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  - 1. Governmental Affairs Consultant
- VII. ADJOURN



Tourism and Visitors Bureau Committee  
**STAFF REPORT**

**SUBJECT:** Hotel Occupancy Tax Application - P.A.W.S. - Woofstock Concert Event  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Tourism and Visitors Bureau  
**STAFF CONTACT:** Julie Smith

**RECOMMENDATION:**

P.A.W.S. is requesting \$5,000 for their first-annual Woofstock concert event for equipment, paid advertising, and promotion. This request is an allowable Hotel Occupancy Fund expense for advertising the Woofstock event. Because this is a first-time event, staff recommends funding half of the amount in advance, and the other half following the event as long as the post-event application is submitted and all HOT funding criteria has been met.

**BACKGROUND:**

Founded in 2015, P.A.W.S. is a local nonprofit organization which provides care and shelter for homeless animals, as well as adoption services in Erath County. P.A.W.S. is governed by a board of directors. The first annual Woofstock event expects to draw over 500 guests and pets, and 100-150 overnight stays in our local hotels. Proceeds from the event will go toward the creation of a local dog park.

**FISCAL IMPACT SUMMARY:**

P.A.W.S. is requesting \$5,000 for their Woofstock concert.

**ATTACHMENTS:**

[HOT Application Woofstock 2018.08.28](#)



**CITY OF STEPHENVILLE**  
**HOTEL OCCUPANCY TAX (H.O.T) APPLICATION**  
**(HOTEL MOTEL FUNDS GRANT APPLICATION)**

**CITY OF STEPHENVILLE**  
**GUIDELINES UNDER TEXAS LAW FOR**  
**USE OF HOTEL OCCUPANCY TAX REVENUE**

**State Law:** By law of the State of Texas, the City of Stephenville collects a Hotel Occupancy Tax (HOT) from hotels, motels, inns, and bed-and-breakfast establishments. Chapter 351 of the Tax Code states that HOT funds may be used only if both parts of the following two-part test are met. Part One (1) requires that usage of HOT Funds must directly enhance and promote tourism and the convention, and hotel industry, and Part Two (2) limits the use of HOT Funds to the following:

1. **Convention center facilities or visitor information centers:** the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of TVB center facilities or visitor information centers, or both;
2. **Registration of tourism and visitor's bureau delegates:** the furnishing of facilities, personnel, and materials for the registration of TVB delegates or registrants;
3. **Advertising, and conducting solicitations and promotional programs to attract tourists and visitor's delegates:** advertising and conducting solicitations and promotional programs to attract tourists and visitor's delegates or registrants to the municipality or its vicinity;
4. **Promotion of the arts:** the encouragement, promotion, improvement and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion picture, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;
5. **Historical restoration and preservation projects or activities:** historical restoration and preservation objects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and visitor's delegates to visit preserved historic sites or museums: (a) at or in the immediate vicinity of Tourism and Visitor's Bureau facilities or visitor information centers; or (b) located elsewhere in the municipality or its vicinity that would be frequented by tourists and visitor delegates;
6. **Sporting event expenses related to sporting events which substantially increase economic activity at hotels:** for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting

event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity.

7. **Signage:** Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.
8. **Transportation systems for tourists:** Funding the costs for transporting tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.

**City of Stephenville Process:** The City of Stephenville accepts applications from groups who request HOT Funds for events/activities/facilities, which fit into one or more of the above listed categories. All decisions of the City Council are final.

**City of Stephenville Policy:**

1. The purpose of HOT funding is to assist and support qualified events/activities/facilities, not to be the major patron or the majority funds provider (50% or more) for the event/activity/facility budget.
2. Priority will be given to those events and entities based upon documented ability to directly promote tourism and the hotel and convention industry in Stephenville by “demonstrating a proven record of increased hotel or tourism and visitor’s activity.” Such activity may result from hotel or tourism and visitor’s guests that are already in town and choose to attend the funded event or facility, or it may result from individuals coming from another city or county to stay in an area lodging to attend the funded event or facility. Applicants should document the potential to generate increased hotel or tourism and visitor’s activity by:
  - a. Providing historical information on the number of rooms nights used during previous years of the same event/activity/facility;
  - b. Providing current information on the size of room blocks reserved at area hotels to accommodate anticipated overnight guests attending the funded event/activity/facility.
  - c. Providing historical information on the number of guests at hotels or other lodging facilities that attended the funded event/activity/facility; and/or
  - d. Providing examples of marketing or programs and activities likely to generate or encourage overnight visitors to local lodging properties.

