount not to exceed \$57,000, and authorizing City Administrator to take execute contracts for and on behalf of the City. (John Gomez, Public Works Director)

Public Works Superintendent Roy Clayton briefed the city council on the request to purchase a ditch witch to be used in the city to locate utilities. Mr. Roy said currently they were renting the equipment and it would be more economical to purchase. There was a question on the quote shown in the backup being different from a copy of the quote Mr. Clayton had received. Staff would go back and check with the company for the best price, if approved.

A motion was made by Councilmember King and duly seconded by Councilmember Carey to approve the purchase of a Ditch Witch HX-30 through the Texas Buyboard in an amount not to exceed \$58,000. A vote was taken (5:0 all ayes) the motion carried by all present.

XVII. Discussion and possible action on clarifying Phases of opening the city pool, including swim lessons. (Devin Fredrickson, Parks and Recreation Director)

Parks and Recreation Director Devin Fredrickson briefed the city council on possibly closing Regional Park over the 4th of July weekend. Mr. Fredrickson said with the new governor orders having been put in place he felt it would be safer to close. Mayor Pro Tem Schroeder complimented Mr. Fredrickson on the work he had put into the phases to re-open the park. Mr. Fredrickson said there had been groups inquiring about using the volleyball courts and the baseball leagues would fall under these new limits. Councilmember Tschirhart said the little league was finishing the season that week. Councilmember King clarified the pool was open for open swimming. Mr. Fredrickson said it was open for fitness and open swimming.

XVIII. Discussion on measures of safety for city staff and the public during the COVID 19 pandemic.

Mayor Pro Tem Schroeder said with the increase of cases he wanted to make sure the city staff and the public were protected. Interim City Administrator Leroy Vidales said city hall and the public works had been sanitized and was currently closed to the public. Mr. Vidales asked the city council for direction on opening to the public again. Mayor Pro Tem Schroeder wanted to make sure employees were wearing masks, social distancing, and disinfecting vehicles daily. Councilmember King wanted signage at the park to reflect the restrictions was from the city council not as per recommendation of the Parks and Recreation Department. Mr. Fredrickson said he would install signage to reflect this.

XIX. Discussion and possible action on process for utility customers with delinquent bills due to COVID 19 Virus outbreak. (Interim City Administrator Leroy Vidales)

Interim City Administrator Leroy Vidales briefed the city council on the utility customers affected by the pandemic. Mr. Vidales said there were 280 delinquent commercial and residential accounts with approximately \$75,000 due to the city. Mr. Vidales asked for direction on a disconnect schedule as this had been suspended since March. Mr. Vidales said pay plans would be offered to those that contacted the city. Council members directed staff to send out notices of pay options to the delinquent accounts now and revert to regular disconnect schedule at the next billing cycle.

XX. Discussion and appropriate action on SGR contract for city administrator search process

This was approved earlier in the meeting.

XXI. Discussion on future agenda items

Mr. Vidales said the next budget meeting was July 9th to review the Utility Fund but with the Public Works Director out due to illness he wanted to change the agenda to the Airport if council agreed. Councilmember King asked for an update on code enforcement in the city. Also, amendments to the noise ordinance and discussion on updates to the thoroughfare plan.

XXII. ADJOURN

Mayor Pro Tem Schroeder adjourned the meeting at 8:07 p.m.

Mayor Pro Tem

ATTEST:

City Secretary



CITY COUNCIL AGENDA REPORT

DATE: July 10, 2020

AGENDA OF: July 14, 2020

DEPARTMENT: City Administration

SUBJECT: Discussion and appropriate action on approving the Gas Operations and Maintenance Contract with City Public Service.

RECOMMENDATION: Approval of Gas Operations and Maintenance Contract with CPS.

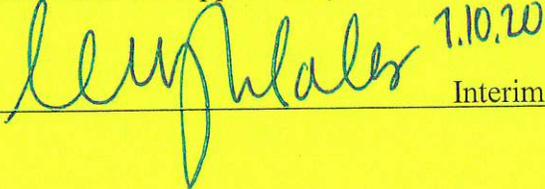
BACKGROUND/DISCUSSION: CPS Energy shall perform, on an as-needed basis in a manner as consistent with state and federal regulations and rules as practicable, the following necessary operational and necessary operational and maintenance functions for the City Gas System: Locate requests, leak isolation and repair, pressure control and odorization, system patrolling, corrosion control, city service requests, emergency response, regulatory liaison, regulatory compliance, new facilities, gas leak surveys.

Term: This agreement shall terminate twenty-four (24) months from the effective date
Extension: City may extend the Agreement for an additional twelve (12) months

FISCAL IMPACT/SOURCE OF FUNDING:

Utility Fund: 20-51104-413-01
Fixed Cost: \$8,827. Current monthly rate: \$8,570

Submitted and Approved by:

 7.10.20

Interim City Administrator/Finance Director

ATTACHMENTS/ADDITIONAL INFORMATION:

Gas Operation and Maintenance Services Contract

**FINAL
CLEAN
COPY**



Gas Operation and Maintenance Services



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GAS OPERATION AND MAINTENANCE SERVICES AGREEMENT

This GAS OPERATION AND MAINTENANCE SERVICES AGREEMENT (the "Agreement") is entered into as of this 1st day of August, 2020 (the "Effective Date") by and between:

The City of San Antonio, acting by and through, City Public Service Board "CPS Energy": 145 Navarro Street San Antonio, TX 78205 Phone:

and "City:" City Name: City of Castroville Attn: City Administrator

with Notice to:

CPS Energy Attn: General Counsel P.O. Box 1771 San Antonio, Texas 78296

Address: 1209 Fiorella Street Castroville, Texas 78114 Phone: 830-931-4070 ext 313 Fax: n/a Email: Leroy.vidales@castrovilletx.gov

with Notice to: Denton, Navarro, Roacha, Bernal, and Zech A Professional Corporation 2517 N. Main Avenue San Antonio, Texas 78212

City and CPS Energy are sometimes individually referred to herein as a "party" and collectively as the "parties."

WHEREAS, City owns, controls, operates, and manages a natural gas distribution system serving City and certain surrounding territories ("City Gas System");

WHEREAS, CPS Energy controls, manages, operates, and owns the CPS Energy gas system serving the City of San Antonio, Texas and certain surrounding territories;

WHEREAS, CPS Energy's resources can ensure that skilled persons continue to operate and maintain the City Gas System and deliver natural gas service to customers consistent with the requirements of the Railroad Commission of Texas ("RCC") and Department of Transportation; and

WHEREAS, the Parties agree that the operation and maintenance of the City Gas System by CPS Energy will benefit the Parties respective customers through the reallocation of costs and responsibilities associated with the City Gas System;

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties mutually agree to the following:

1. CONTRACTED SERVICES

CPS Energy shall perform, on an as-needed basis and in a manner as consistent with state and federal regulations and rules as practicable, the following necessary operational and maintenance functions (the "Services") for the City Gas System:

- a. Locate Requests. CPS Energy will locate and mark any City Gas System facilities and/or equipment that are buried in response to damage prevention requirements for excavators working in or near the City Gas System, as necessary to comply with state and/or federal regulations. Excavators shall notify City, and City shall notify CPS Energy.
b. Leak Isolation and Repair. Any natural gas leaks reported by customers to City shall be reported immediately to CPS Energy. CPS Energy shall pinpoint, classify, and repair, within an appropriate and practicable time frame, any

reported leak or leaks identified by CPS Energy on City Gas System facilities located above or below ground. If CPS Energy deems a detected leak hazardous, CPS Energy shall take emergency response measures it believes necessary and appropriate in order to minimize property damage and injury to the general public.

- c. Pressure Control and Odorization. CPS Energy will perform the following Services as necessary to comply with state and/or federal regulations:
 - i. Investigate, determine the cause, and make repairs relating to reported complaints by City of abnormal pressure, high or low, on the City Gas System;
 - ii. Inspect and maintain pressure-regulating equipment, critical valves, and relief devices;
 - iii. Purchase and inject odorant into the City Gas System and operate odorization equipment in order to maintain required levels of odorant in the City Gas System stream; and
 - iv. Perform monthly tests to verify proper levels of odorant present in the City Gas System.
- d. System Patrolling. CPS Energy will schedule patrols on the City Gas System lines located on bridges, at creek or river crossings, and other points such as the City Gas System pipeline markers, casing vents, and regulator stations.
- e. Corrosion Control. CPS Energy shall take cathodic protection readings on the City Gas System steel piping to verify proper levels of corrosion control protection. If inadequacies are detected, CPS Energy will investigate the questionable piping to determine the root cause and correct and restore the level of protection consistent with natural gas industry practices. CPS Energy will inspect rectifiers and casings to ensure proper operation and maintain compliance with regulations.
- f. City Service Requests. CPS Energy will respond to gas leakage and odor complaints (inside and outside of customer premises) and will repair leaks detected upstream of the outlet meter swivel. If a leak is detected downstream of the outlet meter swivel, City shall notify and advise it's customer(s) to contact a plumber for repairs. CPS Energy will lock off the gas meter until repairs are made. City shall notify CPS Energy when it's customer completes the repairs, and following such notice from City, CPS Energy will unlock the gas meter.
- g. Emergency Response. City shall immediately report City Gas System related emergencies to CPS Energy for response. CPS Energy will investigate any City Gas System related accident and will assist City with investigatory processes taken by the RRC or any other public safety officials in relation to such accident. In case of damage to a natural gas line on the City Gas System, CPS Energy will take necessary action to bill and collect for damages inflicted by any third party. CPS Energy shall retain any and all damages collected.
- h. Regulatory Liaison. CPS Energy will handle all communications, inquiries, correspondence, and audits with the RRC with reasonable assistance provided by the City. CPS Energy shall include the operation and maintenance of the City Gas System within the CPS Energy Operations and Maintenance Plan and CPS Energy's Operator Qualification Plan.
- i. Regulatory Compliance. CPS Energy shall apply the same standards and procedures followed by CPS Energy on its gas distribution system to the operation and maintenance of the City Gas System. Except as otherwise provided herein, CPS Energy shall conduct and perform the operation and maintenance of the City Gas System in accordance with the CPS Energy Operations and Maintenance Plan and CPS Energy's Operator Qualification Plan.
- j. New Facilities. CPS Energy shall operate and maintain natural gas facility additions made by the City to the City Gas System that are made after the Effective Date of the Agreement. The construction and installation of such additional natural gas facilities is governed by Section 4(c).
- k. Gas Leak Surveys. CPS Energy shall conduct gas leak surveys of the City Gas System, including an annual gas leak survey of the downtown business district of the City and a gas leak survey of the entire City Gas System every three (3) years to meet RRC requirements for a prescription leak survey program.

2. CHANGE AUTHORIZATION ORDER ("CAO")

In the event that the scope of the Services is substantially expanded, revised, or modified, the parties shall prepare and sign a Change Authorization Order (“CAO”), which shall be incorporated into the Agreement. No changes shall become effective until both parties have signed the CAO.

3. SPECIAL SERVICES

- a. **Lighting Services.** CPS Energy will provide lighting service of gas appliances to customers at a reasonable cost following interruption of the City Gas System service resulting from an outage not caused by a CPS Energy action, and at no charge following interruption of the City Gas System resulting from CPS Energy’s operation and maintenance, if requested by a customer.
- b. **Additional Services.** City may contract with CPS Energy (for additional Fees) via a CAO to test and calibrate the meters of customers indentified by City to CPS Energy, and/or to construct and install gas mains and services within the City Gas System.

4. CITY REQUIREMENTS

- a. **City System Maps.** City shall provide CPS Energy with all City Gas System maps and as-built drawings in City's possession, in hard copy and electronic format if available, no later than five (5) business days from the Effective Date of the Agreement.
- b. **Customer Relations.** City shall continue to read all City Gas System meters, receive and process all City Gas System related calls from customers, and perform all billing and collection processes.
- c. **Additional Customers.** City shall be responsible for the construction and installation, at its own cost, of any natural gas facilities as necessary to serve additional customers that are not connected to the City Gas System at the time of the Effective Date of the Agreement. Upon and after construction and installation of the requested natural gas facilities and the connection of any additional customer to the City Gas System, CPS Energy shall operate and maintain the additional gas facilities in accordance with the Agreement. City may contract with CPS Energy to provide such construction and installation.
- d. **Materials and Equipment.** City shall provide CPS Energy natural gas materials and/or equipment, including but not limited to gas meters and regulators, that are part of the City Gas System and that CPS Energy must replace for maintenance or operational reasons. City shall be responsible for procuring such materials and equipment and providing it in a timely manner to CPS Energy to minimize customer interruption. City may contract with CPS Energy via a CAO to purchase such gas materials and/or equipment (“Goods”) required by this paragraph from CPS Energy.
- e. **Adherence to Laws.** City and its representatives or agents agree that in carrying out their duties and responsibilities under the Agreement, they will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any applicable laws, decrees, rules, or regulations in effect in the United States or applicable to the Agreement, including, but not limited to, Employment and Labor related laws, rules or regulations, or (ii) would have the effect of causing CPS Energy to be in violation of any laws, decrees, rules, or regulations in effect in the United States or applicable to the Agreement. City and its representatives or agents shall protect and indemnify CPS Energy and CPS Energy officers and agents against any claim or liability arising from or based on any violation of the same.

5. CONTACT WITH CUSTOMERS

- a. **Communication & Personnel.** CPS Energy will not communicate with City’s customers except as necessary to perform Services required by the Agreement. CPS Energy personnel will at all times be identified as CPS Energy employees as they perform Services under the Agreement.
- b. **City Customer Service.** In the event a City customer has a request, comment, and/or a question relating to a matter that is not specifically related to CPS Energy Services, CPS Energy personnel shall inform the customer to contact City at the City’s Customer Service Number. City shall inform all customers that all requests, comments, and/or

questions regarding the City Gas System and/or City gas service should be directed at all times to the City's Customer Service Number.

- c. Relay of Customer Communications. City shall relay complete information to CPS Energy regarding all City non-emergency customer requests, comments, and/or questions that relate to CPS Energy's obligations under the Agreement within twenty-four (24) hours of receipt or the next business day, if on a Friday or weekend.
- d. Operation and Maintenance Plan. The City Gas System Operations and Maintenance Plan shall state expressly that CPS Energy is the operator of the City Gas System and that City retains customer relations responsibilities, including but not limited to receiving customer calls. The City Gas System Operations and Maintenance Plan shall also explain how City will relay information to CPS Energy in a timely manner.

6. EMERGENCY COMMUNICATIONS

- a. The City Gas System Operations and Maintenance Plan shall state, and City shall inform City's customers, that emergency communications, including but not limited to odor, leak, and/or abnormal operating complaints relating to the City Gas System shall be submitted to the City offices and/or the City emergency 911 system.
- b. City shall inform City employees and the City emergency 911 system that each and all emergency communications regarding the City Gas System shall be submitted immediately by the appropriate personnel to the CPS Energy Emergency Telephone Number: (210) 353-4357 (HELP).

7. CONTINUITY OF SERVICE

- a. Force Majeure. CPS Energy shall not be liable to City for failure of CPS Energy to deliver the Services due to injunction or Force Majeure events.
- b. Continuity. CPS Energy does not guarantee continuous service of the City Gas System, but shall use reasonable diligence to provide uninterrupted service from the City Gas System. CPS Energy shall not be liable to City or to any customer for any damage occasioned by irregularities or interruptions of service from the City Gas System.
- c. Suspension. CPS Energy reserves the right to suspend or interrupt service from the City Gas System and take such other action as reasonably necessary in accordance with prudent natural gas utility practice, without incurring liability on its part, at such times and for such periods and in such manner as it may, in its sole discretion, deem advisable for the purpose of making necessary adjustments to, changes in, or repairs on City Gas System facilities and/or equipment or in cases where the continuance of service from the City Gas System would endanger persons or property. CPS Energy shall use its best efforts to provide the City with reasonable notice in the event of suspension of service from the City Gas System under this provision and will use its best engineering judgment in determining the time and manner of restoration of service from the City Gas System.

8. ACCESS

- a. Access without Notice. Without need for advance notice to City, CPS Energy shall have the right of access to the City Gas System facilities and/or equipment at all times for the purpose of conducting and performing Services under this Agreement or emergency operations. CPS Energy shall provide City notice of any City Gas System emergency operations as soon as practicable following such activity.
- b. Access with Notice. Upon reasonable verbal and/or electronic mail (email) notice to City, CPS Energy shall have the right of access to the City Gas System facilities and/or equipment at all reasonable hours for the purpose of conducting and performing any other non-emergency services.

9. FEES & PAYMENT TERMS

- a. Fees/Pricing. City agrees to compensate CPS Energy at the rates set forth on Schedule "A" (the "Fees").
- b. Invoices. CPS Energy shall submit invoices to City monthly on or before the 15th of each month during which the Fees and charges are incurred or the next business day if the 15th falls on a holiday or weekend.

- c. Payment. No later than thirty (30) days following the date of invoice, City shall remit payment to CPS Energy at the address specified on the invoice. If there is a dispute with respect to any portion of an invoice, City shall pay the undisputed portion and provide written details specifying the basis of any dispute. City's payments under the Agreement, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.
- d. Tax-Exempt Organization. City is a TAX-EXEMPT ORGANIZATION, assigned tax identification number 17460004975.

10. TERM & TERMINATION

- a. Term. This Agreement shall terminate twenty-four (24) months from the Effective Date (the "Term"), provided that either Party may terminate the Agreement without cause before the expiration date by providing the non-terminating Party thirty (30) days advance written notice.
- b. Extension. City may extend the Agreement for an additional twelve (12) months (the "Extension") provided the Parties comply with the following:
 - i. City must provide CPS Energy advance written notice of a request for Extension at least ninety (90) days before the expiration of the current Term;
 - ii. The Parties must agree to mutually acceptable Fees and charges applicable to the Extension Term; and
 - iii. CPS Energy shall provide City advance written notice of approval of the Extension Term and Fee Schedule at least sixty (60) days before the expiration of the current Term.
- c. Termination for Insolvency. Either party shall have the right to immediately terminate the Agreement, by providing written notice to the other party, in the event that (i) the other party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- d. Effect of Termination. In the event of early termination and unless otherwise agreed in writing, CPS Energy shall immediately stop work as to the terminated portion of the Agreement, notify all suppliers, subcontractors and sub-suppliers to stop work on contracts for performance hereunder. CPS Energy shall, within thirty (30) days after receipt of said notice to terminate, advise City in writing whether any termination charges will be submitted in connection with the termination. CPS Energy shall be paid a reasonable termination charge consisting of a percentage of the Agreement price reflecting the percentage of the work completed prior to the notice of termination, plus reasonable, actual direct costs for uncompleted work in progress. In no event shall the aggregate of all termination payments under the Agreement exceed the total sum due under the Agreement.
- e. Payments Due Post Termination. The termination of the Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due or payable according to the provisions herein.

11. INTELLECTUAL PROPERTY

- a. Ownership in Work. The parties agree that any works of authorship, plans, studies, diagrams, drawings, documents, derivative works, products, documents, strategic materials, designs, brochures, correspondence, agreements, deliverables, reports, or any other proprietary information that CPS Energy creates in the course of providing the Services or any Goods (collectively the "Work"), if any, shall not be considered "works made for hire" to the extent permitted by applicable law. CPS Energy will own the Work. City hereby irrevocably assigns all rights, title, and interests in the Work to CPS Energy as its sole and exclusive property. The rights assigned under the Agreement shall not lapse on account of non-exercise of the rights. City agrees that it will cooperate with CPS Energy in completing documents, providing information, and doing other things needed to evidence CPS Energy's ownership of the Work, or to evidence the transfer of these rights to CPS Energy, including those things necessary to register any intellectual property right.

12. CONFIDENTIALITY

- a. Confidential Information. The parties understand and acknowledge that they may, from time to time, disclose and receive Confidential Information. The following information is “**Confidential Information**”: the terms of the Agreement, and all information exchanged by or on behalf of the parties during negotiations culminating in the Agreement and during the Term of the Agreement or any extension thereof; any information related to a party’s performance of, or failure to perform, the Agreement; any information that is marked or designated as “Confidential” at the time of disclosure; any information related to that party’s assets, liabilities, finances, business strategies, product development plans, operations, technology, know-how, trade secrets, inventions, techniques, processes, source code, schematics, designs, network topology, network and data storage information, customers, vendors, and personnel; and all other information that a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure. During the Term of the Agreement and thereafter, the receiving party will not (i) use the Confidential Information except to perform its duties and obligations under the Agreement or (ii) disclose the Confidential Information to any third party without the prior written consent of the disclosing party, except that the receiving party may disclose the Confidential Information to its employees, agents, and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement, and who are bound by written non-disclosure obligations at least as stringent as those stated in the Agreement. The receiving party shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, and representatives. In no event shall the parties use the other party’s Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the products or services of the owner. The receiving party’s obligations with respect to the Confidential Information also extend to any third party’s proprietary or confidential information disclosed to the receiving party under the Agreement, if any.
- b. Non-Protected Information. This confidentiality obligation will not apply to the extent that the receiving party can demonstrate that: (i) the Confidential Information is available to the public at the time of disclosure; (ii) the Confidential Information thereafter becomes available to the public, except by breach of the provisions of the Agreement or violation of law or other agreement; (iii) the receiving party can establish by written evidence that it had possession of the Confidential Information prior to the time of disclosure; (iv) the Confidential Information is received by the receiving party from a third-party that is not bound by a confidential relationship with the disclosing party; (v) the Confidential Information was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information.
- c. Disclosure. If the receiving party is requested or required (e.g., by deposition, interrogatory, request for documents, subpoena, civil investigative demand, open records request, or similar process) to disclose any of the Confidential Information, then the receiving party will notify the disclosing party (to the extent legally permissible) promptly in writing so that the disclosing party may seek any appropriate protective order and/or take any other action prior to disclosure. In any event that the receiving party is legally compelled or obligated to disclose any of the Confidential Information, such Confidential Information may be disclosed as required; provided, however, that the receiving party will use its best efforts to minimize the disclosure of such information.
- d. Return or Destroy. Each party shall return or irretrievably destroy the other party’s Confidential Information and all material that is derived from the Confidential Information immediately on completion of the Agreement, or earlier upon request of the other party, provided that a party may retain the other party’s Confidential Information only if reasonably necessary to use the Services or deliverables, or to maintain reasonable and customary business records. On request of a party, an officer of the other party shall certify its compliance with the preceding sentence.
- e. Injunctive Relief. The parties agree that the disclosure of Confidential Information by the receiving party will cause the disclosing party irreparable damage for which recovery of money damages would be inadequate. The disclosing party is therefore entitled to injunctive relief in addition to all other remedies available at law.

13. WARRANTY DISCLAIMER

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THE AGREEMENT CPS ENERGY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. CPS ENERGY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT APPLICABLE.

14. GOODS

- a. Warranty Disclaimer Relating to Goods. CPS ENERGY HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS.
- b. Specifications of Goods. Unless CPS Energy has expressly agreed otherwise in writing, it is City's responsibility to ensure that the Goods are the ones that it has requested and that all specifications and quantities are correct. CPS ENERGY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.
- c. Duty to Inspect Goods. City shall immediately inspect all Goods upon receipt. Any claims for shortages or discrepancies will be waived by City unless made in writing to CPS Energy within ten business days of receipt of the Goods.
- d. Payment of Goods. Payment for Goods is due within 30 days from the date of CPS Energy's invoice; provided, however, that CPS Energy reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery. Until City has fully and finally paid all amounts owed to CPS Energy for any Goods, City shall hold such Goods in trust for CPS Energy, and CPS Energy may repossess them if City fails to pay for them in a timely fashion. The purchase price of the Goods does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods. Except for those taxes for which City is exempt, City is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods.
- e. Exclusive Remedy. City's exclusive remedy against CPS Energy for any claim for, or arising out of, any Goods tendered to City is the repair or replacement of the Goods, or alternatively, at CPS Energy's sole election, a refund of the purchase price of the Goods. This remedy will only be available to City for thirty (30) days after the Goods are tendered to City, and CPS Energy's obligations under this section will be void unless City provides CPS Energy with notice of the defect in the Goods within ten (10) days of discovery of the defect.

15. LIMITATION OF LIABILITY

- a. Neither party (nor its employees, agents, suppliers or affiliates) shall be liable to the other for any lost profits or any indirect, special, incidental, punitive, or consequential loss or damage of any kind arising in connection with the Agreement, even if the party has been advised or should be aware of the possibility of such damages. Nothing in the Agreement limits or excludes either party's liability for loss or damage resulting from death or personal injury caused by its gross negligence, or any fraud or fraudulent misrepresentation. The parties obligations pursuant to the Agreement are subject to Texas Government Code Chapter 1502, as applicable.
- b. CPS Energy's total liability related to Goods shall not exceed the purchase price of such Goods, and CPS Energy's

total liability related to Services shall not exceed the Fees for such Services.

16. INDEMNIFICATION

- a. **General.** City shall indemnify, defend and hold harmless CPS Energy, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be), officers, employees, representatives, and agents (collectively, the “**CPS Indemnified Parties**”) from and against any claims, demands, loss, damage or expense arising from in any manner, directly or indirectly, out of, or in connection with, or in the course of, or incidental to, or as a consequence of City’s conduct, including any act, omission, professional error, fault, mistake, failure, negligence, gross negligence or gross or willful misconduct, of any and every kind, by City, or by City’s officers, directors, employees, agents, or subcontractors, arising from in any manner, directly or indirectly, out of, or in connection with, or in the course of, or incidental to, or as a consequence of (i) any workers’ compensation claims or claims under similar laws or obligations related to the Agreement, the Services or the Goods thereunder; (ii) performance of the Agreement; (iii) breach of the Agreement; or (iv) violation of any laws or regulations, except to the extent the gross negligence or willful misconduct of CPS Energy gives rise to such claim. To the extent that any claim arises from the concurrent conduct of CPS Energy, City and/or any third party, it is expressly agreed that each party’s obligations of indemnity under this section shall be effective only to the extent of each party’s pro rata share of liability. CPS Energy reserves the right to employ counsel at its own expense and participate in the defense and/or settlement of any claim covered by this subsection.
- b. **CITY INDEMNIFICATION.** THE PRECEDING SECTION (16a) IS SUBJECT TO THE FOLLOWING: TO THE EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND STATE LAW AND WITH THE MUTUAL UNDERSTANDING THAT CITY IS A GENERAL LAW MUNICIPALITY INCORPORATED UNDER THE TEXAS CONSTITUTION AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS; AND THAT AN INDEMNITY OBLIGATION CANNOT BE PAID FROM CURRENT REVENUES AND THAT NO ORDER, RESOLUTION, TAX NOR INTEREST AND SINKING FUNDS HAS BEEN SET, ADOPTED OR ESTABLISHED FOR PAYMENT OF THIS INDEMNITY OBLIGATION, AND WITHOUT EXPANDING CITY’S LIABILITY BEYOND THE STATUTORY LIMITS OF THE TEXAS TORT CLAIMS ACT OR UNDER EXISTING LAW, AND FURTHERMORE, WITHOUT WAIVING CITY’S IMMUNITY BEYOND THE SCOPE OF THAT ALLOWED BY THE TEXAS TORT CLAIMS ACT OR EXISTING LAW, CITY SHALL INDEMNIFY AND HOLD HARMLESS CPS ENERGY AND ITS RESPECTIVE EMPLOYEES, OFFICERS, TRUSTEES, AGENTS, AND INDEPENDENT CONTRACTORS FROM ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, AND WHETHER CONTINGENT OR LIQUIDATED, ARISING FROM OR RELATED TO (A) ANY BREACH BY CITY OR CITY’S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS ASSUMED HEREIN AND (B) CITY’S OWNERSHIP, CONTROL, OPERATION, MAINTENANCE, AND MANAGEMENT OF THE CITY GAS SYSTEM UNDERTAKEN AND OCCURRING PRIOR TO THE EFFECTIVE DATE OF THE AGREEMENT, WHETHER THE SAME ARE A RESULT OF CITY’S NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE. THE INDEMNITY SET FORTH IN THIS SECTION DOES NOT INCLUDE ANY CLAIMS UNDER ENVIRONMENTAL LAWS OR WITH RESPECT TO ANY ENVIRONMENTAL LIABILITY WHICH ARE SPECIFICALLY ADDRESSED HEREIN. THIS INDEMNITY SHALL SURVIVE TERMINATION OF THE AGREEMENT.
- c. **CPS ENERGY INDEMNIFICATION.** TO THE EXTENT PERMITTED BY LAW, CPS ENERGY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS RESPECTIVE EMPLOYEES, OFFICERS, AGENTS, AND INDEPENDENT CONTRACTORS FROM ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, AND WHETHER CONTINGENT OR LIQUIDATED, TO THE EXTENT ARISING FROM OR RELATED TO CPS ENERGY’S GROSS NEGLIGENCE OR KNOWINGLY WRONGFUL OPERATION AND MAINTENANCE OF THE CITY GAS SYSTEM SUBSEQUENT TO THE EFFECTIVE DATE OF THE AGREEMENT AND UNDER THE UNINTERRUPTED TERM THEREAFTER. THE INDEMNITY SET FORTH IN THIS SECTION SPECIFICALLY EXCLUDES ANY CLAIMS UNDER ENVIRONMENTAL LAWS OR WITH RESPECT TO ANY ENVIRONMENTAL LIABILITY ARISING BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT OR DURING ANY INTERRUPTED OR TERMINATED TERM. THIS INDEMNITY

SHALL SURVIVE TERMINATION OF THE AGREEMENT.

- d. Environmental Indemnity. During the Term of the Agreement, including any extension, and subject to the limitations of the Texas Constitution and State Law and with the mutual understanding that City is a general law municipality incorporated under the Texas Constitution and a political subdivision of the State of Texas; and that an indemnity obligation cannot be paid from current revenues and that no order, resolution, tax nor interest and sinking funds has been set, adopted or established for payment of this indemnity obligation, and without expanding City's liability beyond the statutory limits of the Texas Tort Claims Act or under existing law, and furthermore, without waiving City's immunity beyond the scope of that allowed by the Texas Tort Claims Act or existing law, City shall assume liability for and indemnify CPS Energy against any and all known and unknown Environmental Liabilities with respect to the City Gas System arising prior to the Effective Date of the Agreement. City will make available to CPS Energy all material reports and other information relating to any Environmental Liabilities of the City Gas System and, except as to those matters previously disclosed to CPS Energy, City has not received any written notice from governmental authority regarding Environmental Laws and to City's knowledge, City never intentionally violated Environmental Laws by a Release.
- e. Indemnification Procedure. The indemnifying party shall, within fifteen (15) days of receipt of notice of any claim or threatened claim from the party seeking indemnification ("**Indemnity Notice**"), notify the party seeking indemnification of indemnifying party's intention to assume the defense of such claim. If (i) the indemnifying party shall decline to assume the defense of any such claim; (ii) the indemnifying party shall fail to notify the other party within fifteen (15) days after receipt Indemnity Notice of the indemnifying party's election to defend such claim and such failure results in prejudice to the indemnified party's defense of such action; (iii) the indemnified parties shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified parties); or (iv) a conflict exists between the indemnifying party and the indemnified parties which the indemnified parties have reasonably concluded would prejudice the indemnifying party's defense of such action, then in such case, the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified parties and the indemnified parties shall, at the sole expense of the indemnifying party, defend against such claim and in the event of a circumstance described in clause (i) and (ii) the indemnified parties may settle such claim without the consent of the indemnifying and in the event of a circumstance described in clause (iii) and (iv) the indemnified parties may not settle such claim without the consent of the indemnifying party (which consent will not be unreasonably withheld or delayed).

17. INSURANCE

- a. Minimum Insurance Requirements. City agrees to carry and keep insurance in full force during the Term, including any extension thereof, sufficient to fully protect CPS Energy from all damages, claims, suits and/or judgments including, but not limited to, errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with the performance or failure to perform under the Agreement by City, City's agents or employees, a City subcontractor, or its agents or employees. The minimum amount of insurance as required shall be in accordance with "Addendum A" titled "Minimum Insurance Requirements." City's insurance shall be primary to and non-contributory with any self-insurance and/or insurance maintained by CPS Energy. City acknowledges that CPS Energy is a political subdivision of the State of Texas and a self-insured governmental entity with the ability to self-insure and maintain commercial excess insurance coverage to protect City against all damages, claims, suits, violations, fees and penalties caused or claimed to have been caused by CPS Energy in connection with said activities under the Agreement. Evidence of such insurance shall be satisfied in the form of a self-insured letter provided to City upon request.
- b. Change in Minimum Insurance Requirements. Should the Minimum Insurance Requirements of CPS Energy change, City shall be notified in writing and City shall have sixty (60) days to meet the new requirements.

18. MISCELLANEOUS CLAUSES

- a. Independent Contractor. The parties recognize that CPS Energy is an independent contractor and nothing within the Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties, or as granting a franchise under federal or state law. All City employees, contractors, representatives, or agents, including those assigned to perform services relating to the Agreement shall be considered to be an employee of City only and will not be considered an agent or employee of CPS Energy for any purpose. City will be solely responsible for payment of all compensation owed to its employees, contractors, representatives, or agents, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any City employee be eligible for or entitled to participate in any of the employee benefit plans or similar programs of CPS Energy.
- b. Non-Restrictive Relationship. Unless prohibited by another provision herein, CPS Energy may provide the same or similar Services or Goods to other customers.
- c. Trademarks. Neither party may use the other party's name, logo, trade or service marks, or similar indicia (each a "Trademark") without the other party's prior written consent. Except as expressly stated herein, each party retains all right, title, and interest in and to its intellectual property.
- d. Waiver. The rights and remedies provided to each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate the Agreement or to enforce any provision of the Agreement for default or violation by the other party shall not prejudice such party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.
- e. Force Majeure. Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market. Neither party shall, however, be excused from performance if nonperformance is due to causes which are removable or remediable and which the non-performing party could have, with the exercise of reasonable diligence, resolved or remedied with reasonable dispatch. The provisions of this section shall not be interpreted or construed to require either party to prevent, settle, or otherwise avoid a strike, labor stoppage, or other similar labor action. The non-performing party shall, within a reasonable time of being prevented or delayed from performance, give written notice to the other party describing the force majeure circumstances preventing continued performance of the obligations of the Agreement.
- f. Notices. All notices required under or regarding the Agreement must be in writing and shall be considered properly given if delivered personally, by electronic mail to City's email address specified on the first page or to CPS Energy at legalnotices@cpsenergy.com (upon receipt), mailed via registered or certified mail (return receipt requested and postage prepaid), or sent by courier (confirmed by receipt) to City's address designated on the first page or to CPS Energy at CPS Energy, Attn: General Counsel, P.O. Box 1771, San Antonio, Texas 78296. It is City's responsibility to keep its address of record up to date at all times.
- g. Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected. In the event an ambiguity or question of intent or interpretation arises, the Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Agreement.
- h. Captions. The section headings in the Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of the Agreement.
- i. Entire Agreement. This Agreement and any addenda, schedules, exhibits, appendices, amendments and other documents attached to or incorporated herein constitute the entire agreement between the parties and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or

written, regarding the subject matter of the Agreement.

- j. Amendments. The Agreement may be amended only by an instrument in writing executed by the parties hereto.
- k. Applicable Law and Venue. The Agreement is governed by the laws of the State of Texas. Exclusive venue for all actions under the Agreement shall be in the state courts of the State of Texas, Bexar County, Texas.
- l. Survival. The following provisions shall survive expiration or termination of the Agreement: Intellectual Property, Confidentiality, Warranty Disclaimer, Goods, Limitation of Liability, Indemnification, Insurance, Miscellaneous, and any other provisions that by their nature are intended to survive expiration or termination.
- m. Assignment. City shall not assign the Agreement, or any part thereof, without the previous written consent of CPS Energy. CPS Energy reserves the right to assign any of the activities herein relegated to its province to a designated representative or agent.
- n. Attorneys' Fees. In the event a party brings any action for any relief, declaratory or otherwise, arising out of the Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- o. Successors and Third Party Beneficiaries. The terms, provisions, and covenants contained in the Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and permitted assigns, except as otherwise herein provided. No third parties shall have any rights hereunder.
- p. Authorization. Each party represents and warrants that all consents or approvals required of third parties (including, but not limited to, its Board of Directors or partners) for the execution, delivery and performance of the Agreement have been obtained and that each party has the right and authority to enter into and perform its covenants contained in the Agreement.
- q. Signatures. Any documents signed in connection with the Agreement may be signed in multiple counterparts which, taken together, will constitute one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures. Each person executing the Agreement warrants that he/she is authorized to do so on behalf of the party for whom he/she signs the Agreement.
- r. Primary Contacts.

CPS ENERGY

Title: Mgr. Gas Compliance

Title:

Name: Tom Linerode

Name:

Phone Number: (210) 353-2928

Phone Number:

Email Address: telinerode@cpsenergy.com

Email Address:

CPS Energy
Emergency (210) 353-9275
Telephone Number:

CITY

Title: Director of Public Works

Title: Interim City Administrator

Name: John Gomez

Name: Leroy Vidales

Phone Number: (830) 931-4090

Phone Number: (830)931-4070

Email Address: John.gomez@castrovilletx.gov

Email Address: Leroy.vidales@castrovilletx.gov

Customer Service Number: (830) 931-4090

19. ADDENDA & SCHEDULES

The following addenda and schedules shall be attached hereto and incorporated by reference:

- a. Addendum A: Minimum Insurance Requirements
- b. Schedule A: Fees

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**The City of San Antonio,
acting by and through
City Public Service Board**

City: City of Castroville

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Addendum A
Minimum Insurance Requirements

Schedule A

Fees

1. Monthly Fees. City shall pay CPS Energy the following Fees and charges according to the provisions set forth in the Agreement:

Fixed Cost: \$8,827.00 per month.

Hourly rates as set forth below.

Other: .

2. Gas Delivery. (if applicable)

Not applicable.

For all gas delivered by City to CPS Energy at delivery points for delivery by CPS Energy to , City agrees to pay CPS Energy for each one thousand (1,000) cubic feet (MCF) of gas delivered to such delivery point as compensation for use of CPS Energy's Facilities.

3. The fees set forth above in (1) and (2) shall adjust automatically in accordance with the annual change in the Consumer Price Index – All Urban Consumers – U.S., as published by the Bureau of Labor Statistics. Annual adjustments are effective on October 1st of each calendar year. Notwithstanding the foregoing, the maximum amount by which the fees may be raised in any given year shall not exceed 3%. On written request from the City or the Government, CPS Energy shall provide written notice of any adjustment. The adjustment shall be calculated as the greater of zero or the annual rate of growth, rounded to the nearest thousandth, for the annual index. (By way of example, the published annual indexes for 1997 and 1998 were 160.5 and 163.0).

The formula for the annual growth rate is as follows:

$$R = (\text{Index}_{\text{yr1}} - \text{Index}_{\text{yr0}}) / \text{Index}_{\text{yr0}}$$

Where $\text{Index}_{\text{yr1}}$ = Annual index for the latest year published.

$\text{Index}_{\text{yr0}}$ = Annual index for the previous year.

R = Rate of Growth

The data is available through the Bureau of Labor Statistics website at <http://stats.bis.gov/>.

4. Unforeseen Costs. City is liable for any major or unforeseen costs arising from the Agreement that exceed the following amount during the Term and any agreed extension:

Twenty Thousand Dollars (\$20,000.00 US)

Fixed Amount: \$.

Other: .

5. Hourly Rates / Additional Fees. As agreed on any CAO setting forth additional fees for additional services, including, but not limited to the following:

a. Construction and installation of gas mains and services.

b. Construction and installation relating to additional customers.

c. Significant materials or equipment that are part of the City Gas System and that CPS Energy must replace for maintenance or operational reasons.

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Gas Operation and Maintenance Services



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GAS OPERATION AND MAINTENANCE SERVICES AGREEMENT

This **GAS OPERATION AND MAINTENANCE SERVICES AGREEMENT** (the “**Agreement**”) is entered into as of this 1st day of ~~May~~**February**, 20~~17~~**2017** (the “**Effective Date**”) by and between:

The City of San Antonio,
acting by and through, City
Public Service Board
“**CPS Energy**”:
145 Navarro Street
San Antonio, TX 78205
Phone:

and “**City**:”
City Name: City of Castroville

Attn: City Administrator

with Notice to:

CPS Energy
Attn: General Counsel
P.O. Box 1771
San Antonio, Texas 78296

Address: 1209 Fiorella Street
Castroville, Texas 78114

Phone: 830-931-4070 ext 313
Fax: n/a
Email: Leroy.vidalesmarie.gelles@castrovilletx.gov

with Notice to: Denton, Navarro, Roacha, Bernal, ~~Hyde~~ and
Zech
A Professional Corporation
2517 N. Main Avenue
San Antonio, Texas 78212

City and CPS Energy are sometimes individually referred to herein as a “**party**” and collectively as the “**parties**.”

WHEREAS, City owns, controls, operates, and manages a natural gas distribution system serving City and certain surrounding territories (“**City Gas System**”);

WHEREAS, CPS Energy controls, manages, operates, and owns the CPS Energy gas system serving the City of San Antonio, Texas and certain surrounding territories;

WHEREAS, CPS Energy’s resources can ensure that skilled persons continue to operate and maintain the City Gas System and deliver natural gas service to customers consistent with the requirements of the Railroad Commission of Texas (“**RCC**”) and Department of Transportation; and

WHEREAS, the Parties agree that the operation and maintenance of the City Gas System by CPS Energy will benefit the Parties respective customers through the reallocation of costs and responsibilities associated with the City Gas System;

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties mutually agree to the following:

1. CONTRACTED SERVICES

CPS Energy shall perform, on an as-needed basis and in a manner as consistent with state and federal regulations and rules as practicable, the following necessary operational and maintenance functions (the “**Services**”) for the City Gas System:

- a. Locate Requests. CPS Energy will locate and mark any City Gas System facilities and/or equipment that are buried in response to damage prevention requirements for excavators working in or near the City Gas System, as necessary to comply with state and/or federal regulations. Excavators shall notify City, and City shall notify CPS Energy.
- b. Leak Isolation and Repair. Any natural gas leaks reported by customers to City shall be reported immediately to

CPS Energy. CPS Energy shall pinpoint, classify, and repair, within an appropriate and practicable time frame, any reported leak or leaks identified by CPS Energy on City Gas System facilities located above or below ground. If CPS Energy deems a detected leak hazardous, CPS Energy shall take emergency response measures it believes necessary and appropriate in order to minimize property damage and injury to the general public.