3. All applicants are encouraged to utilize local businesses for food, supplies, materials, printing, and the like. A minimum of 8% of the HOT Funds shall be spent with local businesses.
4. A portion of the revenues from any event/activity/facility receiving HOT Funds should be channeled back into the future costs of operating that same event/activity/facility or the continued operation of such.
5. It is critical that the Application/Request for funding be filled out completely and accurately. Under the application section "Fund Usage," it is responsibility of the applicant to specifically explain how the funds will be used only in eligible ways.
6. If applying under the Advertising category, please note the local requirement that advertising must be accomplished in advance of the event/activity/facility, and must utilize legitimate media for promotion outside of the area, i.e. direct mail, newspapers, magazines, radio, television, billboards.
7. As a general rule, all funding requests should be for fifty percent (50%) or less of Applicant's total projected revenue from the event/activity/facility.
8. Applicants are on notice that while the City of Stephenville makes decisions based on estimated budgets and projections, documentation of how granted funds were spent must be actual costs supported by proofs of payment. Any monies not used or not used lawfully, must be returned or repaid to the City within sixty (60) days of the event, along with the completed Post-Funding Analysis.
9. The final accounting of funds must mirror the items outlined in the Applicant's original application, in its fund expenditure outline, and in its request letter.
10. City of Stephenville guidelines were duly adopted by City Council on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FUNDING CONSIDERATION CHECKLIST**

**Name of Event/Activity/Facility:** \_\_\_\_\_

Does your event/activity/facility pass Part One (1) of the statutory test, defined specifically as directly enhancing and promoting tourism and the convention, and hotel industry in Stephenville?  YES  NO

Does your event/activity/facility pass Part Two (2) of the statutory test, defined specifically as fitting into one of more of the following categories:

- Convention center facilities or visitor information centers
- Facilities, personnel and materials for registration of the Tourism and Visitor’s Bureau delegates
- Advertising, and conducting solicitations and promotional programs to attract tourist and visitor’s
- Promotion of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion picture, radio, television, tape and sound recording
- Historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists to visit preserved historic sites or museums in the area
- Signage directing tourist to sights and attractions that are visited frequently by hotel guests in the municipality
- Funding the costs for transporting tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city
- Sporting event expenses, including promotion expenses, related to sporting events at which the majority of participants are tourists who substantially increase economic activity at hotels in the area
- Is your application filled out thoroughly and completely, and are all required pages attached?
- Is your request for funding in accordance with the maximum funding guidelines?
- If applicable, have you submitted the Post-Funding Analysis and proofs of payment for last year’s event/activity/facility?
- If applicable, have you returned or repaid the City for any previous funds not used or not used lawfully?
- Have you documented how you will accurately track out-of-town guests, showing that your event will attract tourists that will directly support the Tourism and Visitor’s Bureau and the Hotel industry in the area?
- Is your request for fifty percent (50%) or less of your total projected revenue from the event/activity/facility?
- If you are applying under the Advertising category, is your request for one hundred percent (100%) or less of your total projected advertising expenditures?
- If you are applying under the Advertising category, have you met the local requirement that advertising must be accomplished in advance of the event/activity/facility, and must utilize legitimate media for promotion outside of the area, i.e. direct mail, newspapers, magazines, radio, television, billboards?
- Will all advertising indicate that the City of Stephenville is a direct sponsor of the event?