- c. Pressure Control and Odorization. CPS Energy will perform the following Sservices as necessary to comply with state and/or federal regulations:
 - i. Investigate, determine the cause, and make repairs relating to reported complaints by City of abnormal pressure, high or low, on the City Gas System;
 - ii. Inspect and maintain pressure-regulating equipment, critical valves, and relief devices;
 - iii. Purchase and inject odorant into the City Gas System and operate odorization equipment in order to maintain required levels of odorant in the City Gas System stream; and
 - iv. Perform monthly tests to verify proper levels of odorant present in the City Gas System.
- d. System Patrolling. CPS Energy will schedule patrols on the City Gas System lines located on bridges, at creek or river crossings, and other points such as the City Gas System pipeline markers, casing vents, and regulator stations.
- e. Corrosion Control. CPS Energy shall take cathodic protection readings on the City Gas System steel piping to verify proper levels of corrosion control protection. If inadequacies are detected, CPS Energy will investigate the questionable piping to determine the root cause and correct and restore the level of protection consistent with natural gas industry practices. CPS Energy will inspect rectifiers and casings to ensure proper operation and maintain compliance with regulations.
- f. City Service Requests. CPS Energy will respond to gas leakage and odor complaints (inside and outside of customer premises) and will repair leaks detected upstream of the outlet meter swivel. If a leak is detected downstream of the outlet meter swivel, City shall notify and advise it's customer(s) to contact a plumber for repairs. CPS Energy will lock off the gas meter until repairs are made. City shall notify CPS Energy when it's customer completes the repairs, and following such notice from City, CPS Energy will unlock the gas meter.
- g. Emergency Response. City shall immediately report City Gas System related emergencies to CPS Energy for response. CPS Energy will investigate any City Gas System related accident and will assist City with investigatory processes taken by the RRC or any other public safety officials in relation to such accident. In case of damage to a natural gas line on the City Gas System, CPS Energy will take necessary action to bill and collect for damages inflicted by any third party. CPS Energy shall retain any and all damages collected.
- h. Regulatory Liaison. CPS Energy will handle all communications, inquiries, correspondence, and audits with the RRC with reasonable assistance provided by the City. CPS Energy shall include the operation and maintenance of the City Gas System within the CPS Energy Operations and Maintenance Plan and CPS Energy's Operator Qualification Plan.
- i. Regulatory Compliance. CPS Energy shall apply the same standards and procedures followed by CPS Energy on its gas distribution system to the operation and maintenance of the City Gas System. Except as otherwise provided herein, CPS Energy shall conduct and perform the operation and maintenance of the City Gas System in accordance with the CPS Energy Operations and Maintenance Plan and CPS Energy's Operator Qualification Plan.
- j. New Facilities. CPS Energy shall operate and maintain natural gas facility additions made by the City to the City Gas System that are made after the Effective Date of the Agreement. The construction and installation of such additional natural gas facilities is governed by Section 4(c).
- k. Gas Leak Surveys. CPS Energy shall conduct gas leak surveys of the City Gas System, including an annual gas leak survey of the downtown business district of the City and a gas leak survey of the entire City Gas System every three (3) years to meet RRC requirements for a prescription leak survey program.

2. CHANGE AUTHORIZATION ORDER (“CAO”)

In the event that the scope of the Services is substantially expanded, revised, or modified, the parties shall prepare and sign a Change Authorization Order (“CAO”), which shall be incorporated into the Agreement. No changes shall become effective until both parties have signed the CAO.

3. SPECIAL SERVICES

- a. Lighting Services. CPS Energy will provide lighting service of gas appliances to customers at a reasonable cost following interruption of the City Gas System service resulting from an outage not caused by a CPS Energy action, and at no charge following interruption of the City Gas System resulting from CPS Energy’s operation and maintenance, if requested by a customer.
- b. Additional Services. City may contract with CPS Energy (for additional Fees) via a CAO to test and calibrate the meters of customers indentified by City to CPS Energy, and/or to construct and install gas mains and services within the City Gas System.

4. CITY REQUIREMENTS

- a. City System Maps. City shall provide CPS Energy with all City Gas System maps and as-built drawings in City's possession, in hard copy and electronic format if available, no later than five (5) business days from the Effective Date of the Agreement.
- b. Customer Relations. City shall continue to read all City Gas System meters, receive and process all City Gas System related calls from customers, and perform all billing and collection processes.
- c. Additional Customers. City shall be responsible for the have-constructed and installationed, not at CPS’sat its own cost, of any natural gas facilities as necessary to serve additional customers that are not connected to the City Gas System at the time of the Effective Date of the Agreement. Upon and after construction and installation of the requested natural gas facilities and the connection of any additional customer to the City Gas System, CPS Energy shall operate and maintain the additional gas facilities in accordance with the Agreement. City may contract with CPS Energy to provide such construction and installation.
- d. Materials and Equipment. City shall provide CPS Energy natural gas materials and/or equipment, including but not limited to gas meters and regulators, that are part of the City Gas System and that CPS Energy must replace for maintenance or operational reasons. -City shall be responsible for procuring such materials and equipment and providing it in a timely manner to CPS Energy to minimize customer interruption. City may contract with CPS Energy via a CAO to purchase such gas materials and/or equipment (“Goods”) required by this paragraph from CPS Energy.
- e. Adherence to Laws. City and its representatives or agents agree that in carrying out their duties and responsibilities under the Agreement, they will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any applicable laws, decrees, rules, or regulations in effect in the United States or applicable to the Agreement, including, but not limited to, Employment and Labor related laws, rules or regulations, or (ii) would have the effect of causing CPS Energy to be in violation of any laws, decrees, rules, or regulations in effect in the United States or applicable to the Agreement. City and its representatives or agents shall protect and indemnify CPS Energy and CPS Energy officers and agents against any claim or liability arising from or based on any violation of the same.

5. CONTACT WITH CUSTOMERS

- a. Communication & Personnel. CPS Energy will not communicate with City’s customers except as necessary to perform Services required by the Agreement. CPS Energy personnel will at all times be identified as CPS Energy employees as they perform Services under the Agreement.
- b. City Customer Service. In the event a City customer has a request, comment, and/or a question relating to a matter that is not specifically related to CPS Energy Services, CPS Energy personnel shall inform the customer to contact

City at the City's Customer Service Number. City shall inform all customers that all requests, comments, and/or questions regarding the City Gas System and/or City gas service should be directed at all times to the City's Customer Service Number.

- c. Relay of Customer Communications. City shall relay complete information to CPS Energy regarding all City non-emergency customer requests, comments, and/or questions that relate to CPS Energy's obligations under the Agreement within twenty-four (24) hours of receipt or the next business day, if on a Friday or weekend.
- d. Operation and Maintenance Plan. The City Gas System Operations and Maintenance Plan shall state expressly that CPS Energy is the operator of the City Gas System and that City retains customer relations responsibilities, including but not limited to receiving customer calls. The City Gas System Operations and Maintenance Plan shall also explain how City will relay information to CPS Energy in a timely manner.

6. EMERGENCY COMMUNICATIONS

- a. The City Gas System Operations and Maintenance Plan shall state, and City shall inform City's customers, that emergency communications, including but not limited to odor, leak, and/or abnormal operating complaints relating to the City Gas System shall be submitted to the City offices and/or the City emergency 911 system.
- b. City shall inform City employees and the City emergency 911 system that each and all emergency communications regarding the City Gas System shall be submitted immediately by the appropriate personnel to the CPS Energy Emergency Telephone Number: (210) 353-92754357 ([HELP](#)).

7. CONTINUITY OF SERVICE

- a. Force Majeure. CPS Energy shall not be liable to City for failure of CPS Energy to deliver the Services due to injunction or Force Majeure events.
- b. Continuity. CPS Energy does not guarantee continuous service of the City Gas System, but shall use reasonable diligence to provide uninterrupted service from the City Gas System. CPS Energy shall not be liable to City or to any customer for any damage occasioned by irregularities or interruptions of service from the City Gas System.
- c. Suspension. CPS Energy reserves the right to suspend or interrupt service from the City Gas System and take such other action as reasonably necessary in accordance with prudent natural gas utility practice, without incurring liability on its part, at such times and for such periods and in such manner as it may, in its sole discretion, deem advisable for the purpose of making necessary adjustments to, changes in, or repairs on City Gas System facilities and/or equipment or in cases where the continuance of service from the City Gas System would endanger persons or property. CPS Energy shall use its best efforts to provide the City with reasonable notice in the event of suspension of service from the City Gas System under this provision and will use its best engineering judgment in determining the time and manner of restoration of service from the City Gas System.

8. ACCESS^[NMH1]

- ~~a. Access with Notice. Upon reasonable verbal and/or electronic mail (email) notice to City, CPS Energy shall have the right of access to the City Gas System facilities and/or equipment at all reasonable hours for the purpose of conducting and performing any non-emergency Services. CPS Energy shall not require any prior approval from City to conduct and perform any Services.~~
- a. Access without Notice. Without need for advance notice to City, CPS Energy shall have the right of access to the City Gas System facilities and/or equipment at all times for the purpose of conducting and performing Services under this Agreement or emergency operations any operating, maintenance, and/or emergency Services. CPS Energy shall provide City notice of any City Gas System emergency operations as soon as practicable following such activity. ~~CPS Energy shall not require any prior approval from City to conduct and perform any Services.~~
- b. Access with Notice. Upon reasonable verbal and/or electronic mail (email) notice to City, CPS Energy shall have the right of access to the City Gas System facilities and/or equipment at all reasonable hours for the purpose of conducting and performing any other non-emergency services.

9. FEES & PAYMENT TERMS

- a. Fees/Pricing. City agrees to compensate CPS Energy at the rates set forth on Schedule “A” (the “Fees”).
- b. Invoices. CPS Energy shall submit invoices to City monthly on or before the 15th of each month during which the Fees and charges are incurred or the next business day if the 15th falls on a holiday or weekend.
- c. Payment. No later than thirty (30) days following the date of invoice, City shall remit payment to CPS Energy at the address specified on the invoice. If there is a dispute with respect to any portion of an invoice, City shall pay the undisputed portion and provide written details specifying the basis of any dispute. City’s payments under the [Contract Agreement](#), including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.
- d. Tax-Exempt Organization. City is a TAX-EXEMPT ORGANIZATION, assigned tax identification number 17460004975.-

10. TERM & TERMINATION

- a. Term. This Agreement shall terminate twenty-four (24) months from the Effective Date (the “Term”), provided that either Party may terminate the Agreement without cause before the expiration date by providing the non-terminating Party thirty (30) days advance written notice.
- b. Extension. City may extend the Agreement for an additional twelve (12) months (the “Extension”) provided the Parties comply with the following:
 - i. City must provide CPS Energy advance written notice of a request for Extension at least ninety (90) days before the expiration of the current Term;
 - ii. The Parties must agree to mutually acceptable Fees and charges applicable to the Extension Term; and
 - iii. CPS Energy shall provide City advance written notice of approval of the Extension Term and Fee Schedule at least sixty (60) days before the expiration of the current Term.
- c. Termination for Insolvency. Either party shall have the right to immediately terminate the Agreement, by providing written notice to the other party, in the event that (i) the other party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other party’s property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- d. Effect of Termination. In the event of early termination and unless otherwise agreed in writing, CPS Energy shall immediately stop work as to the terminated portion of the Agreement, notify all suppliers, subcontractors and sub-suppliers to stop work on contracts for performance hereunder. CPS Energy shall, within thirty (30) days after receipt of said notice to terminate, advise City in writing whether any termination charges will be submitted in connection with the termination. CPS Energy shall be paid a reasonable termination charge consisting of a percentage of the Agreement price reflecting the percentage of the work completed prior to the notice of termination, plus reasonable, actual direct costs for uncompleted work in progress. In no event shall the aggregate of all termination payments under the Agreement exceed the total sum due under the Agreement.
- e. Payments Due Post Termination. The termination of the Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due or payable according to the provisions herein.

11. INTELLECTUAL PROPERTY

- a. Ownership in Work. The parties agree that any works of authorship, plans, studies, diagrams, drawings, documents, derivative works, products, documents, strategic materials, designs, brochures, correspondence, agreements, deliverables, reports, or any other proprietary information that CPS Energy creates in the course of providing the Services or any Goods (collectively the “Work”), if any, shall not be considered “works made for hire” to the extent permitted by applicable law. CPS Energy will own the Work. City hereby irrevocably assigns all rights, title, and

interests in the Work to CPS Energy as its sole and exclusive property. The rights assigned under the Agreement shall not lapse on account of non-exercise of the rights. City agrees that it will cooperate with CPS Energy in completing documents, providing information, and doing other things needed to evidence CPS Energy's ownership of the Work, or to evidence the transfer of these rights to CPS Energy, including those things necessary to register any intellectual property right.

12. CONFIDENTIALITY

- a. Confidential Information. The parties understand and acknowledge that they may, from time to time, disclose and receive Confidential Information. The following information is "**Confidential Information**": the terms of the Agreement, and all information exchanged by or on behalf of the parties during negotiations culminating in the Agreement and during the Term of the Agreement or any extension thereof; any information related to a party's performance of, or failure to perform, the Agreement; any information that is marked or designated as "Confidential" at the time of disclosure; any information related to that party's assets, liabilities, finances, business strategies, product development plans, operations, technology, know-how, trade secrets, inventions, techniques, processes, source code, schematics, designs, network topology, network and data storage information, customers, vendors, and personnel; and all other information that a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure. During the Term of the Agreement and thereafter, the receiving party will not (i) use the Confidential Information except to perform its duties and obligations under the Agreement or (ii) disclose the Confidential Information to any third party without the prior written consent of the disclosing party, except that the receiving party may disclose the Confidential Information to its employees, agents, and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement, and who are bound by written non-disclosure obligations at least as stringent as those stated in the Agreement. The receiving party shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, and representatives. In no event shall the parties use the other party's Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the products or services of the owner. The receiving party's obligations with respect to the Confidential Information also extend to any third party's proprietary or confidential information disclosed to the receiving party under the Agreement, if any.
- b. Non-Protected Information. This confidentiality obligation will not apply to the extent that the receiving party can demonstrate that: (i) the Confidential Information is available to the public at the time of disclosure; (ii) the Confidential Information thereafter becomes available to the public, except by breach of the provisions of the Agreement or violation of law or other agreement; (iii) the receiving party can establish by written evidence that it had possession of the Confidential Information prior to the time of disclosure; (iv) the Confidential Information is received by the receiving party from a third-party that is not bound by a confidential relationship with the disclosing party; (v) the Confidential Information was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information.
- c. Disclosure. If the receiving party is requested or required (e.g., by deposition, interrogatory, request for documents, subpoena, civil investigative demand, open records request, or similar process) to disclose any of the Confidential Information, then the receiving party will notify the disclosing party (to the extent legally permissible) promptly in writing so that the disclosing party may seek any appropriate protective order and/or take any other action prior to disclosure. In any event that the receiving party is legally compelled or obligated to disclose any of the Confidential Information, such Confidential Information may be disclosed as required; provided, however, that the receiving party will use its best efforts to minimize the disclosure of such information.
- d. Return or Destroy. Each party shall return or irretrievably destroy the other party's Confidential Information and all material that is derived from the Confidential Information immediately on completion of the Agreement, or earlier upon request of the other party, provided that a party may retain the other party's Confidential Information only if reasonably necessary to use the Services or deliverables, or to maintain reasonable and customary business records. On request of a party, an officer of the other party shall certify its compliance with the preceding sentence.

- e. Injunctive Relief. The parties agree that the disclosure of Confidential Information by the receiving party will cause the disclosing party irreparable damage for which recovery of money damages would be inadequate. The disclosing party is therefore entitled to injunctive relief in addition to all other remedies available at law.

13. WARRANTY DISCLAIMER

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THE AGREEMENT CPS ENERGY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. CPS ENERGY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT APPLICABLE.

14. GOODS

- a. Warranty Disclaimer Relating to Goods. CPS ENERGY HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS.
- b. Specifications of Goods. Unless CPS Energy has expressly agreed otherwise in writing, it is City's responsibility to ensure that the Goods are the ones that it has requested and that all specifications and quantities are correct. CPS ENERGY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.
- c. Duty to Inspect Goods. City shall immediately inspect all Goods upon receipt. Any claims for shortages or discrepancies will be waived by City unless made in writing to CPS Energy within ten business days of receipt of the Goods.
- d. Payment of Goods. Payment for Goods is due within 30 days from the date of CPS Energy's invoice; provided, however, that CPS Energy reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery. Until City has fully and finally paid all amounts owed to CPS Energy for any Goods, City shall hold such Goods in trust for CPS Energy, and CPS Energy may repossess them if City fails to pay for them in a timely fashion. The purchase price of the Goods does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods. Except for those taxes for which City is exempt, City is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods.
- e. Exclusive Remedy. City's exclusive remedy against CPS Energy for any claim for, or arising out of, any Goods tendered to City is the repair or replacement of the Goods, or alternatively, at CPS Energy's sole election, a refund of the purchase price of the Goods. This remedy will only be available to City for thirty (30) days after the Goods are tendered to City, and CPS Energy's obligations under this section will be void unless City provides CPS Energy with notice of the defect in the Goods within ten (10) days of discovery of the defect. [CT2]

15. LIMITATION OF LIABILITY

- a. Neither party (nor its employees, agents, suppliers or affiliates) shall be liable to the other for any lost profits or any indirect, special, incidental, punitive, or consequential loss or damage of any kind arising in connection with the Agreement, even if the party has been advised or should be aware of the possibility of such damages. Nothing in the Agreement limits or excludes either party's liability for loss or damage resulting from death or personal injury

caused by its gross negligence, or any fraud or fraudulent misrepresentation. The parties obligations pursuant to the Agreement are subject to Texas Government Code Chapter 1502, as applicable.

- b. CPS Energy's total liability related to Goods shall not exceed the purchase price of such Goods, and CPS Energy's total liability related to Services shall not exceed the Fees for such Services.

16. **INDEMNIFICATION**^[CT3]

- a. **General.** City shall indemnify, defend and hold harmless CPS Energy, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be), officers, employees, representatives, and agents (collectively, the "**CPS Indemnified Parties**") from and against any claims, demands, loss, damage or expense arising from in any manner, directly or indirectly, out of, or in connection with, or in the course of, or incidental to, or as a consequence of City's conduct, including any act, omission, professional error, fault, mistake, failure, negligence, gross negligence or gross or willful misconduct, of any and every kind, by City, or by City's officers, directors, employees, agents, or ~~Subcontractors~~^[CT4], arising from in any manner, directly or indirectly, out of, or in connection with, or in the course of, or incidental to, or as a consequence of (i) any workers' compensation claims or claims under similar laws or obligations related to the Agreement, the Services or the Goods thereunder; (ii) performance of the Agreement ~~(or failure to perform) or any actions contemplated herein~~; (iii) breach of the Agreement; or (iv) violation of any laws or regulations, except to the extent the gross negligence or willful misconduct of CPS Energy gives rise to such claim. To the extent that any claim arises from the concurrent conduct of CPS Energy, City and/or any third party, it is expressly agreed that each party's obligations of indemnity under this section shall be effective only to the extent of each party's pro rata share of liability. CPS Energy reserves the right to employ counsel at its own expense and participate in the defense and/or settlement of any claim covered by this subsection.

- b. **CITY INDEMNIFICATION.** THE PRECEEDING SECTION (16a) IS SUBJECT TO THE FOLLOWING: TO THE EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND STATE LAW AND WITH THE MUTUAL UNDERSTANDING THAT CITY IS A GENERAL LAW MUNICIPALITY INCORPORATED UNDER THE TEXAS CONSTITUTION AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS; AND THAT AN INDEMNITY OBLIGATION CANNOT BE PAID FROM CURRENT REVENUES AND THAT NO ORDER, RESOLUTION, TAX NOR INTEREST AND SINKING FUNDS HAS BEEN SET, ADOPTED OR ESTABLISHED FOR PAYMENT OF THIS INDEMNITY OBLIGATION, AND WITHOUT EXPANDING CITY'S LIABILITY BEYOND THE STATUTORY LIMITS OF THE TEXAS TORT CLAIMS ACT OR UNDER EXISTING LAW, AND FURTHERMORE, WITHOUT WAIVING CITY'S IMMUNITY BEYOND THE SCOPE OF THAT ALLOWED BY THE TEXAS TORT CLAIMS ACT OR EXISTING LAW, CITY SHALL INDEMNIFY AND HOLD HARMLESS CPS ENERGY AND ITS RESPECTIVE EMPLOYEES, OFFICERS, TRUSTEES, AGENTS, AND INDEPENDENT CONTRACTORS FROM ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, AND WHETHER CONTINGENT OR LIQUIDATED, ARISING FROM OR RELATED TO (A) ANY BREACH BY CITY OR CITY'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS ASSUMED HEREIN AND (B) CITY'S OWNERSHIP, CONTROL, OPERATION, MAINTENANCE, AND MANAGEMENT OF THE CITY GAS SYSTEM UNDERTAKEN AND OCCURRING PRIOR TO THE EFFECTIVE DATE OF THE AGREEMENT, WHETHER THE SAME ARE A RESULT OF CITY'S NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE. THE INDEMNITY SET FORTH IN THIS SECTION DOES NOT INCLUDE ANY CLAIMS UNDER ENVIRONMENTAL LAWS OR WITH RESPECT TO ANY ENVIRONMENTAL LIABILITY WHICH ARE SPECIFICALLY ADDRESSED HEREIN. THIS INDEMNITY SHALL SURVIVE TERMINATION OF THE AGREEMENT.

- c. **CPS ENERGY INDEMNIFICATION.** TO THE EXTENT PERMITTED BY LAW, CPS ENERGY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS RESPECTIVE EMPLOYEES, OFFICERS, AGENTS, AND INDEPENDENT CONTRACTORS FROM ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, AND WHETHER CONTINGENT OR LIQUIDATED, TO THE EXTENT ARISING FROM OR RELATED TO CPS ENERGY'S GROSS NEGLIGENCE OR KNOWINGLY WRONGFUL OPERATION AND MAINTENANCE OF THE CITY GAS SYSTEM SUBSEQUENT TO THE EFFECTIVE DATE OF THE

AGREEMENT AND UNDER THE UNINTERRUPTED TERM THEREAFTER. THE INDEMNITY SET FORTH IN THIS SECTION SPECIFICALLY EXCLUDES ANY CLAIMS UNDER ENVIRONMENTAL LAWS OR WITH RESPECT TO ANY ENVIRONMENTAL LIABILITY ARISING BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT OR DURING ANY INTERRUPTED OR TERMINATED TERM. THIS INDEMNITY SHALL SURVIVE TERMINATION OF THE AGREEMENT.