**APPLICATION**

**Organization Information**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Address:

\_\_\_\_\_  
City, State, Zip:

\_\_\_\_\_  
Contact Name:

\_\_\_\_\_  
Contact Phone Number:

\_\_\_\_\_  
Website Address for Event/Activity/Facility:

Is your organization:     Non-Profit     Private for Profit

Tax ID#: \_\_\_\_\_

Organization's Creation Date: \_\_\_\_\_

Purpose for your organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Event/Activity/Facility Information**

\_\_\_\_\_  
Name of Event/Activity/Facility:

\_\_\_\_\_  
Date of Even/Activity:

\_\_\_\_\_  
Primary Location of Event/Activity/Facility:

\_\_\_\_\_  
Amount of HOT Funding Requested:

**Fund Usage:** How will the funds be used?

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**Primary purpose if funded Event/Activity/Facility:**

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***Check that statutory categories apply to funding request and amount requested under each category:***

- Convention center facilities or visitor information centers:** the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both; \_\_\_\_\_
  
- Registration of Tourism and Visitor's Bureau delegates:** the furnishing of facilities, personnel, and materials for the registration of tourism and visitor's bureau delegates or registrants; \_\_\_\_\_
  
- Advertising, and conducting solicitations and promotional programs to attract tourists and visitor delegates:** advertising and conducting solicitations and promotional programs to attract tourists and visitor's delegates or registrants to the municipality or its vicinity; \_\_\_\_\_
  
- Promotion of the arts:** the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape, and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- Historical restoration and preservation projects or activities:** historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and visitor's delegates to visit preserved historic sites or museums: (a) at or in the immediate vicinity of the Tourism and Visitor's Bureau center facilities or visitor information centers; or (b) located elsewhere in the municipality or its vicinity that would be frequented by tourists and visitors delegates; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Sporting event expenses related to sporting event which substantially increase economic activity at hotels:** for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity. \_\_\_\_\_
  
- Signage:** Signage directing tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.
  
- Transportation system for tourists:** Funding the costs for transporting tourist from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.

*(Answer the following three (3) questions only if sporting event-related)*

**If sporting even-related: How many individuals are expected to participate?**

\_\_\_\_\_

**If sporting event-related: How many of the participants are expected to be from another city or county?**

\_\_\_\_\_

**If sporting event-related: Quantify how the funded event/activity/facilities will substantially increase economic activity at hotel and motels within the City or its vicinity?**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Questions for all Funding Requests**

**How many years have you held this event/activity?**

\_\_\_\_\_

**Expected attendance:**

\_\_\_\_\_

**How many people attending the event/activity/facility will use Stephenville hotels, motels, inn s or bed-and-breakfast establishments?**

\_\_\_\_\_

**How many nights will they stay?**

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**Do you reserve a room block for this event/activity/facility at an area hotel and if so, for how many rooms and at which hotels?**

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**Please list other years (over the last three years) that you have hosted your event/activity/facility, and list the amount of assistance given from HOT funding and the number of hotel rooms used:**

Motel/Year Held	Assistance Amount	Number of Hotel Rooms Used

**How will you measure the impact of your event/activity/facility on area hotel activity?**

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**Please list all other organizations, government entities and grants that have offered financial support to your event/activity/facility, and respective amounts:**

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**Please check all promotion efforts your organization is coordinating, and list the financial amounts committed to each media outlet:**

- Paid Advertising  
  Newspaper  
  Radio  
  TV  
  Social Media  
  Press Releases  
 Direct mailing to out-of-town recipients  
  Other

What specific geographic areas do your advertising materials and promotions reach?

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**What number of individuals located in another city or county will your proposed marketing reach?**

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**The above application for HOT funds received for the City of Stephenville, and the explanation of how such funds will be utilized, is true and accurate.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date Signed

This Pre-Fund Analysis must be completely and accurately filled out and returned to the City of Stephenville, Attn: Tourism Coordinator, 298 W. Washington St. Stephenville, Texas 76401, no later than **sixty (60) days** before the event/activity/facility. If the total amount of the HOT funds were not used or were not lawfully used, then those funds must be returned or repaid to the City of Stephenville with the Post-Funding Analysis. Questions may be directed to the Tourism Coordinator at (254) 918-1212 or email [tourism@stephenvilletx.gov](mailto:tourism@stephenvilletx.gov).



Tourism and Visitors Bureau Committee  
**STAFF REPORT**

**SUBJECT:** Hotel Occupancy Tax Fund Request from the American Junior Rodeo Association (AJRA)  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Tourism and Visitors Bureau  
**STAFF CONTACT:** Julie Smith

**RECOMMENDATION:**

The American Junior Rodeo Association has requested \$2,000 - \$2,500 in Hotel Occupancy Tax funds to cover the cost of rental fees for the rodeo to be held in Stephenville November 9-11, 2018. This request is an allowable request for sporting event expenses, and for which the majority of the participants are tourists who substantially increase economic activity in hotels in the area. The organization will create a hotel tracking form, as well as gas station, restaurant, and shopping forms to report where folks are staying and/or spending who are connected with this event. Staff recommends funding this request at \$2,500.

**BACKGROUND:**

The American Junior Rodeo Association was founded in 1952. Last year was the first year since 2012 the organization held its AJRA rodeo in Stephenville. This event expects to bring 170-200 contestants ages 16-19, each day. Ninety percent or more of the contestants are from other cities and states (Colorado, New Mexico, Louisiana, and Texas). There will be over 200 spectators each day, for the three day event. The AJRA expects 75% of the contestants and spectators to stay in our hotels for two nights during their event.

**FISCAL IMPACT SUMMARY:**

The American Junior Rodeo Association has requested \$2,000 - \$2,500 in Hotel Occupancy Tax funds for rodeo events in Stephenville.

**ATTACHMENTS:**

[HOT Application AJRA 2018.08.28](#)

**FUNDING CONSIDERATION CHECKLIST**

Name of

Event/Activity/Facility: Stephenville AJRA Rodeo

Does your event/activity/facility pass Part One (1) of the statutory test, defines specifically as directly enhancing and promoting tourism in Stephenville and directly enhancing and promoting the tourism, visitors, and hotel industry in Stephenville?  YES /  NO

Does your event/activity/facility pass Part Two (2) of the statutory test, defined specifically as fitting into one of more of the following categories:

- Tourism and Visitor's Bureau facilities or visitor information centers
- Facilities, personnel and materials for registration of the Tourism and Visitor's Bureau delegates
- Advertising, and conducting solicitations and promotional programs to attract tourist and visitor's
- Promotion of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion picture, radio, television, tape and sound recording
- Historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists to visit preserved historic sites or museums in the area
- Sporting event expenses, including promotion expenses, related to sporting
- Events at which the majority of participants are tourists who substantially increase economic activity at hotels in the area
- Is your application filled out thoroughly and completely, and are all required pages attached?
- Is your request for funding in accordance with the maximum funding guidelines?
- If applicable, have you submitted the Post-Funding Analysis and proofs of payment for last year's event/activity/facility?
- If applicable, have you returned or repaid the City for any previous funds not used or not used lawfully?
- Have you documented how you will accurately track out-of-town guests, showing that your event will attract tourists that will directly support the Tourism and Visitor's Bureau and the Hotel industry in the area?
- Is your request for fifty percent (50%) or less of your total projected revenue from the event/activity/facility?
- If you are applying under the Advertising category, is your request for one hundred percent (100%) or less of your total projected advertising expenditures?
- If you are applying under the Advertising category, have you met the local requirement that advertising must be accomplished in advance of the event/activity/facility, and must utilize legitimate media for promotion outside of the area, i.e. direct mail, newspapers, magazines, radio, television, billboards?
- Will all advertising indicate that the City of Stephenville is a direct sponsor of the event?

APPLICATION

**Organization Information**

Date: August 15, 2018

Name of Organization  
American Junior Rodeo Association

Address:  
PO Box 398

City, State, Zip:  
Bronte, TX 76933

Contact Name:  
Mary McMullan

Contact Phone Number:  
(325) 277-5824

Website Address for Event/Activity/Facility: http://ajra.org

Is your organization:  Non-Profit  Private for Profit

Tax ID#: 75-1810750

Organization's Creation Date: June 7, 1952

Purpose for your organization:  
The mission of the AJRA is to provide rodeo youth the opportunity to compete in an environment modeled after the PRCA that will prepare them for higher levels of competition, to encourage their competition through the pursuit of attaining a higher education, to be mindful of the sport's western heritage and the values garnered from that heritage such as hard work, family unity and Christian values while providing the youth members opportunities of leadership through directorships.