- d. Environmental Indemnity. During the Term of the Agreement, including any extension, and subject to the limitations of the Texas Constitution and State Law and with the mutual understanding that City is a general law municipality incorporated under the Texas Constitution and a political subdivision of the State of Texas; and that an indemnity obligation cannot be paid from current revenues and that no order, resolution, tax nor interest and sinking funds has been set, adopted or established for payment of this indemnity obligation, and without expanding City's liability beyond the statutory limits of the Texas Tort Claims Act or under existing law, and furthermore, without waiving City's immunity beyond the scope of that allowed by the Texas Tort Claims Act or existing law, City shall assume liability for and indemnify CPS Energy against any and all known and unknown Environmental Liabilities with respect to the City Gas System arising prior to the Effective Date of the Agreement. City will make available to CPS Energy all material reports and other information relating to any Environmental Liabilities of the City Gas System and, except as to those matters previously disclosed to CPS Energy, City has not received any written notice from governmental authority regarding Environmental Laws and to City's knowledge, City never intentionally violated Environmental Laws by a Release.
- e. Indemnification Procedure. ~~City shall, within fifteen (15) days of receipt of notice of any claim or threatened claim, notify CPS Energy of its intention to assume the defense of such claim. If (i) City shall decline to assume the defense of any such claim; (ii) City shall fail to notify CPS Energy within fifteen (15) days after receipt of notice of any claim or threatened claim of City's election to defend such claim; (iii) CPS Energy shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to City (in which case City shall not have the right to direct the defense of such action on behalf of CPS Energy); or (iv) a conflict exists between City and CPS Energy which CPS Energy has reasonably concluded would prejudice City's defense of such action, then in such case, City shall not have the right to direct the defense of such action on behalf of CPS Energy and CPS Energy shall, at the sole expense of City, defend against such claim and in the event of a circumstance described in clause (i) and (ii) CPS Energy may settle such claim without the consent of City (and City may not challenge the reasonableness of any such settlement) and in the event of a circumstance described in clause (iii) and (iv) CPS Energy may not settle such claim without the consent of City (which consent will not be unreasonably withheld or delayed).~~ The [NMH5] indemnifying party shall, within fifteen (15) days of receipt of notice of any claim or threatened claim from the party seeking indemnification ("Indemnity Notice"), notify the party seeking indemnification of indemnifying party's intention to assume the defense of such claim. If (i) the indemnifying party shall decline to assume the defense of any such claim; (ii) the indemnifying party shall fail to notify the other party within fifteen (15) days after receipt Indemnity Notice of the indemnifying party's election to defend such claim and such failure results in prejudice to the indemnified party's defense of such action; (iii) the indemnified parties shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified parties); or (iv) a conflict exists between the indemnifying party and the indemnified parties which the indemnified parties have reasonably concluded would prejudice the indemnifying party's defense of such action, then in such case, the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified parties and the indemnified parties shall, at the sole expense of the indemnifying party, defend against such claim and in the event of a circumstance described in clause (i) and (ii) the indemnified parties may settle such claim without the consent of the indemnifying and in the event of a circumstance described in clause (iii) and (iv) the indemnified parties may not settle such claim without the consent of the indemnifying party (which consent will not be unreasonably withheld or delayed).

17. INSURANCE

- a. Minimum Insurance Requirements. City agrees to carry and keep insurance in full force during the Term, including any extension thereof, sufficient to fully protect CPS Energy from all damages, claims, suits and/or judgments including, but not limited to, errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with the performance or failure to perform under the Agreement by City, City's agents or employees, a City subcontractor, or its agents or employees. The minimum amount of insurance as required shall be in accordance with "Addendum A" titled "Minimum Insurance Requirements." City's insurance shall be primary to and non-contributory with any self-insurance and/or insurance maintained by CPS Energy. City acknowledges that CPS Energy is a political subdivision of the State of Texas and a self-insured governmental entity with the ability to self-insure and maintain commercial excess insurance coverage to protect City against all damages, claims, suits, violations, fees and penalties caused or claimed to have been caused by CPS Energy in connection with said activities under the Agreement. Evidence of such insurance shall be satisfied in the form of a self-insured letter provided to City upon request.
- b. Change in Minimum Insurance Requirements. Should the Minimum Insurance Requirements of CPS Energy change, City shall be notified in writing and City shall have sixty (60) days to meet the new requirements.

18. MISCELLANEOUS CLAUSES

- a. Independent Contractor. The parties recognize that CPS Energy is an independent contractor and nothing within the Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties, or as granting a franchise under federal or state law. All City employees, contractors, representatives, or agents, including those assigned to perform services relating to the Agreement shall be considered to be an employee of City only and will not be considered an agent or employee of CPS Energy for any purpose. City will be solely responsible for payment of all compensation owed to its employees, contractors, representatives, or agents, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any City employee be eligible for or entitled to participate in any of the employee benefit plans or similar programs of CPS Energy.
- b. Non-Restrictive Relationship. Unless prohibited by another provision herein, CPS Energy may provide the same or similar Services or Goods to other customers.
- c. Trademarks. Neither party may use the other party's name, logo, trade or service marks, or similar indicia (each a "**Trademark**") without the other party's prior written consent. Except as expressly stated herein, each party retains all right, title, and interest in and to its intellectual property.
- d. Waiver. The rights and remedies provided to each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate the Agreement or to enforce any provision of the Agreement for default or violation by the other party shall not prejudice such party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.
- e. Force Majeure. Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market. Neither party shall, however, be excused from performance if nonperformance is due to causes which are removable or remediable and which the non-performing party could have, with the exercise of reasonable diligence, resolved or remedied with reasonable dispatch. The provisions of this section shall not be interpreted or construed to require either party to prevent, settle, or otherwise avoid a strike, labor stoppage, or other similar labor action. The non-performing party shall, within a reasonable time of being prevented or delayed from performance, give written notice to the other party describing the force majeure circumstances preventing continued performance of the obligations of the Agreement.

- f. Notices. All notices required under or regarding the Agreement must be in writing and shall be considered properly given if delivered personally, by electronic mail to City's email address specified on the first page or to CPS Energy at legalnotices@cpsenergy.com (upon receipt), mailed via registered or certified mail (return receipt requested and postage prepaid), or sent by courier (confirmed by receipt) to City's address designated on the first page or to CPS Energy at CPS Energy, Attn: General Counsel, P.O. Box 1771, San Antonio, Texas 78296. It is City's responsibility to keep its address of record up to date at all times.
- g. Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected. In the event an ambiguity or question of intent or interpretation arises, the Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Agreement.
- h. Captions. The section headings in the Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of the Agreement.
- i. Entire Agreement. This Agreement and any addenda, schedules, exhibits, appendices, amendments and other documents attached to or incorporated herein constitute the entire agreement between the parties and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the Agreement.
- j. Amendments. The Agreement may be amended only by an instrument in writing executed by the parties hereto.
- k. Applicable Law and Venue. The Agreement is governed by the laws of the State of Texas. Exclusive venue for all actions under the Agreement shall be in the state courts of the State of Texas, [Bexar County][CT6], Texas.
- l. Survival. The following provisions shall survive expiration or termination of the Agreement: Intellectual Property, Confidentiality, Warranty Disclaimer, Goods, Limitation of Liability, Indemnification, Insurance, Miscellaneous, and any other provisions that by their nature are intended to survive expiration or termination.
- m. Assignment. City shall not assign the Agreement, or any part thereof, without the previous written consent of CPS Energy. CPS Energy reserves the right to assign any of the activities herein relegated to its province to a designated representative or agent.
- n. Attorneys' Fees. In the event a party brings any action for any relief, declaratory or otherwise, arising out of the Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- o. Successors and Third Party Beneficiaries. The terms, provisions, and covenants contained in the Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and permitted assigns, except as otherwise herein provided. No third parties shall have any rights hereunder.
- p. Authorization. Each party represents and warrants that all consents or approvals required of third parties (including, but not limited to, its Board of Directors or partners) for the execution, delivery and performance of the Agreement have been obtained and that each party has the right and authority to enter into and perform its covenants contained in the Agreement.
- q. Signatures. Any documents signed in connection with the Agreement may be signed in multiple counterparts which, taken together, will constitute one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures. Each person executing the Agreement warrants that he/she is authorized to do so on behalf of the party for whom he/she signs the Agreement.
- r. Primary Contacts.

CPS ENERGY

Title: Mgr. Gas Compliance

Title:

Name: Tom Linerode

Name:

Phone Number: (210) 353-2928

Phone Number:

Email Address: telinerode@cpsenergy.com

Email Address:

CPS Energy
Emergency Telephone Number: (210) 353-9275

CITY

Title: Director of Public Works

Title: Interim City Administrator

Name: ~~John Gomez~~ ~~Lawrence Heinrich~~

Name: ~~Leroy Vidales~~ ~~Marie Gelles~~

Phone Number: (830) 931-4090

Phone Number: (830)931-4070

Email Address: ~~John.gomez~~ ~~larry.heinrich~~@castr
ovilletx.gov

Email Address: ~~Leroy.vidales~~ ~~marie.gelles~~@castr
ovilletx.gov

Customer Service Number: (830) 931-4090

19. ADDENDA & SCHEDULES

The following addenda and schedules shall be attached hereto and incorporated by reference:

- a. Addendum A: Minimum Insurance Requirements
- b. Schedule A: Fees

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**The City of San Antonio,
acting by and through
City Public Service Board**

City: City of Castroville

Signature

Signature

Printed Name

Printed Name

Title

Date

Title

Date

Addendum A
Minimum Insurance Requirements

Schedule A

Fees

1. Monthly Fees. City shall pay CPS Energy the following Fees and charges according to the provisions set forth in the Agreement:

- Fixed Cost: \$8,~~827570~~.00 per month.
 Hourly rates as set forth below.
 Other: .

2. Gas Delivery. (if applicable)

- Not applicable.
 For all gas delivered by City to CPS Energy at delivery points for delivery by CPS Energy to , City agrees to pay CPS Energy for each one thousand (1,000) cubic feet (MCF) of gas delivered to such delivery point as compensation for use of CPS Energy's Facilities.

3. The fees set forth above in (1) and (2) shall adjust automatically in accordance with the annual change in the Consumer Price Index – All Urban Consumers – U.S., as published by the Bureau of Labor Statistics. Annual adjustments are effective on October 1st of each calendar year. Notwithstanding the foregoing, the maximum amount by which the fees may be raised in any given year shall not exceed 3%. On written request from the City or the Government, CPS Energy shall provide written notice of any adjustment. The adjustment shall be calculated as the greater of zero or the annual rate of growth, rounded to the nearest thousandth, for the annual index. (By way of example, the published annual indexes for 1997 and 1998 were 160.5 and 163.0).

The formula for the annual growth rate is as follows:

$$R = (\text{Index}_{\text{yr1}} - \text{Index}_{\text{yr0}}) / \text{Index}_{\text{yr0}}$$

Where $\text{Index}_{\text{yr1}}$ = Annual index for the latest year published.

$\text{Index}_{\text{yr0}}$ = Annual index for the previous year.

R = Rate of Growth

The data is available through the Bureau of Labor Statistics website at <http://stats.bis.gov/>.

4. Unforeseen Costs. City is liable for any major or unforeseen costs arising from the Agreement that exceed the following amount during the Term and any agreed extension:

- Twenty Thousand Dollars (\$20,000.00 US)
 Fixed Amount: \$.
 Other: .

5. Hourly Rates / Additional Fees. As agreed on any CAO setting forth additional fees for additional services, including, but not limited to the following:

- Construction and installation of gas mains and services.
- Construction and installation relating to additional customers.
- Significant materials or equipment that are part of the City Gas System and that CPS Energy must replace for maintenance or operational reasons.



CITY COUNCIL AGENDA REPORT

DATE: July 10, 2020

AGENDA OF: July 14, 2020

DEPARTMENT: City Administration

SUBJECT: Discussion and appropriate action on a petition for annexation from Hwy 90 Castroville Partners, LTD.

RECOMMENDATION: Approve the petition for annexation from Hwy. 90 Castroville Partners, LTD.

BACKGROUND/DISCUSSION: Per the Alsatian Oaks Development Agreement – Article 6: Annexation -

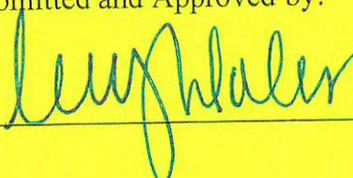
Petition for Annexation into ETJ: the Developer hereby agrees to the voluntary annexation of the portion of the Property outside the City ETJ into the City ETJ, a petition requesting the inclusion of such portion of the Property (the “Non-ETJ Petition”) into the City ETJ. The Non-ETJ Petition is deemed filed by the Developer.

Petition for Annexation into City: the Developer hereby agrees to voluntary, full-purpose annexation of any portion of the Property outside the corporate limits of the City, including the portion of the Property described above into the City, a petition requesting the annexation of the Property (the “ETJ Petition”). The ETJ Petition is deemed filed by the Developer.

City Council Action: City action initiating Property annexation shall occur as soon as practicable after the effective date and after the City’s receipt of the completed Non-ETJ Petition and ETJ-Petition, which shall include the steps required under Chapter 43 for the full-purpose annexation of all Property. Notwithstanding its full-purpose annexation of the Property, provision of City services, including extension of public infrastructure, to the Property shall be made subject the development agreement and no other agreement, regulation, or law.

FISCAL IMPACT/SOURCE OF FUNDING:

Submitted and Approved by:

 ^{7.10.20}

Interim City Administrator

ATTACHMENTS/ADDITIONAL INFORMATION:

PETITION FOR ANNEXATION
PETITION FOR ANNEXATION
OF LAND INTO THE CITY OF CASTROVILLE

TO THE HONORABLE CITY COUNCIL, CITY OF CASTROVILLE, TEXAS:

I or we, HWY 90 Castroville Partners, Ltd., owner(s) of the land described below by metes and bounds and, being contiguous and adjacent land and territory to the present corporate limits of the City of Castroville, Texas, hereby request annexation of the described land into the City of Castroville. I (we) understand that the request does not necessarily mean that the land will be annexed, but that the City will consider the request based upon requests received from other land owners and an evaluation of services to be provided.

Name: HWY 90 CASTROVILLE PARTNERS, LTD.

Address: 900 E. LAKEVIEW DRIVE, MCALLEN, TX 78501

City/State/Zip:

{INSERT LEGAL DESCRIPTION AND/OR ATTACH PLAT & METES AND BOUNDS DESCRIPTION}

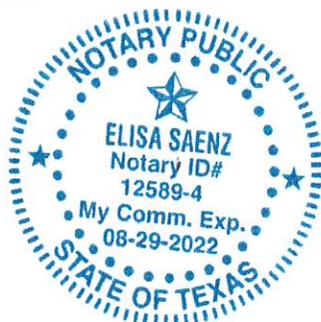
Wherefore, petitioners respectfully request that the hereinabove described land be forthwith incorporated into and become a part of the territory of the municipal corporation of the City of Castroville, Medina County, Texas.

Respectfully Submitted,

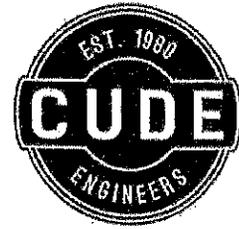
BY: Robert J. Morehead
Petitioner(s) Signature

STATE OF TEXAS
COUNTY OF ~~MEDINA~~ HIDALGO

BEFORE ME, the undersigned authority, on this day personally appeared Robert J. Morehead, President who having knowledge of the facts contained herein acknowledged to me that he executed the same for the purposes and consideration therein expressed, on this 14th day of May, 2019X 20.



[Signature]
Notary Public



LEGAL DESCRIPTION
131.613 ACRES OF LAND

131.613 acres of land located in the L.M. Collard Survey Number 97, Abstract Number 1259, Medina County, Texas and being a portion of that certain 383.723 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 2013006833, Official Public Records of Medina County, Texas; said 131.613 acres being more particularly described as follows:

BEGINNING, at a found Cotton Spindle marking the northeasterly corner of the said 383.723 acres and the northwesterly corner of that certain called 154.17 acres of land conveyed to Dickerson Tausch Properties, LLC, as described in Document Number 2018002306, Official Public Records of Medina County, Texas;

THENCE, South 00deg 01' 45" West, along the westerly line of the said 154.17 acres, a distance of 2,878.60, to a point;

THENCE, crossing the said 383.723 acres and along the Extra Territorial Jurisdiction line (ETJ) of the City of Castroville, the following courses:

Northwesterly, along the arc of a curve to the left having a radius of 2,640.00 feet, a central angle of 25deg 00' 13", an arc length of 1,152.09 feet and a chord bearing: N 50deg 48' 37" W, 1,142.97 feet, to a point;
Northwesterly, along the arc of a curve to the left having a radius of 2,640.00 feet, a central angle of 65deg 31' 42", an arc length of 3,019.33 feet and a chord bearing: N 62deg 00' 24" W, 2,857.44 feet, to a point;
North 89deg 40' 32" West, a distance of 678.20 feet, to a point located in the easterly line of that certain called 140.48 acres of land conveyed to Olan F. Karm, as described in Volume 169, Page 891, Official Public Records of Medina County, Texas;

THENCE, North 00deg 03' 52" East, along the easterly line of the said 140.48 acres, a distance of 841.88 feet, to a found 1/2 inch Iron rod with "KOCH" cap located in the southerly line of that certain tract of land conveyed to J2G Properties, Ltd., as described in Document Number 20180010053, Official Public Records of Medina County, Texas;

THENCE, South 89deg 34' 19" East, along the southerly line of the said J2G Properties, Ltd. Land, a distance of 4,087.82 feet, to the **POINT OF BEGINNING** and containing 131.613 acres of land, more or less.

Basis of bearings is the Texas State Plane Coordinate System, South Central Zone (4204), NAD 83 (93).

James W. Russell 9/2/19

James W. Russell
Registered Professional Land Surveyor No. 4230
Cude Engineers
4122 Pond Hill Road, Suite 101
San Antonio, Texas 78231
TBPLS Firm No. 10048500
TBPE Firm No. 455



J2G PROPERTIES, LTD.
 DOC# 2018001053
 O.P.R.M.C.

P.O.B.

OLAN F. KARM
 VOL. 169, PG. 891
 O.P.R.M.C.

N0°03'52"E
 841.88'

S89°34'19"E
 4087.82'

5,733,079 SF
 131.613 AC

ET. LINE

N89°40'32"W
 678.20'

L=3,019.33'
 R=2,640.00'
 Δ=65°31'42"
 Ch=2,857.44'
 ChB=N62°00'24"W

S0°01'45"W
 2878.60'

REMAINDER OF
 64.5 ACRES
 PATRICIA ANN DECOCK
 WURZBACH
 VOL. 274, PG. 695
 O.P.R.M.C.

KATHY EATON, ET AL
 VOL. 191, PG. 711
 O.P.R.M.C.

L=1,152.09'
 R=2,640.00'
 Δ=25°00'13"
 Ch=1,142.97'
 ChB=N50°48'37"W

383.723 ACRES
 HWY 90 CASTROVILLE
 PARTNERS, LTD.
 DOC# 2013006833
 O.P.R.M.C.

DICKERSON TAUSCH PROPERTIES, LLC
 DOC# 2018002306
 O.P.R.M.C.T.

LOT 1
 WALMART STORE NO.
 4102-00 SUBDIVISION
 VOL. 10, PGS. 318-322
 M.P.R.M.C.T.

TONDRE
 PARKWAY

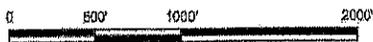
LOT 2
 LOT 3

REMAINDER OF
 33.360 ACRES
 HWY 90 CASTROVILLE
 PARTNERS, LTD.
 VOL. 763, PG. 378
 O.P.R.M.C.T.

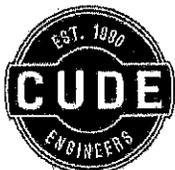
LOT 4

U.S. HIGHWAY 90
 (ROW VARIES)

CITY OF CASTROVILLE
 VOL. 99, PG. 307
 O.P.R.M.C.T.



SCALE: 1" = 1000'



CUDE ENGINEERS
 4122 POND HILL RD. • SUITE 101
 SAN ANTONIO, TEXAS 78231
 TEL 210.681.2951 • FAX 210.523.7112
 WWW.CUDEENGINEERS.COM
 TBPE FIRM #455
 TBPLS FIRM #10048500

EXHIBIT OF
 131.613 ACRES OF LAND LOCATED IN THE L.M. COLLARD SURVEY
 NUMBER 97, ABSTRACT NUMBER 1259, MEDINA COUNTY, TEXAS AND
 BEING A PORTION OF THAT CERTAIN 383.723 ACRES OF LAND CONVEYED
 TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN
 DOCUMENT NUMBER 2013006833, OFFICIAL PUBLIC RECORDS OF
 MEDINA COUNTY, TEXAS.

DATE: APRIL 1, 2019

JOB NO.: 02889.060

F:\02889\060\p-Survey\Drawings\SY 121889.dwg 2019/04/02 11:28am bblack

REPRODUCTION OF THE ORIGINAL SIGNED AND SEALED PLAN AND/OR ELECTRONIC MEDIA MAY HAVE BEEN INCOMPLETELY ALTERED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE SCALE OF THE DOCUMENT AND CONTRACTING LOGIC ENGINEERS TO VERIFY DISCREPANCIES PRIOR TO CONSTRUCTION.

PETITION FOR ANNEXATION

PETITION FOR ANNEXATION
OF LAND INTO THE CITY OF CASTROVILLE EXTRATERRITORIAL
JURISDICTION

TO THE HONORABLE CITY COUNCIL, CITY OF CASTROVILLE, TEXAS:

I or we, HWY 90 Castroville Partners, Ltd., owner(s) of the land described below by metes and bounds and, being contiguous and adjacent land and territory to the present corporate limits of the City of Castroville, Texas, hereby request annexation of the described land into the City of Castroville Extraterritorial Jurisdiction. I (we) understand that the request does not necessarily mean that the land will be annexed into the Extraterritorial Jurisdiction, but that the City will consider the request based upon requests received from other land owners and an evaluation of services to be provided.

Name: HWY 90 CASTROVILLE PARTNERS, LTD.

Address: 900 E. LAKEVIEW DRIVE, MCALLEN, TX 78501 City/State/Zip:

{INSERT LEGAL DESCRIPTION AND/OR ATTACH PLAT & METES AND BOUNDS DESCRIPTION}

Wherefore, petitioners respectfully request that the hereinabove described land be forthwith incorporated into and become a part of the territory of the municipal corporation of the City of Castroville, Medina County, Texas.

Respectfully Submitted,

BY: Robert J. Morehead
Robert J. Morehead, President

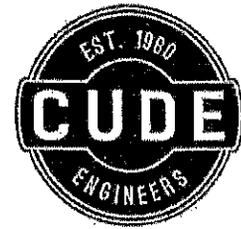
Petitioner(s) Signature

STATE OF TEXAS
COUNTY OF ~~MEDINA~~ HIDALGO

BEFORE ME, the undersigned authority, on this day personally appeared Robert J. Morehead, President who having knowledge of the facts contained herein acknowledged to me that he executed the same for the purposes and consideration therein expressed, on this 14th day of May, 2019



[Signature]
Notary Public



LEGAL DESCRIPTION
131.613 ACRES OF LAND

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THENCE, North 00deg 03' 52" East, along the easterly line of the said 140.48 acres, a distance of 841.88 feet, to a found ½ inch iron rod with "KOCH" cap located in the southerly line of that certain tract of land conveyed to J2G Properties, Ltd., as described in Document Number 20180010053, Official Public Records of Medina County, Texas;

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Basis of bearings is the Texas State Plane Coordinate System, South Central Zone (4204), NAD 83 (93).

James W. Russell 4/2/19

James W. Russell
Registered Professional Land Surveyor No. 4230
Cude Engineers
4122 Pond Hill Road, Suite 101
San Antonio, Texas 78231
TBPLS Firm No. 10048500
TBPE Firm No. 455



J2G PROPERTIES, LTD.
DOC# 2018001053
O.P.R.M.C.

P.O.B.

OLAN F. KARM
VOL. 169, PG. 891
O.P.R.M.C.

N0°03'52"E
841.88'

S89°34'19"E
4087.82'

5,733,079 SF
131.613 AC

ET LINE

N89°40'32"W
678.20'

L=3,019.33'
R=2,640.00'
Δ=65°31'42"
Ch=2,857.44'
ChB=N62°00'24"W

S0°01'45"W
2878.60'

DICKERSON TAUSCH PROPERTIES, LLC
DOC# 2018002306
O.P.R.M.C.T.

REMAINDER OF
64.5 ACRES
PATRICIA ANN DECOCK
WURZBACH
VOL. 274, PG. 695
O.P.R.M.C.

KATHY EATON, ET AL
VOL. 191, PG. 711
O.P.R.M.C.

L=1,152.09'
R=2,640.00'
Δ=25°00'13"
Ch=1,142.97'
ChB=N50°48'37"W

383.723 ACRES
HWY 90 CASTROVILLE
PARTNERS, LTD.
DOC# 2013006833
O.P.R.M.C.

LOT 1
WALMART STORE NO.
4102-00 SUBDIVISION
VOL. 10, PGS. 318-322
M.P.R.M.C.T.

TONDRE
PARKWAY

LOT 2
LOT 3

REMAINDER OF
33.360 ACRES
HWY 90 CASTROVILLE
PARTNERS, LTD.
VOL. 763, PG. 378
O.P.R.M.C.T.

LOT 4

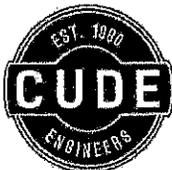
U.S. HIGHWAY 90
(ROW VARIES)

CITY OF CASTROVILLE
VOL. 99, PG. 307
O.P.R.M.C.T.



0 500' 1000' 2000'

SCALE: 1" = 1000'



CUDE ENGINEERS
4122 POND HILL RD. • SUITE 101
SAN ANTONIO, TEXAS 78231
TEL. 210.681.2951 • FAX 210.523.7112
WWW.CUDEENGINEERS.COM
TBPE FIRM #455
TBPLS FIRM #10048500

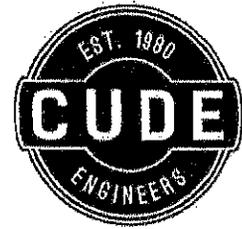
EXHIBIT OF
131.613 ACRES OF LAND LOCATED IN THE L.M. COLLARD SURVEY
NUMBER 97, ABSTRACT NUMBER 1259, MEDINA COUNTY, TEXAS AND
BEING A PORTION OF THAT CERTAIN 383.723 ACRES OF LAND CONVEYED
TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN
DOCUMENT NUMBER 2013006833, OFFICIAL PUBLIC RECORDS OF
MEDINA COUNTY, TEXAS.

DATE: APRIL 1, 2019

JOB NO.: 02869.060

P:\02869\02869\Drawings\SY 12869.060 Base.dwg 2/19/19 11:28am bblack

REPRODUCTION OF THE ORIGINAL SIGNED AND SEALED PLAN AND/OR ELECTRONIC MEDIA MAY HAVE BEEN INADVERTENTLY ALTERED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE SCALE OF THE DOCUMENT AND CONTACTING CUDE ENGINEERS TO VERIFY DISCREPANCIES PRIOR TO CONSTRUCTION.



**LEGAL DESCRIPTION
269.407 ACRES OF LAND**

269.407 acres of land located in the L.M. Collard Survey Number 97, Abstract Number 1259, Medina County, Texas and being comprised of that certain 383.723 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 2013006833, Official Public Records of Medina County, Texas; that certain 2.00 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 2013006835, Official Public Records of Medina County, Texas; that certain 2.00 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 20130068336, Official Public Records of Medina County, Texas and a portion of that certain 33.360 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Volume 763, Page 378, Official Public Records of Medina County, Texas; said 269.407 acres being more particularly described as follows:

BEGINNING, at a found 5/8 inch Iron rod with "ROTHE" cap located in the northerly right of way line of U.S. Highway 90 (US 90) and marking the southeasterly corner of an unnamed right of way (now referred to as Tondre Parkway) as shown on the plat of Walmart Store No. 4102-00, as recorded in Volume 10, Pages 318-322, Map and Plat Records of Medina County, Texas;

THENCE, along the easterly and northerly right of way lines of said Tondre Parkway, the following courses:

North 00deg 19' 45" East, a distance of 120.96 feet, to a found 5/8 inch iron rod;
North 05deg 05' 34" East, a distance of 60.21 feet, to a found 5/8 inch iron rod with "TERRA" cap;
North 00deg 19' 45" East, a distance of 838.11 feet, to a set 1/2 inch iron rod with "CUDE" cap;
Northeasterly, along the arc of a curve to the right having a radius of 30.00 feet, a central angle of 50deg 40' 49", an arc length of 26.54 feet and a chord bearing: N 25deg 47' 06" E, 25.68 feet, to a set 1/2 inch iron rod with "CUDE" cap;
Westerly, along the arc of a curve to the left having a radius of 65.00 feet, a central angle of 230deg 51' 40", an arc length of 261.90 feet and a chord bearing: N 64deg 15' 40" W, 117.40 feet, to a found 5/8 inch iron rod with "TERRA" cap located in the easterly line of Lot 1 of said Walmart Store No. 4102-00 subdivision;

THENCE, along the easterly and northerly lines of said Lot 1, the following courses:

North 00deg 18' 27" East, a distance of 258.88 feet, to a found 5/8 inch iron rod with "TERRA" cap;
South 89deg 42' 21" West, a distance of 630.52 feet, to a found 5/8 inch iron rod with "ROTHE" cap; said rod being located in the easterly line of that certain called 25.7512 acres of land conveyed to Kathy Eaton, et al, as described in Volume 191, Page 711, Official Public Records of Medina County, Texas;

THENCE, along the easterly and northerly lines of the said 25.7512 acres, the following courses:

North 00deg 20' 52" East, a distance of 2,513.10 feet, to a found P.K. Nail;
North 88deg 58' 15" West, a distance of 660.43 feet, to a found P.K. Nail;
North 56deg 59' 23" West, a distance of 883.43 feet, to a found 5/8 inch iron rod located in the easterly line of the remainder of a called 64.5 acres of land conveyed to Patricia Ann DeCock Wurzbach, as described in Volume 274, Page 695, Official Public Records of Medina County, Texas

THENCE, North 00deg 03' 52" East, along the easterly line of the said remainder of the 64.5 acres and the easterly line of that certain called 140.48 acres of land conveyed to Olan F. Karm, as described in Volume 169, Page 891, Official Public Records of Medina County, Texas, a distance of 700.83 feet, to a point;

THENCE, crossing the said 383.723 acres and along the Extra Territorial Jurisdiction line (ETJ) of the City of Castroville, the following courses:

South 89deg 40' 32" East, a distance of 678.20 feet, to a point;
 Southeasterly, along the arc of a curve to the right having a radius of 2,640.00 feet, a central angle of 65deg 31' 42",
 an arc length of 3,019.33 feet and a chord bearing: S 62deg 00' 24" E, 2,857.44 feet, to a point;
 Southeasterly, along the arc of a curve to the right having a radius of 2,640.00 feet, a central angle of 25deg 00' 13",
 an arc length of 1,152.09 feet and a chord bearing: S 50deg 48' 37" E, 1,142.97 feet, to a point located in the westerly
 line of that certain called 154.17 acres of land conveyed to Dickerson Tausch Properties, LLC, as described in
 Document Number 2018002306, Official Public Records of Medina County, Texas;

THENCE, South 00deg 01' 45" West, along the westerly line of the said 154.17 acres, a distance of 2,926.98 feet, to a found 5/8
 Inch Iron rod with "ROTHE" cap marking the northeasterly corner of that certain called 0.02 acres of land conveyed to the City
 of Castroville, as described in Volume 99, Page 307, Official Public Records of Medina County, Texas;

THENCE, along the northerly and westerly lines of the said 0.02 acres, the following courses:

South 89deg 54' 24" West, a distance of 34.00 feet, to a set 1/2 Inch Iron rod with "CUDE" cap;
 South 00deg 01' 45" West, a distance of 26.69 feet, to a set 1/2 Inch Iron rod with "CUDE" cap located in the northerly
 right of way line of said US 90;

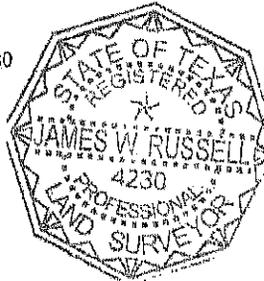
THENCE, along the northerly right of way line of said US 90, the following courses:

South 89deg 54' 08" West, a distance of 1,217.36 feet, to a set 1/2 Inch Iron rod with "CUDE" cap;
 Westerly, along the arc of a curve to the left having a radius of 5,804.58 feet, a central angle of 03deg 06' 35", an arc
 length of 315.04 feet and a chord bearing: S 88deg 21' 05" W, 315.00 feet, to a found 5/8 inch iron rod;
 South 86deg 47' 08" West, a distance of 422.17 feet, to the **POINT OF BEGINNING** and containing 269.407 acres of
 land, more or less.

Basis of bearings is the Texas State Plane Coordinate System, South Central Zone (4204), NAD 83 (93).

James W. Russell 4/21/19

James W. Russell
 Registered Professional Land Surveyor No. 4230
 Cude Engineers
 4122 Pond Hill Road, Suite 101
 San Antonio, Texas 78231
 TBPLS Firm No. 10048500
 TBPE Firm No. 455



J2G PROPERTIES, LTD.
 DOC# 2018001053
 O.P.R.M.C.

OLAN F. KARM
 VOL. 169, PG. 891
 O.P.R.M.C.

DICKERSON TAUSCH PROPERTIES, LLC
 DOC# 2018002305
 O.P.R.M.C.T.

REMAINDER OF
 64.5 ACRES
 PATRICIA ANN DECOCK
 WURZBACH
 VOL. 274, PG. 695
 O.P.R.M.C.

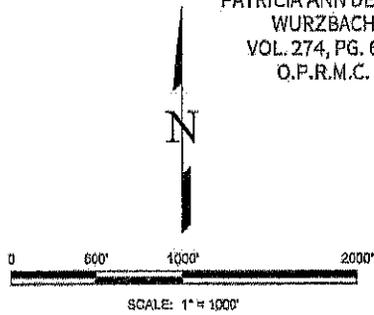
KATHY EATON, ET AL
 VOL. 191, PG. 711
 O.P.R.M.C.

11,735,350 SF
 269,407 AC
 383,723 ACRES
 HWY 90 CASTROVILLE
 PARTNERS, LTD.
 DOC# 2013006833
 O.P.R.M.C.

LOT 1
 WALMART STORE NO.
 4102-00 SUBDIVISION
 VOL. 10, PGS. 318-322
 M.P.R.M.C.T.

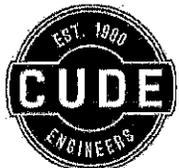
REMAINDER OF
 33,360 ACRES
 HWY 90 CASTROVILLE
 PARTNERS, LTD.
 VOL. 763, PG. 378
 O.P.R.M.C.T.

CITY OF CASTROVILLE
 VOL. 99, PG. 307
 O.P.R.M.C.T.



LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	N00°19'45"E	120.96'
L2	N05°05'34"E	60.21'
L3	N00°19'45"E	838.11'
L4	N00°18'27"E	258.88'
L5	S89°42'21"W	630.52'
L6	N00°20'52"E	2513.10'
L7	N88°58'15"W	660.43'
L8	N56°59'23"W	883.43'
L9	N00°03'52"E	700.83'
L10	S89°40'32"E	678.20'
L11	S00°01'45"W	2926.98'
L12	S89°54'24"W	34.00'
L13	S00°01'45"W	26.69'
L14	S89°54'08"W	1217.36'
L15	S86°47'08"W	422.17'

CURVE TABLE					
CURVE NO.	DELTA	ARC LENGTH	RADIUS	CHORD BEARING	CHORD DIST.
C1	050°40'49"	26.54'	30.00'	N25°47'06"E	25.68'
C2	230°51'40"	261.90'	65.00'	N64°15'40"W	117.40'
C3	065°31'42"	3019.33'	2640.00'	S62°00'24"E	2857.44'
C4	025°00'13"	1152.09'	2640.00'	S50°48'37"E	1142.97'
C5	003°06'35"	315.04'	5804.58'	S88°21'05"W	315.00'



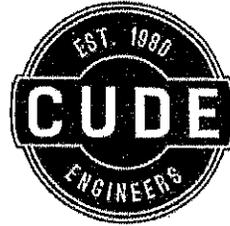
CUDE ENGINEERS
 4122 POND HILL RD. • SUITE 101
 SAN ANTONIO, TEXAS 78231
 TEL 210.681.2951 • FAX 210.523.7112
 WWW.CUDEENGINEERS.COM
 TBPE FIRM #455
 TBPLS FIRM #10048500

269,407 ACRES OF LAND LOCATED IN THE L.M. COLLARD SURVEY NUMBER 97, ABSTRACT NUMBER 1259, MEDINA COUNTY, TEXAS AND BEING COMPRISED OF THAT CERTAIN 383,723 ACRES OF LAND CONVEYED TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN DOCUMENT NUMBER 2013006833, OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY, TEXAS; THAT CERTAIN 2.09 ACRES OF LAND CONVEYED TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN DOCUMENT NUMBER 2013006835, OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY, TEXAS; THAT CERTAIN 2.00 ACRES OF LAND CONVEYED TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN DOCUMENT NUMBER 2013006836, OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY, TEXAS AND A PORTION OF THAT CERTAIN 33,360 ACRES OF LAND CONVEYED TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN VOLUME 763, PAGE 378, OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY, TEXAS.

DATE: APRIL 1, 2019 JOB NO.: 02568.060

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REPRODUCTION OF THE ORIGINAL SIGNED AND SEALED PLAN AND (OR) ELECTRONIC MEDIA, MAY HAVE BEEN INADVERTENTLY ALTERED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE SCALE OF THE DOCUMENT AND CONTACTING CUDE ENGINEERS TO VERIFY DISCREPANCIES PRIOR TO CONSTRUCTION.



**LEGAL DESCRIPTION
14.131 ACRES OF LAND**

A 14.131 acre tract of land located in the L. M. Collard Survey No. 97, Abstract No. 1259, Medina County, Texas, and being all of that certain 13.470 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 2015003983, Official Public Records of Medina, County, Texas and all of that certain 0.660 acres of land conveyed to HWY 90 Castroville Partners, Ltd., as described in Document Number 2015003984, Official Public Records of Medina, County, Texas said 14.131 acre tract being more particularly described as follows:

BEGINNING, at a found 1/2" iron rod with red plastic cap stamped "CAREY 4454" located on the southerly right-of-way line of U.S. Highway 90, a varying width right-of-way, marking the northeasterly corner of said 13.470 acre tract and the northwesterly corner of a called 45.172 acre tract, conveyed to Marshal Persyn and wife, Joy Persyn, recorded in Volume 163, Page 281, Deed Records of Medina County, Texas,

THENCE, South 00deg 06' 32" West, along the easterly line of said 13.470 acre tract and the westerly line of said 45.172 acre tract, a distance of 848.42 feet to a found 1/2" iron rod with red plastic cap stamped "MW CUDE";

THENCE, North 88deg 47' 39" West, along the southerly line of the said 13.470 acres, a distance of a distance of 732.96 feet to a found 1/2" iron rod with red plastic cap stamped "MW CUDE";

THENCE, along the westerly line of the said 13.470 acres and the westerly line of the said 0.660 acres, the following courses:

North 00deg 06' 32" East, at a distance of 143.09 feet, passing a found 1/2" iron rod with red plastic cap stamped "MW CUDE" marking the southwesterly corner of the said 0.660 acres, a total distance of 256.02 feet, found 1/2" iron rod with red plastic cap stamped "CAREY 4454";

North 04deg 00' 22" East, a distance of 617.46 feet, to a found 1/2" iron rod with red plastic cap stamped "CAREY 4454" located on the southerly right-of-way line of U.S. Highway 90;

THENCE, along the southerly right-of-way line of U.S. Highway 90 the following courses:

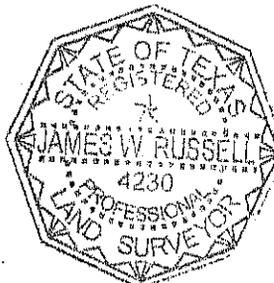
South 85deg 44' 39" East, at a distance of 40.00 feet passing a found 1/2" iron rod with red plastic cap stamped "MW CUDE, a total distance of 335.24 feet to a found 1/2" iron rod with red plastic cap stamped "CAREY 4454";

Easterly, along the arc of a curve to the left having a radius of 5,809.58 feet, a central angle of 03deg 31' 08", an arc length of 356.80 feet and a chord bearing: S 87deg 44' 03" E, 356.75 feet, to the **POINT OF BEGINNING** and containing 14.131 acres of land, more or less

Note: Basis of Bearings is the Texas State Plane Coordinate System, South Central Zone (4204), NAD 83 (93).

James W. Russell 4/2/19
James W. Russell

Registered Professional Land Surveyor No. 4230
Cude Engineers
4122 Pond Hill Road, Suite 101
San Antonio, Texas 78231
TBPLS Firm No. 10048500
TBPE Firm No. 455
Job No. 02869.006



U.S. HIGHWAY 90
(ROW VARIES)

KELLER GRAIN INC.
VOL. 298, PG. 744
VOL. 273, PG. 149
VOL. 397, PG. 338
O.P.R.M.C.

S85°44'39"E 295.24'
S85°44'39"E 40.00'

L=356.80'
R=5,809.58'
Δ=3°31'08"
Ch=356.75'
ChB=S87°44'03"E

P.O.B.

617.46'

N04°00'22"E

N0°06'32"E

256.02

0.660 ACRE
HWY 90 CASTROVILLE
PARTNERS, LTD.
DOC# 2015003984
O.P.R.H.C.T.

615,542 SF
14.131 AC
13.470 ACRES
HWY 90 CASTROVILLE
PARTNERS, LTD
DOC# 2015003983
O.P.R.M.C.

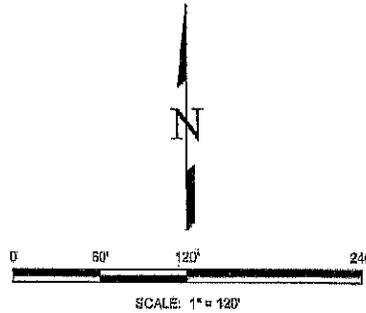
S00°06'32"W

848.42'

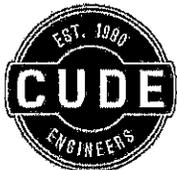
N88°47'39"W

732.96'

MARSHEL & JOY PERSYN
VOL. 163, PG. 281
D.R.M.C.T.



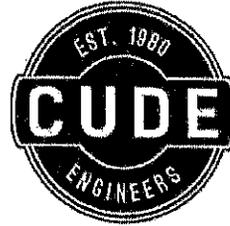
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CUDE ENGINEERS
4122 POND HILL RD. • SUITE 101
SAN ANTONIO, TEXAS 78231
TEL 210.681.2951 • FAX 210.523.7112
WWW.CUDEENGINEERS.COM
TBPE FIRM #455
TBPLS FIRM #10048500

EXHIBIT OF
A 14.131 ACRE TRACT OF LAND LOCATED IN THE L. M. COLLARD SURVEY NO. 97,
ABSTRACT NO. 1259, MEDINA COUNTY, TEXAS, AND BEING ALL OF THAT CERTAIN 13.470
ACRES OF LAND CONVEYED TO HWY 90 CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN
DOCUMENT NUMBER 2015003983, OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY,
TEXAS AND ALL OF THAT CERTAIN 0.660 ACRES OF LAND CONVEYED TO HWY 90
CASTROVILLE PARTNERS, LTD., AS DESCRIBED IN DOCUMENT NUMBER 2015003984,
OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY, TEXAS.
DATE: APRIL 1, 2019 JOB NO: 02869.060

REPRODUCTION OF THE ORIGINAL SIGNED AND SEALED PLAN AND/OR ELECTRONIC MEDIA MAY HAVE BEEN INADVERTENTLY ALTERED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE SCALE OF THE DOCUMENT AND CONTACTING CUDE ENGINEERS TO VERIFY DISCREPANCIES PRIOR TO CONSTRUCTION.