**Event/Activity/Facility Information**

Stephenville AJRA Rodeo, Lone Star Arena, Stephenville, Texas  
Name of Event/Activity/Facility:

November 9, 10 & 11, 2018  
Date of Even/Activity:

Lone Star Arena, Stephenville, Texas  
Primary Location of Event/Activity/Facility:

\$2,000.00-\$2,500.00  
Amount of HOT Funding Requested:



**Fund Usage:** How will the funds be used?

These funds will be used to cover the cost of the facility rental fees.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Primary purpose if funded Event/Activity/Facility:**

The AJRA has 14 scheduled rodeo events prior to the finals held in July 2019. This would be the first two qualifying rodeos of the 2018-2019 season.  
\_\_\_\_\_

**Check that statutory categories apply to funding request and amount requested under each category:**

- Tourism center facilities or visitor information centers:** the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of tourism center facilities or visitor information centers, or both; \_\_\_\_\_
- Registration of Tourism and Visitor’s Bureau delegates:** the furnishing of facilities, personnel, and materials for the registration of tourism and visitor’s bureau delegates or registrants;  
\_\_\_\_\_
- Advertising, and conducting solicitations and promotional programs to attract tourists and visitor delegates:** advertising and conducting solicitations and promotional programs to attract tourists and visitor’s delegates or registrants to the municipality or its vicinity;  
\_\_\_\_\_
- Promotion of the arts:** the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape, and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;  
\_\_\_\_\_  
\_\_\_\_\_
- Historical restoration and preservation projects or activities:** historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and visitor’s delegates to visit preserved historic sites or museums: (a) at or in the immediate vicinity of the Tourism and Visitor’s Bureau center facilities or visitor information centers; or (b) located elsewhere in the municipality or its vicinity that would be frequented by tourists and visitors delegates;  
\_\_\_\_\_  
\_\_\_\_\_

**Sporting event expenses related to sporting event which substantially increase economic activity at hotels:** for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity. \_\_\_\_\_

*(Answer the following three (3) questions only if sporting event-related)*

**If sporting even-related: How many individuals are expected to participate?**

170-200 contestants \_\_\_\_\_

**If sporting event-related: How many of the participants are expected to be from another city or county?**

90% or more of the contestants will be from other cities and states. Contestants come from all over Texas, New Mexico and Colorado. \_\_\_\_\_

**If sporting event-related: Quantify how the funded event/activity/facilities will substantially increase economic activity at hotel and motels within the City or its vicinity?**

This event is for contestants ranging in age groups of 8 & Under through 16-19. Parents, and grand parents attend to watch their children to compete. During this weekend are two separate rodeos with 4 performances beginning on Friday evening and concluding on Sunday afternoon. Numerous families will be staying at the facility in their RV's and in hotels. Local restaurants, gas stations, shopping entities will benefit from this event. \_\_\_\_\_  
\_\_\_\_\_

**Questions for all Funding Requests**

**How many years have you held this event/activity?**

Last year was the first year since 2012 that our organization held an AJRA rodeo in Stephenville. \_\_\_\_\_

**Expected attendance:**

We are expecting between 170-200 contestants and over 200 spectators each day. \_\_\_\_\_

**How many people attending the event/activity/facility will use Stephenville hotels, motels, inn s or bed-and-breakfast establishments?**

About 75% \_\_\_\_\_

**How many nights will they stay?**

Two nights \_\_\_\_\_

**Do you reserve a room block for this event/activity/facility at an area hotel and if so, for how many rooms and at which hotels?**

HOT Funds Application Packet

The AJRA reserves approximately 6-8 rooms for their judges and workers at local hotels.

Please list other years (over the last three years) that you have hosted your event/activity/facility, and list the amount of assistance given from HOT funding and the number of hotel rooms used:

Motel/Year Hold	Assistance Amount	Number of Hotel Rooms Used
LaQuinta Inn/2017	\$2,500	6 rooms by the AJRA, not sure about rooms used by members and their families

How will you measure the impact of your event/activity/facility on area hotel activity?