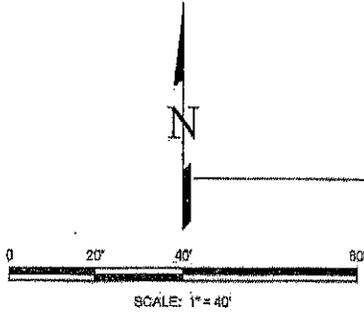


Page 1 of 1

LEGAL DESCRIPTION
LOT 2
WALMART STORE NO. 4102-00

1.148 acres of land located in the L. M. Colliard Survey No. 97, Abstract No. 1259, Medina County, Texas, and being all of Lot 2, Walmart Store No. 4102-00 subdivision, according to the map or plat thereof recorded in Volume 10, Pages 318-322, Map and Plat Records of Medina County, Texas.

LOT 1
WALMART STORE NO.
4102-00 SUBDIVISION
VOL. 10, PGS. 318-322
M.P.R.M.C.T.



LOT 3
WALMART STORE NO.
4102-00 SUBDIVISION
VOL. 10, PGS. 318-322
M.P.R.M.C.T.

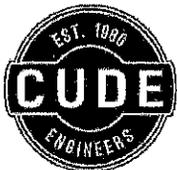
50,022 SF
1.148 AC

LOT 2
WALMART STORE NO.
4102-00 SUBDIVISION
VOL. 10, PGS. 318-322
M.P.R.M.C.T.

L=166.02'
R=5,654.58'
 $\Delta=1^{\circ}40'56''$
Ch=166.02'
ChB= $S88^{\circ}43'44''W$

U.S. HIGHWAY 90
(ROW VARIES)

- ₁ = SET 1/2" IRON ROD WITH CAP STAMPED "CUDE"
- ₂ = FOUND 5/8" IRON ROD WITH CAP STAMPED "TERRA"
- ₃ = FOUND 5/8" IRON ROD WITH CAP STAMPED "ROTHE"



CUDE ENGINEERS
4122 POND HILL RD. • SUITE 101
SAN ANTONIO, TEXAS 78231
TEL 210.681.2951 • FAX 210.523.7112
WWW.CUDEENGINEERS.COM
TBPE FIRM #455
TBPLS FIRM #10048500

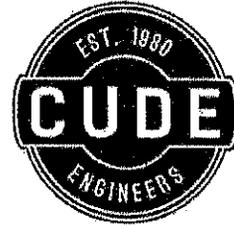
EXHIBIT OF
1.148 ACRES OF LAND LOCATED IN THE L. M. COLLARD SURVEY NO. 97,
ABSTRACT NO. 1259, MEDINA COUNTY, TEXAS, AND BEING ALL OF LOT 2,
WALMART STORE NO. 4102-00 SUBDIVISION, ACCORDING TO THE MAP OR
PLAT THEREOF RECORDED IN VOLUME 10, PAGES 318-322, MAP AND PLAT
RECORDS OF MEDINA COUNTY, TEXAS.

DATE: APRIL 1, 2019

JOB NO.: 02869.060

REPRODUCTION OF THE ORIGINAL SIGNED AND SEALED PLAN AND/OR ELECTRONIC MEDIA MAY HAVE BEEN INADVERTENTLY ALTERED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE SCALE OF THE DOCUMENT AND CONTACTING CUDE ENGINEERS TO VERIFY DISCREPANCIES PRIOR TO CONSTRUCTION.

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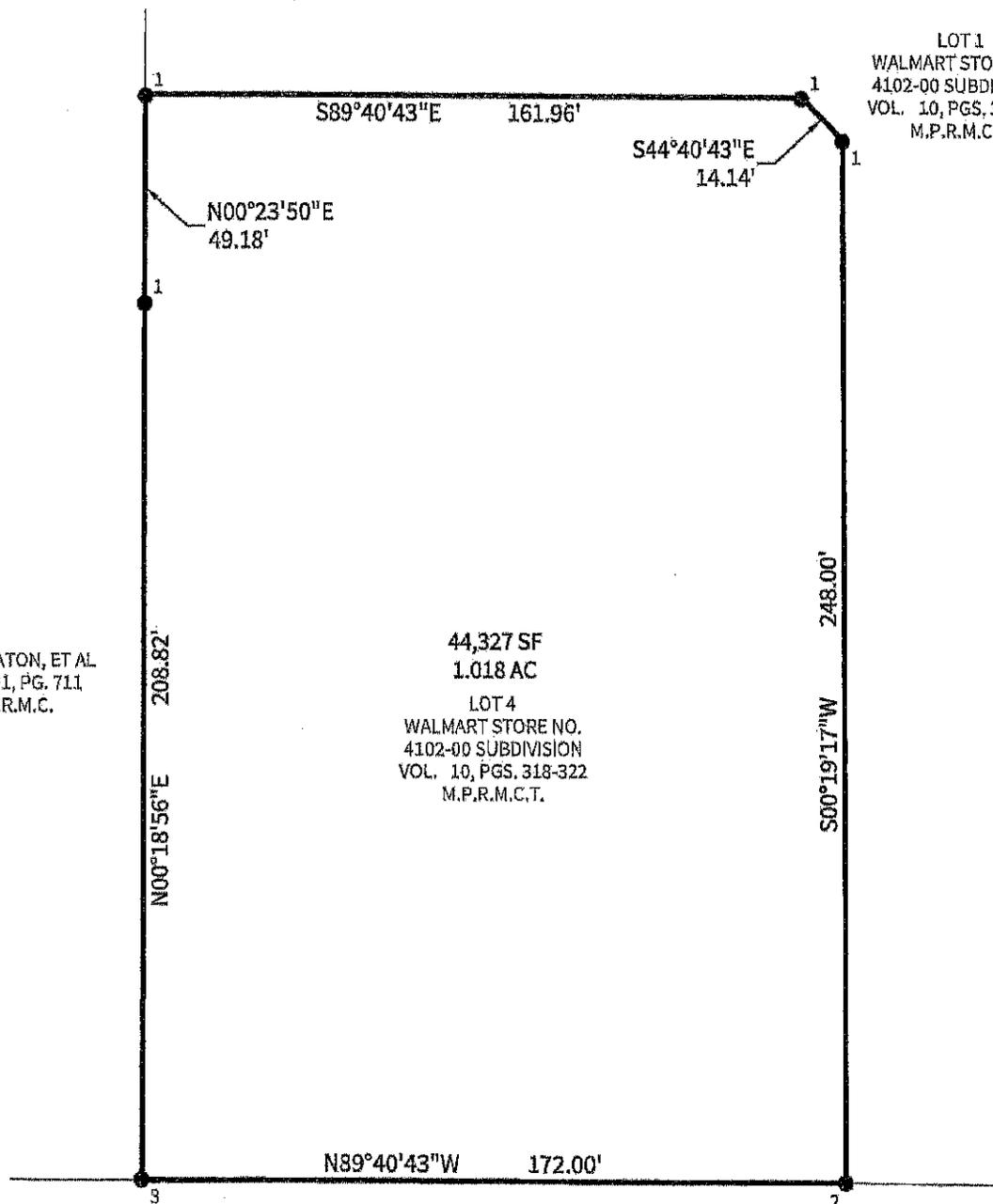


Page 1 of 1

LEGAL DESCRIPTION
LOT 4
WALMART STORE NO. 4102-00

1.018 acres of land located in the L. M. Collard Survey No. 97, Abstract No. 1259, Medina County, Texas, and being all of Lot 4, Walmart Store No. 4102-00 subdivision, according to the map or plat thereof recorded in Volume 10, Pages 318-322, Map and Plat Records of Medina County, Texas.

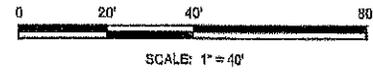
LOT 1
 WALMART STORE NO.
 4102-00 SUBDIVISION
 VOL. 10, PGS. 318-322
 M.P.R.M.C.T.



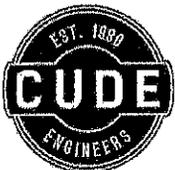
KATHY EATON, ET AL
 VOL. 191, PG. 711
 O.P.R.M.C.

44,327 SF
 1.018 AC
 LOT 4
 WALMART STORE NO.
 4102-00 SUBDIVISION
 VOL. 10, PGS. 318-322
 M.P.R.M.C.T.

U.S. HIGHWAY 90
 (ROW VARIES)



- 1 = SET 1/2" IRON ROD WITH CAP STAMPED "CUDE"
- 2 = FOUND 5/8" IRON ROD WITH CAP STAMPED "TERRA"
- 3 = FOUND 5/8" IRON ROD WITH CAP STAMPED "ROTHER"



CUDE ENGINEERS
 4122 POND HILL RD. • SUITE 101
 SAN ANTONIO, TEXAS 78231
 TEL 210.681.2951 • FAX 210.523.7112
 WWW.CUDEENGINEERS.COM
 TBPE FIRM #455
 TBPLS FIRM #10048500

EXHIBIT OF
 1.018 ACRES OF LAND LOCATED IN THE L. M. COLLARD SURVEY NO. 97,
 ABSTRACT NO. 1259, MEDINA COUNTY, TEXAS, AND BEING ALL OF LOT 4,
 WALMART STORE NO. 4102-00 SUBDIVISION, ACCORDING TO THE MAP
 OR PLAT THEREOF RECORDED IN VOLUME 10, PAGES 318-322, MAP AND
 PLAT RECORDS OF MEDINA COUNTY, TEXAS.

DATE: APRIL 1, 2013

JOB NO.: 02866.060

however, that if, on the Final Grant Installment Payment Date, the aggregate amount of Grant Installments total an amount less than the Maximum Disbursement Amount, the City shall have no obligation to reimburse Developer for Developer's Costs that at such time remain unreimbursed. As of the Final Grant Installment Payment Date, the City shall have no continuing obligation to fund Grants from the Grant Proceeds Collection Account and those City Ad Valorem Taxes and City Sales Taxes that have previously been required to be deposited to the Grant Proceeds Collection Account shall be available for use by the City and shall immediately be transferred to the City's General Fund for utilization for any lawful purpose.

5.07 City Takeover. Not later than the thirtieth (30th) day prior to any Grant Installment Payment Date, the City may provide written notice to Developer of its intent to assume the financial responsibility for delivering Public Improvements and Public Infrastructure that have not yet been completed by Developer (such event, a "City Takeover Event"). Any such notice shall be accompanied by action of the City Council evidencing the City's agreement to complete any incomplete Public Infrastructure and Public Improvements in accordance with the PUD and (ii) pay to Developer on the next occurring Grant Installment Payment Date, all Developer's Costs that at such time remain outstanding and unpaid and Developer's development costs for Public Infrastructure and Public Improvements that are at such time in progress but incomplete or not yet conveyed and dedicated to the City. After receipt of notice of a City Takeover Event, the Developer shall include in the next Developer's Reimbursement Request all expenses of the type heretofore described for review, approval, and payment by the City on the applicable Grant Installment Payment Date. The City shall pay amounts owed to Developer on the Grant Installment Payment Date that occurs after delivery to Developer of a notice of City Takeover Event from funds on deposit in the Grant Proceeds Collection Account or any other source of funds that are lawfully available to the City.

 **ARTICLE 6** 
ANNEXATION

6.01 Petition for Annexation into ETJ. Developer hereby agrees to the voluntary annexation of the portion of the Property outside the City ETJ into the City ETJ and hereby submits, as Exhibit I hereto, a petition requesting the inclusion of such portion of the Property (the "Non-ETJ Petition") into the City ETJ. The Non-ETJ Petition is deemed filed by Developer as of the Effective Date.

6.02 Petition for Annexation into City. Developer hereby agrees to the voluntary, full-purpose annexation of any portion of the Property outside the corporate limits of the City, including the portion of the Property described in Section 6.01 of this Agreement, into the City and hereby submits, as Exhibit J hereto, a petition requesting the annexation of the Property (the "ETJ Petition"). The ETJ Petition is deemed filed by Developer as of the Effective Date.

6.03 City Council Action. City action initiating Property annexation shall occur as soon as practicable after the Effective Date and after the City's receipt of the completed Non-ETJ Petition and ETJ-Petition, which shall include the steps required under Chapter 43 for the full-purpose annexation of all Property. Notwithstanding its full-purpose annexation of the Property,

provision of City services, including extension of public infrastructure, to the Property shall be made subject to this Agreement and no other agreement, regulation, or law.

ARTICLE 7
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

7.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property but not to the purchaser of one individual residential lot within the Property. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of the County in order to be effective.

Because the City's entering into this Agreement with Developer is conditioned, in part, on Developer's demonstrated skill, expertise, and financial resources with respect to the development of projects similar to the Project, demonstrating its ability to satisfy its obligations arising under this Agreement, any assignment by Developer of its rights hereunder shall be subject to the City's approval, not to be unreasonably withheld; provided, however, an assignment by Developer to any Developer-affiliated entity does not require approval by the City. In connection with any request for approval of assignment Developer shall provide to the City evidence of the assignee's similar experience, resources, and financial resources that are demonstrative of such assignee's ability to complete Project development in a manner at least equal to those of Developer.

7.02 Lot Conveyance Not an Assignment. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer under this Agreement shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

7.03 Agreement Binding on Assigns. In the event of an assignment of this Agreement, Developer shall be released from any obligations of this Agreement, provided the successors or assigns agree in writing to all terms and conditions of this Agreement. Any reference to Developer, City, or Parties shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 8
DEFAULT AND NOTICE

8.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) calendar days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) calendar day period, the commencement of the cure within the thirty (30) calendar day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. Notwithstanding the



CITY COUNCIL AGENDA REPORT

DATE: July 10, 2020

AGENDA OF: July 14, 2020
DEPARTMENT: City Secretary
SUBJECT: Council Policies and Procedures

RECOMMENDATION: Consider and adopt an ordinance amending the Council Policies and Procedures.

BACKGROUND:

The City Attorney's office was assigned this project was to ensure compliance with Chapter 22 of the Texas Local Government Code. The provisions were revised to reset the rules to a starting base point and then council can consider/revise as needed. We recommend rules that are effective so that business is taken care of efficiently and balanced with the ability of the council to be able to enforce the rules. The draft was provided to city council at the June 23, 2020 council meeting for review.

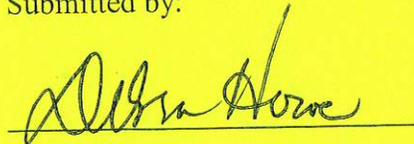
FISCAL IMPACT/SOURCE OF FUNDING:

None.

ATTACHMENTS:

Ordinance amending 2009-006
Exhibit A (clean copy and red lined with changes shown)

Submitted by:



Approved by:

48 and public relations. It is through an informed public that progress is ensured and good government
49 remains sensitive to its constituents. The mayor and councilmembers recognize that the news media provide
50 an important link between council and the public. It is council's desire to establish a professional working
51 relationship to help maintain a well informed and educated citizenry.

52 (1) During the conduct of official business, the city shall designate adequate space for the news
53 media. All reporters will receive an agenda in advance of council meetings and will be furnished
54 support material needed for clarification if requested. The use of media equipment such as lights,
55 cameras and/or microphones should be coordinated with the city administrator prior to the
56 meeting to ensure that this equipment does not disturb or otherwise conflict with or disrupt the
57 meeting or the council's activities.

58 (2) In order to avoid public confusion and ensure dissemination of the most accurate information
59 possible, the mayor and councilmembers should defer to the city administrator, the city's chief
60 executive agent, as primary point of contact for all media questions regarding daily operation and
61 maintenance issues.

62 (3) Councilmembers are encouraged to hold periodic informational meetings, solicit citizen feedback,
63 and otherwise share information of interest to constituents within their districts.

64 **Section three.** The recitals contained in the preamble hereof are hereby found to be true, and
65 such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part
66 of the judgment and findings of the Council.

67 **Section four.** All ordinances and codes, or parts thereof, which are in conflict or inconsistent
68 with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the
69 provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

70 **Section five.** If any provision of this Ordinance or the application thereof to any person or
71 circumstance shall be held to be invalid, the remainder of this Ordinance and the application of
72 such provision to other persons and circumstances shall nevertheless be valid, and the City
73 hereby declares that this Ordinance would have been enacted without such invalid provision.

74 **Section six.** It is officially found, determined, and declared that the meeting at which this
75 Ordinance is adopted was open to the public and public notice of the time, place, and subject
76 matter of the public business to be considered at such meeting, including this Ordinance, was
77 given, all as required by Chapter 551, as amended, Texas Government Code.

78 **Section seven.** The publishers of the City Code are authorized to amend said Code to reflect the
79 changes adopted herein and to correct typographical errors and to format and number paragraphs
80 to conform to the existing Code.

81 **Section eight.** The City Secretary is hereby directed to publish notice of this Ordinance, in
82 substantial form as **Exhibit "B"**, as required by Chapter 52, Subchapter B of the Texas Local
83 Government Code.

84 The remainder of this page intentionally blank

86 **Section nine.** This Ordinance shall be effective upon the date of final adoption hereof and any
87 publication required by law.

88 Adopted by the City Council this _____ day of _____ 2020.

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CASTROVILLE, TEXAS

DARRIN SCHROEDER, Mayor Pro Tem

97 ATTEST:

98
99

100 _____
101 DEBRA HOWE, City Secretary

102
103

104 APPROVED AS TO LEGAL FORM

105
106

107 _____
108 CYNTHIA TREVINO, City Attorney

Exhibit "A"

Amendment to Section 2-4

Sec. 2-4. - Council policy and rules of procedure.

- (a) *Council's role: In order to ensure the proper discharge of duties for the improvement of democratic local government, councilmembers will display a level of behavior that demonstrates independent, impartial review of all matters addressed by them, and be duly responsible to the citizens of Castroville and each other in their relationships.*
- (b) *Mayor's role: The presiding officer of the council is responsible for conducting the meeting. When present and participating, the mayor shall serve as presiding officer at meetings of council. The mayor may participate in discussions of all matters coming before council. After each general election, council shall elect from among councilmembers a mayor pro tempore who shall act as mayor during the absence or disability of the mayor. If neither the mayor nor the mayor pro tempore are able to serve, the remaining councilmembers may by majority vote designate a councilmember to preside. The mayor shall preserve order and decorum during council meetings and shall require councilmembers engaged in debate to limit discussion to the question under consideration. The mayor is the spokesperson for the council on all official city occasions unless absent, at which time the mayor pro tempore will assume the role. The mayor will guide council discussions, respond to council questions, summarize issues and call items for council action. The mayor will encourage all councilmembers to participate in discussion and give each member an opportunity to speak before any member can speak again on the same subject. The total time an individual councilmember may speak on a discrete issue during a meeting will be limited to no more than 15 minutes, unless additional time is provided to the councilmember by a majority council vote.*
- (c) *Council meetings:*
 - (1) *Regular meeting. Council shall meet regularly at such place and times as prescribed by council, but no less frequently than twice each month unless otherwise resolved by council. Council shall adopt a resolution specifying the scheduled date/time/location and may amend the resolution as may be required from time to time.*
 - (2) *Quorum. Council must have a quorum to meet, deliberate, debate, and decide on any city business.*
 - A. *A quorum for a regular meeting is three councilmembers*
 - B. *A quorum for a special meeting is four councilmembers.*
 - (3) *The mayor may call a special meeting on the mayor's own motion and shall call a special meeting on the application of three aldermen. Each member of the governing body, the city secretary, and the municipal attorney must be notified of the special meeting. The notice may be given personally or left at the person's usual place of residence.*
 - (4) *Workshops. A workshop is considered a regular meeting if held on the regularly established meeting date and time and a special meeting if called by the mayor on the mayor's own motion or on the application of three aldermen. A council workshop may be held on any day of the week to consider, in detail, a particular subject or problem of city interest. Workshops emphasize interaction between mayor, council and staff in order to exchange information and develop approaches and possible positions for future council action. Council meeting rules and procedures may be relaxed during a workshop at the discretion of the mayor or presiding officer or by a majority of councilmembers. Notice of the workshop must be posted in compliance with the Texas Open Meetings Act.*

- (5) Agenda. An agenda for a regular or special called meeting shall be posted at least 72 hours in advance of the meeting in compliance with the Texas Open Meetings Act. When the agenda item requires a public hearing, the mayor or presiding officer shall request staff comment, allow for questions by council, open the public hearing for public comment, and close the public hearing.
 - (6) Attendance. Councilmembers are expected to attend all meetings and workshops and stay in attendance during each meeting. If for any reason a councilmember desires to leave a meeting or workshop prior to its termination, he/she will request the presiding officer grant a recess, adjournment or if a quorum of council members are present the meeting may continue. Council may compel the attendance of its members as set forth in Texas Local Government Code section 22.038.
 - (7) Conflicts of Interest. A councilmember prevented from voting due to a conflict of interest shall abstain from the debate, shall not vote in the matter, and shall otherwise comply with state law and ordinances concerning conflicts of interest.
 - (8) Participation. During council meetings and workshops, councilmembers shall assist in preserving order and decorum and shall neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the council.
 - (9) City Staff. Administrative staff and city employees shall observe the same rules of decorum applicable to councilmembers. All persons addressing councilmembers, including the city administrator, shall be recognized by the presiding officer and shall limit remarks to the matter under discussion. All remarks and questions addressed to the council shall be addressed to the council as a whole and not to any individual member.
- (d) Persons addressing the council:
- (1) Addressing the Council. At council meetings, council may hear comments from any citizen or visitor. Speakers must address their comments to the presiding officer rather than individual councilmembers, staff, or members of the audience; stand at the podium, speak clearly into the microphone and state name and residential address before speaking. If the speaker is speaking on behalf of an organization or group, the speaker shall identify the group. Only one person may address the council at any time unless otherwise allowed by council majority. Persons addressing council shall do so in a respectful and orderly manner without shouting or argumentative behavior or making personal, impertinent, slanderous, or profane remarks about any councilmember, city staff member, or a member of the general public. Speakers shall address council and staff respectfully and no shouting or argumentative behavior will be tolerated.
 - (2) Time to speak. Citizen comments will be permitted only at times specified on the published council agenda; speakers will be allowed a maximum of three minutes to speak; additional time may be extended by a council majority. The council, in its discretion may allow citizens comments at any other time as determined necessary.
 - (3) Lines of communication. The mayor and council encourage citizen input regarding their city concerns, questions, and suggestions. Council strongly suggests that citizens contact the City administrator and their district councilmember concerning specific issues prior to speaking at council meetings.
- (e) Members of the audience. No person in the audience at a meeting of council shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language, whistling, stamping of feet, eating or drinking, using tobacco or tobacco products, or other acts which disturb, disrupt, or otherwise impede the orderly conduct of any council meeting. Cell phones shall be turned off or set to silent or vibrate mode. Hats will not be worn in council chambers.

(f) Rules of enforcement:

- (1) Warning. The mayor or the presiding officer shall request that a person breaching any part of subsection (i), (d) or (e) above cease the disruptive conduct. If, after receiving a warning from the mayor or the presiding officer, the person persists in disturbing the council meeting, the mayor, the presiding officer, or a majority of council shall order the person to leave the council meeting. If such person does not remove himself, the mayor or the presiding officer shall first call for a ten minute recess to regain order; if order is not regained, the mayor or presiding officer may direct any on-duty law enforcement officer to remove that person or persons from council chambers.
 - (2) Removal of member of audience: Any on-duty law enforcement officer shall carry out all reasonable orders and instructions given by the mayor or the presiding officer for the purpose of maintaining order and decorum at council meetings.
 - (3) Removal of councilmember: A councilmember may only be removed from the council meeting after a vote is taken of the city council. If the vote is in favor of the councilmember, the councilmember shall be at liberty to proceed.
 - (4) Civil and criminal penalties: The city may enforce the provisions of this article by injunctive relieve as well as prosecution for applicable criminal violations. An offense under this article is a misdemeanor and any person violating this article shall, upon conviction, be fined a sum not exceeding \$200.00. Each instance that a provision of this article is violated shall constitute a separate offense.
- (g) Agenda item submission: Any councilmember may submit an item for placement on a council meeting agenda. The submitted item must be specific, contain an explanation of purpose, include background information, and state the date of the council meeting the councilmember wishes the item to be placed. An item for placement on the agenda must be submitted in person or electronically to the city secretary at city hall no later than 5:00 p.m. on the fourth business day prior to the date of the next council meeting. Items submitted to the city secretary after that time will normally be held over until the next regularly-scheduled council meeting, unless the item is of such importance that the mayor elects to place the item on an earlier agenda or calls a special city council meeting.
- (h) Placement on agenda: The mayor, working with the city administrator, will determine, using his best judgment, the most important items received for placement on the agenda. Any item that has been properly and timely submitted by a councilmember as described above shall be placed on the agenda of the council meeting. If the mayor, in his discretion, finds that there is insufficient background information submitted to adequately address the issue, he will so notify the councilmember and delay placement on the agenda until sufficient information is provided to the city secretary; a council majority may nevertheless place the item on the agenda for consideration during the next regularly scheduled meeting. Councilmembers are encouraged to contact the mayor or city secretary regarding any questions they may have about items that have been placed on an agenda.
- (i) Notification: Notification of meetings shall be compliant with the Open Meetings Act and Public Information Act. The city secretary shall transmit notice of a meeting to city council members, interested persons who have requested copies of a meeting notice, post a notice on the exterior public notice board at City Hall, and post the meeting notice on the homepage of the city's official website.
- (j) Agenda item consideration:
- (1) Ordinarily the mayor or other presiding officer will follow the agenda as posted; however, the mayor or the presiding officer generally maintains the option of addressing agenda items out of order to facilitate guests, reduce costs, or other factors. In addition,

the mayor or presiding officer shall address agenda items out of order, table, or postpone any agenda item on the motion and majority vote of council.

- (2) *Persons under retainer agreement or contract with the city for professional services (e.g., attorneys, engineers, auditors, etc.) shall only attend council meetings when specifically requested by the mayor, city administrator, or majority of councilmembers. These professionals shall be scheduled as early as possible on council meeting agendas to ensure a minimal expense to the city.*
- (k) *Minutes: Minutes of each council meeting, workshop, and public hearing shall be prepared by the city secretary and submitted to a subsequent council meeting for approval. The city secretary may distribute copies of the proposed minutes for review to the mayor and councilmembers prior to the council meeting. The minutes shall contain a brief narrative of council's deliberations, record all motions, and note council vote on each item. The city secretary shall maintain both a paper and electronic record of the approved minutes. Electronic copies of approved minutes will be posted on the city's official web site as soon as practicable.*

Exhibit "B"

Publication Notice

PUBLIC NOTICE

ON THE _____ DAY OF _____, 2020, THE CITY COUNCIL OF THE CITY OF CASTROVILLE TEXAS ADOPTED AN ORDINANCE AMENDING ORDINANCE NUMBER 2009-006 (ENTITLED RULES AND PROCEDURES FOR MEETINGS OF THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS"); BY AMENDING THOSE PROVISION PROVIDING FOR RULES OF ENFORCEMENT AND PUBLIC AND MEDIA RELATIONS; PROVIDING FOR PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY NOT TO EXCEED \$200.00 PER VIOLATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

**RED LINED
COPY**

Exhibit "A"

Amendment to Section 2-4

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Sec. 2-4. - Council policy and rules of procedure.

- (a) *Council's role: In order to ensure the proper discharge of duties for the improvement of democratic local government, councilmembers will display a level of behavior that demonstrates independent, impartial review of all matters addressed by them, and be duly responsible to the citizens of Castroville and each other in their relationships.*
- (b) *Mayor's role: The presiding officer of the council is responsible for conducting the meeting. When present and participating, the mayor shall serve as presiding officer at meetings of council. The mayor may participate in discussions of all matters coming before council. After each general election, council shall elect from among councilmembers a mayor pro tempore who shall act as mayor during the absence or disability of the mayor. If neither the mayor nor the mayor pro tempore are able to serve, the remaining councilmembers may by majority vote designate a councilmember to preside. The mayor shall preserve order and decorum during council meetings and shall require councilmembers engaged in debate to limit discussion to the question under consideration. The mayor is the spokesperson for the council on all official city occasions unless absent, at which time the mayor pro tempore will assume the role. The mayor will guide council discussions, respond to council questions, summarize issues and call items for council action. The mayor will encourage all councilmembers to participate in discussion and give each member an opportunity to speak before any member can speak again on the same subject. The total time an individual councilmember may speak on a discrete issue during a meeting will be limited to no more than 15 minutes, unless additional time is provided to the councilmember by a majority council vote.*
- (c) *Council meetings:*
- (1) *Regular meeting. Council shall meet regularly at such place and times as prescribed by council, but no less frequently than twice each month unless otherwise resolved by council. Council shall adopt a resolution specifying the scheduled date/time/location and may amend the resolution as may be required from time to time. [CT1]*
- (2) *Quorum. Council must have a quorum to meet, deliberate, debate, and decide on any city business. A quorum is defined as the minimum number of councilmembers necessary to conduct the business of that group. A quorum for will be attained when three or more councilmembers are present.*
- A. A quorum for a regular meeting is three councilmembers*
- B. A quorum for a special meeting is four councilmembers.[hhe2]*
- (3) *The mayor may call a special meeting on the mayor's own motion and shall call a special meeting on the application of three aldermen. Each member of the governing body, the secretary, and the municipal attorney must be notified of the special meeting. The notice may be given personally or left at the person's usual place of residence. A special meeting may be held with 72 hours' notice on any day of the week to consider items that require action prior to the next regularly scheduled meeting and may be called upon the request of the mayor or a majority of councilmembers. [hhe3]*
- (4) *Workshops. A workshop is considered a regular meeting if held on the regularly established meeting date and time and a special meeting if called by the mayor on the mayor's own motion or on the application of three aldermen. A council workshop may be held with 72 hours' notice on any day of the week to consider, in detail, a particular subject or problem of city interest. Workshops emphasize interaction between mayor,*

council and staff in order to exchange information and develop approaches and possible positions for future council action. Council meeting rules and procedures may be relaxed during a workshop at the discretion of the mayor or presiding officer or by a majority of councilmembers. Notice of the workshop must be posted in compliance with the Texas Open Meetings Act.[CT4]

- (5) Agenda. An agenda for a regular or special called meeting shall be posted at least 72 hours in advance of the meeting in compliance with the Texas Open Meetings Act. When the agenda item requires a public hearing, the mayor or presiding officer shall request staff comment, allow for questions by council, open the public hearing for public comment, and close the public hearing.
 - (6) Attendance[hhe5]. Councilmembers are expected to attend all meetings and workshops and stay in attendance during each meeting. If for any reason a councilmember desires to leave a meeting or workshop prior to its termination, he/she will request the presiding officer grant a recess, adjournment or if a quorum of council members are present the meeting may continue. Council may compel the attendance of its members as set forth in Texas Local Government Code section 22.038.[CT6]
 - (7) Conflicts of Interest. A councilmember prevented from voting due to a conflict of interest shall abstain from the debate, shall not vote in the matter, and shall otherwise comply with state law and ordinances concerning conflicts of interest.
 - (8) Participation. During council meetings and workshops, councilmembers shall assist in preserving order and decorum and shall neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the council.
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- (1) Addressing the Council. At council meetings, council may hear comments from any citizen or visitor. Speakers must address their comments to the presiding officer rather than individual councilmembers, staff, or members of the audience; stand at the podium, speak clearly into the microphone and state name and residential address before speaking. If the speaker is speaking on behalf of an organization or group, the speaker shall identify the group. Only one person may address the council at any time unless otherwise allowed by council majority. Persons addressing council shall do so in a respectful and orderly manner without shouting or argumentative behavior or making personal, impertinent, slanderous, or profane remarks about any councilmember, city staff member, or a member of the general public. Speakers shall address council and staff respectfully and no shouting or argumentative behavior will be tolerated.
 - (2) Time to speak. Citizen comments will be permitted only at times specified on the published council agenda; speakers will be allowed a maximum of three minutes to speak; additional time may be extended by a council majority[CT7]. The council, in its discretion may allow citizens comments at any other time as determined necessary.
 - (3) Lines of communication. The mayor and council encourage citizen input regarding their city concerns, questions, and suggestions. Council strongly suggests that citizens contact the City administrator and their district councilmember concerning specific issues prior to speaking at council meetings.
- (e) Members of the audience: No person in the audience at a meeting of council shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language, whistling, stamping of feet, eating or drinking, using tobacco or tobacco products, or other acts which disturb, disrupt, or otherwise impede the orderly

conduct of any council meeting. Cell phones shall be turned off or set to silent or vibrate mode. Hats will not be worn in council chambers.

(f) *Rules of enforcement:*

- (1) *Warning.* The mayor or the presiding officer shall request that a person breaching any part of subsection (i), (d) or (e) above cease the disruptive conduct. If, after receiving a warning from the mayor or the presiding officer, the person persists in disturbing the council meeting, the mayor, the presiding officer, or a majority of council shall order the person to leave the council meeting. If such person does not remove himself, the mayor or the presiding officer shall first call for a ten minute recess to regain order; if order is not regained, the mayor or presiding officer may direct any on-duty law enforcement officer to remove that person or persons from council chambers.
- (2) *Removal of member of audience:* Any on-duty law enforcement officer shall carry out all reasonable orders and instructions given by the mayor or the presiding officer for the purpose of maintaining order and decorum at council meetings.
- (3) *Removal of councilmember:* A councilmember may only be removed from the council meeting after a vote is taken of the city council. If the vote is in favor of the councilmember, the councilmember shall be at liberty to proceed.
- (4) *Civil and criminal penalties:* The city may enforce the provisions of this article by injunctive relieve as well as prosecution for applicable criminal violations. An offense under this article is a misdemeanor and any person violating this article shall, upon conviction, be fined a sum not exceeding \$200.00. Each instance that a provision of this article is violated shall constitute a separate offense.

(g) *Agenda item submission:* Any councilmember may submit an item for placement on a council meeting agenda. The submitted item must be specific, contain an explanation of purpose, include background information, and state the date of the council meeting the councilmember wishes the item to be placed. An item for placement on the agenda must be submitted in person or electronically to the city secretary at city hall no later than 5:00 p.m. on the fourth business day prior to the date of the next council meeting. Items submitted to the city secretary after that time will normally be held over until the next regularly-scheduled council meeting, unless the item is of such importance that the mayor elects to place the item on an earlier agenda or calls a special city council meeting.

(h) *Placement on agenda:* The mayor, working with the city administrator, will determine, using his best judgment, the most important items received for placement on the agenda. Any item that has been properly and timely submitted by a councilmember as described above shall be placed on the agenda of the council meeting. If the mayor, in his discretion, finds that there is insufficient background information submitted to adequately address the issue, he will so notify the councilmember and delay placement on the agenda until sufficient information is provided to the city secretary; a council majority may nevertheless place the item on the agenda for consideration during the next regularly scheduled meeting. Councilmembers are encouraged to contact the mayor or city secretary regarding any questions they may have about items that have been placed on an agenda.

(i) *Notification:* Notification of meetings shall be compliant with the Open Meetings Act and Public Information Act. The city secretary shall transmit notice of a meeting to city council members, interested persons who have requested copies of a meeting notice, post a notice on the exterior public notice board at City Hall, and post the meeting notice on the homepage of the city's official website.

(j) *Agenda item consideration:*

- (1) *Ordinarily the mayor or other presiding officer will follow the agenda as posted; however, the mayor or the presiding officer generally maintains the option of addressing agenda items out of order to facilitate guests, reduce costs, or other factors. In addition, the mayor or presiding officer shall address agenda items out of order, table, or postpone any agenda item on the motion and majority vote of council.*
 - (2) *Persons under retainer agreement or contract with the city for professional services (e.g., attorneys, engineers, auditors, etc.) shall only attend council meetings when specifically requested by the mayor, city administrator, or majority of councilmembers. These professionals shall be scheduled as early as possible on council meeting agendas to ensure a minimal expense to the city.*
- (k) *Minutes: Minutes of each council meeting, workshop, and public hearing shall be prepared by the city secretary and submitted to a subsequent council meeting for approval. The city secretary may distribute copies of the proposed minutes for review to the mayor and councilmembers prior to the council meeting. The minutes shall contain a brief narrative of council's deliberations, record all motions, and note council vote on each item. The city secretary shall maintain both a paper and electronic record of the approved minutes. Electronic copies of approved minutes will be posted on the city's official web site as soon as practicable.*

Exhibit "B"

Publication Notice

PUBLIC NOTICE

ON THE _____ DAY OF _____, 2020, THE CITY COUNCIL OF THE CITY OF CASTROVILLE TEXAS ADOPTED AN ORDINANCE AMENDING ORDINANCE NUMBER 2009-006 (ENTITLED RULES AND PROCEDURES FOR MEETINGS OF THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS"); BY AMENDING THOSE PROVISION PROVIDING FOR RULES OF ENFORCEMENT AND PUBLIC AND MEDIA RELATIONS; PROVIDING FOR PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY NOT TO EXCEED \$200.00 PER VIOLATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

**CURRENT
ORDINANCE**

ORDINANCE No. 2009 - 006

PROVIDING FOR RULES AND PROCEDURES FOR MEETINGS OF THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS; PROVIDING FOR RULES OF ENFORCEMENT; PROVIDING FOR PUBLIC AND MEDIA RELATIONS; PROVIDING FOR APPOINTMENTS OF COUNCIL COMMITTEES AND AGENCY LIAISON; PROVIDING FOR GENERAL CITY AND FINANCIAL PLANNING; AND PROVIDING FOR ADOPTION OF ROBERTS RULES OF ORDER.

WHEREAS, the City Council believes that it is important to the orderly conduct of the business and affairs of the City of Castroville that the City Council establish rules and procedures to address Mayor and Council relations, Council and media relations, roles, and meetings; and

WHEREAS, the City Council also believes that each Councilmember should be dedicated to public service by being cooperative and constructive and by making the best and most efficient use of available resources, so that each member may merit the respect and confidence of the citizens of the City of Castroville; and

WHEREAS, the City Council further believes that by adopting the following guidelines to ensure effective and efficient governance, we, as members of City Council, acknowledge our responsibility to each other, to our professional staff, and to the public; and

WHEREAS, the City Council also believes that the establishment of rules of conduct and procedure for conducting the official business of the City of Castroville will help foster an atmosphere of respect, civility, and cooperation wherein individual Councilmembers, staff, and the public will be free to express their ideas and work to their full potential for the good of all our citizens.

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

Section I. Council Policy and Rules of Procedure:

A. Council's Role: In order to ensure the proper discharge of duties for the improvement of democratic local government, Councilmembers will display a level of behavior that demonstrates independent, impartial review of all matters addressed by them, and be duly responsible to the citizens of Castroville and each other in their relationships.

B. Mayor's Role: The presiding officer of the Council is responsible for conducting the meeting. When present and participating, the Mayor shall serve as presiding officer at meetings of Council. The Mayor may participate in discussions of all matters coming before Council. After each general election, Council shall elect from among Councilmembers a mayor *pro tempore* who shall act as mayor during the absence or disability of the Mayor. If neither the Mayor nor the mayor *pro tempore* are able to serve, the remaining Councilmembers may by majority vote designate a Councilmember to preside. The Mayor shall preserve order and decorum during Council meetings and shall require Councilmembers engaged in debate to limit discussion to the question under consideration. The Mayor is the spokesperson for the Council on all official City occasions unless absent, at which time the mayor *pro tempore* will assume the role. The Mayor will guide Council discussions, respond to Council questions, summarize issues and call

items for Council action. The Mayor will encourage all Councilmembers to participate in discussion and give each member an opportunity to speak before any member can speak again on the same subject. The total time an individual Councilmember may speak on a discrete issue during a meeting will be limited to no more than 15 minutes, unless additional time is provided to the Councilmember by a majority Council vote.

C. Council Meetings:

1. Council shall meet regularly at such place and times as prescribed by Council, but no less frequently than twice each month unless otherwise resolved by Council. The regularly scheduled meetings will begin at 7:00 p.m. unless otherwise resolved by a Council majority.
 2. Council must have a quorum to meet, deliberate, debate, and decide on any City business. A quorum is defined as the minimum number of Councilmembers necessary to conduct the business of that group. A quorum will be attained when three or more Councilmembers are present.
 3. A special meeting may be held with 72 hours notice on any day of the week to consider items that require action prior to the next regularly scheduled meeting and may be called upon the request of the Mayor or a majority of Councilmembers.
 4. A Council workshop may be held with 72 hours notice on any day of the week to consider, in detail, a particular subject or problem of City interest and may be called upon the request of the Mayor or a majority of Councilmembers. Workshops emphasize interaction between Mayor, Council and staff in order to exchange information and develop approaches and possible positions for future Council action. Council meeting rules and procedures may be relaxed during a workshop at the discretion of the Mayor or presiding officer or by a majority of Councilmembers.
 5. When the agenda item requires a public hearing, the Mayor or presiding officer shall request staff comment, allow for questions by Council, open the public hearing for public comment, and close the public hearing.
 6. Councilmembers are expected to attend all meetings and workshops and stay in attendance during each meeting. If for any reason a Councilmember desires to leave a meeting or workshop prior to its termination, he/she will request the presiding officer grant a recess, adjournment or if a quorum of council members are present the meeting may continue.
 7. A Councilmember prevented from voting due to a conflict of interest shall abstain from the debate, shall not vote in the matter, and shall otherwise comply with state law and ordinances concerning conflicts of interest.
 8. During Council meetings and workshops, Councilmembers shall assist in preserving order and decorum and shall neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the Council.
 9. Administrative staff and City employees shall observe the same rules of decorum applicable to Councilmembers. All persons addressing Councilmembers, including the City Administrator, shall be recognized by the presiding officer and shall limit remarks to the matter under discussion. All remarks and questions addressed to the Council shall be addressed to the Council as a whole and not to any individual member.
-

D. Persons Addressing the Council:

1. At Council meetings, Council may hear comments from any citizen or visitor. Speakers must address their comments to the presiding officer rather than individual Councilmembers, staff, or members of the audience; stand at the podium, speak clearly into the microphone and state name and residential address before speaking. If the speaker is speaking on behalf of an organization or group, the speaker shall identify the group. Only one person may address the Council at any time unless otherwise allowed by Council majority. Persons addressing Council shall do so in a respectful and orderly manner without shouting or argumentative behavior or making personal, impertinent, slanderous, or profane remarks about any Councilmember, City staff member, or a member of the general public. Speakers shall address Council and staff respectfully and no shouting or argumentative behavior will be tolerated.
2. Citizen comments will be permitted only at times specified on the published Council agenda; Speakers will be allowed a maximum of (3) three minutes to speak; additional time may be extended by a Council majority.
3. The Mayor and Council encourage citizen input regarding their City concerns, questions, and suggestions. Council strongly suggests that citizens contact the City Administrator and their district Councilmember concerning specific issues prior to speaking at Council meetings.

E. Members of the Audience: No person in the audience at a meeting of Council shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language, whistling, stamping of feet, eating or drinking, using tobacco or tobacco products, or other acts which disturb, disrupt, or otherwise impede the orderly conduct of any Council meeting. Cell phones shall be turned off or set to silent or vibrate mode. Hats will not be worn in Council chambers.

F. Rules of Enforcement:

1. **Warning:** The Mayor or the presiding officer shall request that a person breaching any part of Section I, D or E above cease the disruptive conduct. If, after receiving a warning from the Mayor or the presiding officer, the person persists in disturbing the Council meeting, the Mayor, the presiding officer, or a majority of Council shall order the person to leave the Council meeting. If such person does not remove himself, the Mayor or the presiding officer shall first call for a 10 minute recess to regain order; if order is not regained, the Mayor or presiding officer may direct any on-duty law enforcement officer to remove that person or persons from Council Chambers.
2. **Removal of Member of Audience:** Any on-duty law enforcement officer shall carry out all reasonable orders and instructions given by the Mayor or the presiding officer for the purpose of maintaining order and decorum at Council meetings.
3. **Removal of Councilmember:** A Councilmember may only be removed from the Council meeting after a vote is taken of the City Council. If the vote is in favor of the Councilmember, the Councilmember shall be at liberty to proceed.
4. **Civil and Criminal Penalties:** The City may enforce the provisions of this Ordinance by injunctive relieve as well as prosecution for applicable criminal violations. An offense under this Ordinance is a misdemeanor and any person violating this Ordinance shall, upon conviction, be fined a sum not exceeding two hundred dollars (\$200.00). Each instance that a provision of this Ordinance is violated shall constitute a separate offense.

G. Agenda Item Submission: Any Councilmember may submit an item for placement on a Council meeting agenda. The submitted item must be specific, contain an explanation of purpose, include background information, and state the date of the Council meeting the Councilmember wishes the item to be placed. An item for placement on the agenda must be submitted in person or electronically to the City Secretary at City Hall no later than 5:00 p.m. on the fourth business day prior to the date of the next Council meeting. Items submitted to the City Secretary after that time will normally be held over until the next regularly-scheduled Council meeting, unless the item is of such importance that the Mayor elects to place the item on an earlier agenda or calls a special City Council meeting.

H. Placement on Agenda: The Mayor, working with the City Administrator, will determine, using his best judgment, the most important items received for placement on the agenda. Any item that has been properly and timely submitted by a Councilmember as described above shall be placed on the agenda of the Council meeting. If the Mayor, in his discretion, finds that there is insufficient background information submitted to adequately address the issue, he will so notify the Councilmember and delay placement on the agenda until sufficient information is provided to the City Secretary; a Council majority may nevertheless place the item on the agenda for consideration during the next regularly scheduled meeting. Councilmembers are encouraged to contact the Mayor or City Secretary regarding any questions they may have about items that have been placed on an agenda.

I. City Secretary Notification: It is the responsibility of the City Secretary to notify the Councilmember who has requested an item to be placed on an agenda of a Council meeting of the fact that the Councilmember is expected to be at the Council meeting to discuss the agenda item. *Amended - 2016-003*
(RECORDED) 10-27-2015

J. Agenda Item Consideration:

1. Ordinarily the Mayor or other presiding officer will follow the agenda as posted; however, the Mayor or the presiding officer generally maintains the option of addressing agenda items out of order to facilitate guests, reduce costs, or other factors. In addition, the Mayor or presiding officer shall address agenda items out of order, table, or postpone any agenda item on the motion and majority vote of Council.
2. Persons under retainer agreement or contract with the City for professional services (e.g., attorneys, engineers, auditors, etc.) shall only attend Council meetings when specifically requested by the Mayor, City Administrator, or majority of Councilmembers. These professionals shall be scheduled as early as possible on Council meeting agendas to ensure a minimal expense to the City.

K. Minutes: Minutes of each Council meeting, workshop, and public hearing shall be prepared by the City Secretary and submitted to a subsequent Council meeting for approval. The City Secretary may distribute copies of the proposed minutes for review to the Mayor and Councilmembers prior to the Council meeting. The minutes shall contain a brief narrative of Council's deliberations, record all motions, and note Council vote on each item. The City Secretary shall maintain both a paper and electronic record of the approved minutes. Electronic copies of approved minutes will be posted on the City's official web site as soon as practicable.

Section II. Public Contact/Media Relations:

Representative government is only successful when citizens are kept informed and educated about the issues facing their City; consequently, it is imperative that the media play an important role in the Council and public relations. It is through an informed public that progress is ensured and good government remains sensitive to its constituents. The Mayor and Councilmembers recognize that the news media provide an important link between Council and the public. It is Council's desire to establish a professional working relationship to help maintain a well informed and educated citizenry.

1. During the conduct of official business, the City shall designate adequate space for the news media. All reporters will receive an agenda in advance of Council meetings and will be furnished support material needed for clarification if requested. The use of media equipment such as lights, cameras and/or microphones should be coordinated with the City Administrator prior to the meeting to ensure that this equipment does not disturb or otherwise conflict with or disrupt the meeting or the Council's activities.
2. In order to avoid public confusion and ensure dissemination of the most accurate information possible, the Mayor and Councilmembers should defer to the City Administrator, the City's chief executive agent, as primary point of contact for all media questions regarding daily operation and maintenance issues.
3. Councilmembers are encouraged to hold periodic informational meetings, solicit citizen feedback, and otherwise share information of interest to constituents within their districts.

Section III. Appointment of Council Committees:

A. As directed by Council majority, the Mayor may appoint a special committee of the Council to investigate and study a particular matter in depth and report its findings and recommendations to Council. Each committee shall consist of a minimum of a chairman and one other member. If requested by the special committee of the Council, the City Administrator may appoint a member of the staff to serve in a non-voting capacity to assist the committee.

B. All meetings of committees are subject to compliance with the Open Meetings law. The Committee's report shall be submitted to Council for action.

Section IV. General City Planning:

A. On an annual basis, the Mayor and Council shall hold a minimum of one strategic planning workshop wherein they develop priorities, goals and objectives. The goals and objectives shall address short term and long term needs of the City.

B. On an annual basis, the Mayor and Council shall review, update as necessary, and approve a Capital Improvement Plan (CIP).

C. Council policy direction shall be, to the maximum extent practicable, consistent with the most current City Master Plan. Sufficient time and consideration should be given to policy alternatives to ensure that decisions are made consistent with its long term vision.

Section V. Financial Planning: ✓

A. A quarterly review of City budget expenditures shall be presented to Council by the City Financial Director at a scheduled meeting at the end of each fiscal quarter. City financial records will be made

5-16-2011
5-16-2011
5-16-2011

available to Councilmembers at least (4) four business days prior to this meeting and will include a revenue and expense report, cash position report, and overall balance sheet.

B. Council will establish and include, in each annual City budget, a 90-day general fund reserve balance, or an amount otherwise determined by a Council majority.

C. Any agreement, of any kind, that legally requires Council action, shall be submitted to Council for review and approval by a majority of Councilmembers prior to execution by staff. A Council majority may specifically mandate Council review and approval of any other agreement prior to execution. All background documents as well as proposed written agreements shall be made available for Councilmember review at least (4) four workdays prior to scheduled Council meetings where approval is sought. Such materials shall also include a statement indicating whether the expenditure will be within the approved annual City budget. An exception to this rule is permissible only if the Mayor or City Administrator determines that prior submission to Council would result in a delay that significantly, negatively, and imminently impacts the health, safety, or security of the City or its citizens. In these emergency cases, Council must be informed of City actions as soon as practicable, but in no event later than the next scheduled Council meeting.

D. Annual Audit:

1. Requirement for Annual Audit. Under Sections 103.001-103.004 of the Texas Local Government Code, the City is required to have an annual audit of its financial records and accounts. City Council shall select and contract with a certified public accounting firm which has experience in municipal finance for the purpose of rendering an independent audit of all accounts and other financial records of the City. Upon completion of any City audit, the auditor shall prepare a written report and shall submit the report to Council. Additionally, the City Financial Director and City Administrator shall prepare an independent written financial analysis as an attachment to the Audit Report and report those results to the Council.
 2. Purpose and Timing for Audit Completion. The audit involves examination of three aspects of the City's financial operations: (1) internal controls; (2) statements, records, and accounting transactions; and (3) compliance with statutory and budgetary requirements. Properly conducted, the audit provides a double check on the City's financial status, a method for communicating with the citizenry, and a bona fide statement of the City's financial condition, which will improve its ability to issue bonds. The audit report shall be submitted to Council within 120 days after the end of the preceding fiscal year for which the audit is being conducted unless an extension has been granted by Council majority.
 3. Availability of the Audit. A copy of the audit report shall be made available to the public at cost, upon written request.
 4. Selection and Qualifications of Auditor. The personnel of the firm conducting the audit shall not hold any public office in the City nor have any personal interest, direct or indirectly, in the fiscal affairs of the City or any of its offices. If Council, by majority vote, directs the hire of a new, qualified public accounting firm, the City shall solicit bids from qualified public accounting firms. Council, when selecting a public accounting firm to conduct the audit, shall do so on the basis of the firm's experience, expertise, efficiency and ability to timely complete the audit and the cost to be charged for the audit. Council shall not be required to accept the lowest bid for the audit.
-

Section VI. Council and Staff Relations:

A. Councilmembers should normally direct comments, correspondence and concerns about City operations and maintenance issues to the City Administrator with an informational copy to the Mayor. Citizen's concerns, comments and correspondence regarding City services received by Councilmembers shall be forwarded to the City Administrator for appropriate staff action and a timely response with an informational copy to the Mayor.

B. In order to ensure City staff is able to properly address Council agenda items, Councilmember questions should be, whenever possible, presented to the City Administrator for consideration at least (4) workdays prior to the next scheduled Council meeting. This allows time for staff to diligently address Councilmembers' concerns and provide them with an adequate response. If staff is unable to address the agenda item at the Council meeting, the City Administrator will so notify the Councilmember as soon as possible and advise when an answer will be forthcoming.

C. Enhancing a steady exchange of information between City Staff and Council is a high priority in maintaining a streamlined and efficient government. To ensure a well informed Council, the City Administrator or his designee will provide regular and timely informational updates on City operational and maintenance issues that may be of interest to Council. When appropriate, the Mayor or City Administrator will provide notice to Councilmembers regarding meetings hosted by other groups or organizations where Councilmember attendance would be beneficial to the City; no City business will be conducted and the City Secretary will publish a notice of possible quorum when necessary. For purely social events, conferences, and conventions, Councilmembers may attend without the need for publishing a notice of possible quorum; no City Business may be discussed at these functions.

Section VII. Robert's Rules of Order:

Any procedural rule not specifically addressed above shall be governed by the Robert's Rules of Order which is hereby adopted and shall be followed at all Council meetings, public hearings, and workshops.

Section VIII. Suspension or Amendment of Rules:

Any provision of these rules may be temporarily suspended by a majority vote of Councilmembers present. The vote on any such suspension shall be taken by yeas or nays and entered upon the record.

Section IX. Annual Review of City Ordinances:

A. This ordinance shall be reviewed by Council on an annual basis and may be amended or new rules adopted, by a majority vote of Councilmembers at any time.

B. The City Secretary shall ensure that a yearly comprehensive review of all City ordinances is performed and an index of these ordinances is compiled:

1. The City ordinance index shall include, at a minimum, the series, number and title, date enacted, dates amended, date last reviewed, and any requirement for further Council review.
 2. Prior to the end of each fiscal year, the City Secretary shall provide the Mayor and City Administrator with an updated City ordinance index that highlights those ordinances requiring annual Council review; the Mayor shall, as soon as practicable, place those ordinances on the Council meeting agenda for required review and appropriate action.
-

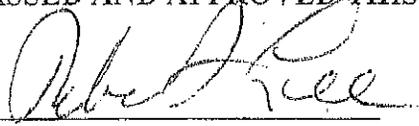
Section X. Failure to Comply:

A failure to comply with these rules does not invalidate any otherwise lawful act of Council.

Section XI. Repeal of Nonconforming Resolution:

Ordinance 2006-17 is expressly repealed. To the extent that any other prior Ordinance, Resolution, Policy, or Guideline conflicts with this ordinance, it is hereby repealed.

PASSED AND APPROVED THIS, the 7th day of January, 2009



Robert Lee, Mayor

ATTEST:



Debra Howe, City Secretary

APPROVED AS TO FORM:



Barbara Boulware-Wells, City Attorney



CITY COUNCIL AGENDA REPORT

DATE: July 10, 2020

AGENDA OF: July 14, 2020
DEPARTMENT: Code Enforcement
SUBJECT: Code Enforcement Update

BACKGROUND:

Code Enforcement Officer position was filled Mid-December. This is an update of violation and training that has taken place the first half of the year.

Total Cases YTD: 92

- Permit: 8
- Parking: 26
- Weeds/Trash: 41
- Signs: 14
- Occupancy: 3

Total Cases Closed: 80

Amount of cases outstanding: 6 under observation; 6 non-compliant

Training

Pass State Exam 7/7/2020

Educational courses done: 7, have 1 July 15th

Continuing Education Hours needed for renewal: 12 hrs. within 24 months

Submitted by:

Kerl Brooks, Code Enforcement Officer

Code Enforcement Review

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CITY COUNCIL AGENDA REPORT

DATE: 10 July 2020

AGENDA OF: 14 July 2020

DEPARTMENT: Airport

SUBJECT: New Hangar Construction

RECOMMENDATION: Recommend approval of resolution for staff to continue with USDA Direct Loan requirements.

BACKGROUND: The airport is in dire need of additional hangar space to meet the growing demand of General Aviation in Castroville. EMC (Grant Writing Company) has reached out to the USDA Rural Development Department for assistance in building new hangars. The USDA is extremely excited to work with the City and Airport on this project. They are aligned with the President's infrastructure initiative and would like to see the City's transportation industry grow and flourish.

FISCAL IMPACT/SOURCE OF FUNDING: 40-year direct loan to the Airport Account. Approx. \$650,000, interest rate currently 2.25%. USDA expects it to drop to 1.25% before funding the loan. There is Zero pre-payment penalty and the first year's payment can be delayed 12 months. The airport account expects to repay this loan in 20 years while still making a \$20-22K profit per year.

ATTACHMENTS: Included in Email

Submitted by: David Kirkpatrick

Approved by:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR FINANCIAL ASSISTANCE WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE, COMMUNITY FACILITIES DIRECT LOAN PROGRAM; AND AUTHORIZING SIGNATORIES FOR ALL DOCUMENTS RELATING TO THE USDA COMMUNITY FACILITIES DIRECT PROGRAM.

WHEREAS, the City Council of the City of Castroville, Texas desires to encourage and support the capital improvements of the Castroville Municipal Airport in the City of Castroville; and

WHEREAS, the City Castroville would like to seek financial assistance with the United States Department of Agriculture to finance the construction of an airport hangar.

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

1. That the City Council of the City of Castroville, Texas agrees to apply for financial assistance with the United States Department of Agriculture, Community Facilities Direct Loan Program to finance the construction of an airport hangar.
2. That the Castroville City Council of the City of Castroville, Texas authorizes the Interim City Administrator and City Finance Director to sign all documents relating to the USDA Community Facilities Direct Loan Program.

PASSED and APPROVED this _____ day of July, 2020.

Darrin Schroeder.
Mayor Pro-tem

ATTEST:

Debra Howe
City Secretary

Engineering stamped by Texas P.E when building is bought

Included in Price of hangars

New Hangar Pricing Breakdown

Hangar Pricing Per Month

(1) - Commercial Hangar 3900 sqft * .35 sqft = \$1365 Per Month

(8) - T-Hangar 1350 sqft * .25 sqft = \$337.50 Per Month

(2) - Shop/Office 675 sqft * .25 sqft = \$170 Per Month

Revenue Produced Per Yr.

(1) - Commercial Hangar \$1365 per moth * 12 = \$16,380

(8) - T-Hangar \$337.50 per month * 12 = 4050 * 8 = \$32,400

(2) - Shop/Office \$170 per month * 2 = 340 * 12 = \$4080

Total Combined Revenue = \$52,860.

Timeline for original loan 40 years.

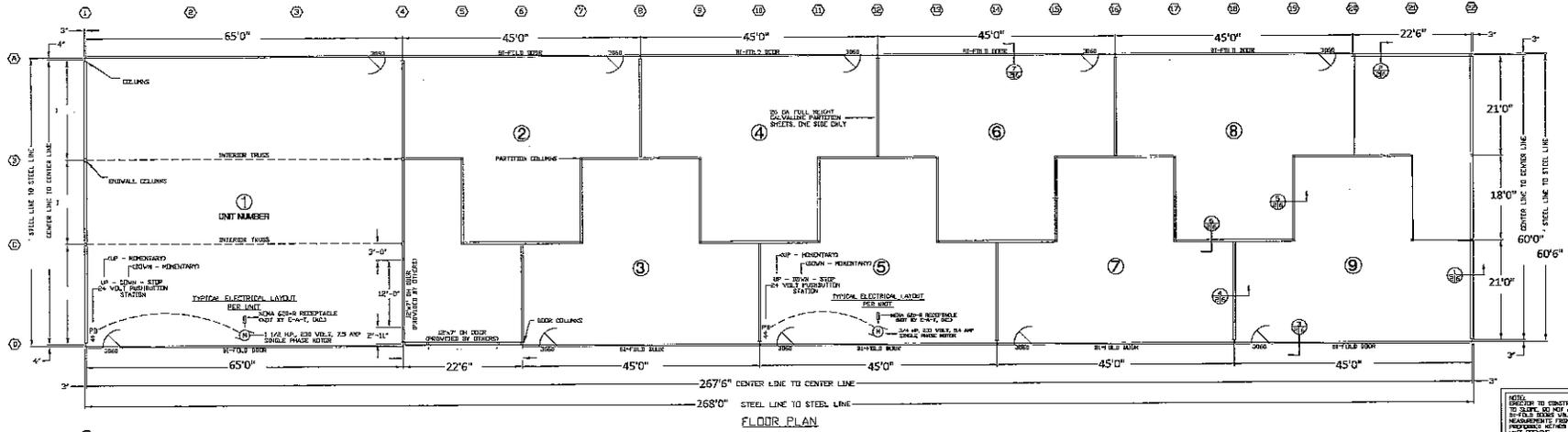
Airport plans to pay off in 20 years (1/2 the time)

With paying the loan off in 20 years, the airport fund will still make \$20k - \$22k per year additional revenue.

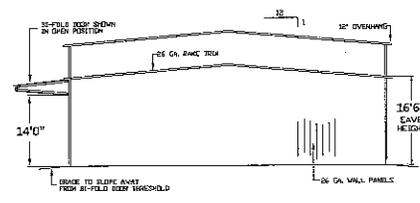
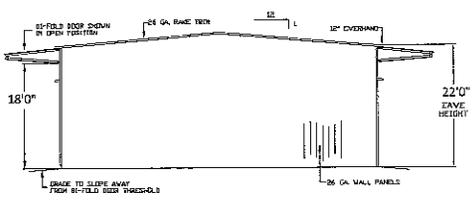
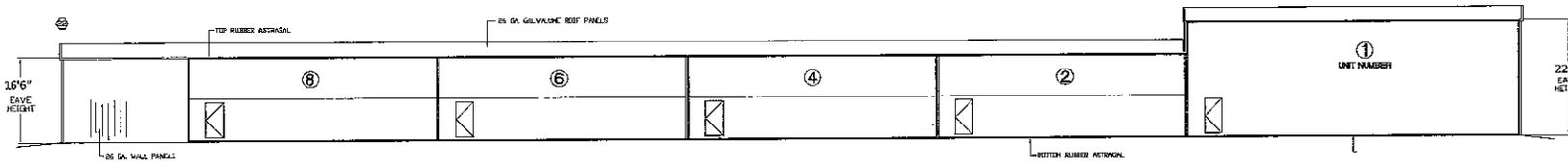
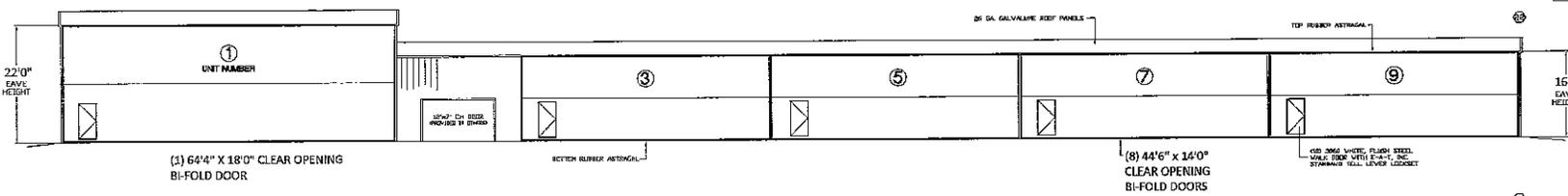
Current price for hangars at the airport is .24 cents per sqft.

All hangar space is occupied

Currently there are 29 on the waiting list. I get calls daily to be added or ask if they can build on city property.



NOTES:
 1. REFER TO CONSTRUCTION MANUAL FOR PERFORMANCE CRITERIA.
 2. ALL DOOR AND WINDOW OPERATORS SHALL BE MANUFACTURED BY THE SAME MANUFACTURER.
 3. ALL DOOR AND WINDOW OPERATORS SHALL BE MANUFACTURED BY THE SAME MANUFACTURER.
 4. ALL DOOR AND WINDOW OPERATORS SHALL BE MANUFACTURED BY THE SAME MANUFACTURER.



- GENERAL NOTES
1. ALL PRIMARY AND SECONDARY STEEL TO BE HOT PRIMED. (ANTHRACITE FOR SHORT TERM EXPOSURE ONLY)
 2. LOCKSETS TO BE 'TOLL' KEYS DIFFERENTIALLY AND MASTER KEYS. FIELD SHALL BE 5/16\"/>
 - 3. ROOF OVERHANG TO BE 12\"/>
 - 4. EXTERIOR WALL PANELS AND TRIM COLORS AS INDICATED ON SHEET 1 TABLE 22.
 - 5. WALK DOOR IN BI-FOLD DOORS, SIDE AND END WALLS WHERE APPLICABLE, TO BE FLUSH AND WHITE IN COLOR. OPER MANUFACTURERS STANDARD.
 - 6. BI-FOLD DOOR PUSH BUTTON OPERATORS. MOMENTARY PRESSURE. 'DOOR DOWN' & 'DOOR UP'.
 - 7. EACH BI-FOLD DOOR IS EQUIPPED WITH MANUAL DOOR LATCHES.
 - 8. EACH BI-FOLD DOOR IS PROVIDED WITH A BOTTOM AND TOP RUBBER ASTRAEGAL.



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SEAL	EXP. DATE

Erect-A-Tube

8-UNIT N60-45 W/R660-6S

TUBER PLAN & ELEVATIONS

2 OF 9