We will make a Hotel Tracking Form available to our members so that they can report where they stayed during their weekend in Stephenville. Also, we can make a tracking form available for visits to restaurants, shopping entities and gas stations.

Please list all other organizations, government entities and grants that have offered financial support to your event/activity/facility, and respective amounts:

No other organizations have or will provide financial assistance for this event.

Please check all promotion efforts your organization is coordinating, and list the amount financial committed to each media outlet:

- Paid Advertising     Newspaper     Radio     TV     Social Media     Press Releases
- Direct mailing to out-of-town recipients     Other

What specific geographic areas do your advertising materials and promotions reach?

We use Rodeo News, Cowboy Times, Cowboy Sports News, THSRA Extreme Team News and Barrel Racer News for our advertising. In addition, we have a Facebook page for American Junior Rodeo Association and Instagram and our website has a large list of subscribers in which newsletters are sent out containing association news, information and upcoming events.

What number of individuals located in another city or county will your proposed marketing reach?

The advertising entities that we use reaches all areas of Texas, New Mexico, Colorado, Oklahoma and Louisiana.

HOT Funds Application Packet

The above application for HOT funds received for the City of Stephenville, and the explanation of how such funds will be utilized, is true and accurate.

Mayra Mulla  
Authorized Signature

August 13, 2018  
Date Signed

This Pre-Fund Analysis must be completely and accurately filled out and returned to the City of Stephenville, Attn: Tourism Coordinator, 298 W. Washington St. Stephenville, Texas 76401, no later than **sixty (60) days** before the event/activity/facility. If the total amount of the HOT funds were not used or were not lawfully used, then those funds must be returned or repaid to the City of Stephenville with this Post-Funding Analysis. Questions may be directed to the Tourism Coordinator at (254) 918-1212 or email [tourism@stephenvilletx.gov](mailto:tourism@stephenvilletx.gov).



Tourism and Visitors Bureau Committee  
**STAFF REPORT**

**SUBJECT:** Hotel Occupancy Tax Application - Tarleton State University Athletics - Texan Club  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Tourism and Visitors Bureau  
**STAFF CONTACT:** Julie Smith

**RECOMMENDATION:**

Tarleton State University Athletics is requesting a \$3,000 sponsorship level to support their Texan Club. The sponsorship request is for support in hosting of visiting college and high school athletic teams and fans for all regular games, playoffs, and NCAA events. The Texan Club has a board of directors who govern the organization. The Texan Club sponsorship is an allowable Hotel Occupancy Fund request as it supports expenses relating to sporting events which substantially increase economic activity at hotels throughout the year. Staff recommends funding this request.

**BACKGROUND:**

Tarleton State University regularly fills our hotels throughout the year for various events. Tarleton State University's local hotel occupancy numbers are greater than any of our other applicants combined. Tarleton State University regularly blocks rooms for playoffs, tournaments, and championships. The new stadium will increase local hotel stays through playoff games, concerts, and other events. Allocation of the requested Hotel Occupancy Tax funds will demonstrate STVB's support of Tarleton's major contributions to the local hotel industry and sales tax year round. In addition, the STVB will benefit from co-branding opportunities at Tarleton State University athletic events through this sponsorship.

**FISCAL IMPACT SUMMARY:**

Tarleton State University Athletics - Texan Club is requesting a \$3,000 sponsorship of Hotel Occupancy Tax funds.

**ATTACHMENTS:**

- [Texan Club](#)
- [HOT Application TSU Athletics 2018.08.28](#)



# 2018-19 TEXAN CLUB



Official Booster Organization for Tarleton State University Athletics  
Box T-0080 • Stephenville, Texas • 76402 • Phone: 254-968-9178 • Fax: 254-968-9674 • Email: Terri at hardcastle@tarleton.edu

## CORPORATE MEMBERSHIPS

**SPRIT LEVEL**  
\$850

**PURPLE & WHITE LEVEL**  
\$1,600

**PLOWBOY LEVEL**  
\$2,100

**TEXAN LEVEL**  
\$3,100

**TEXAN RIDER LEVEL**  
\$5,000

**JOHN TARLETON LEVEL**  
\$10,000 AND UP

**Benefits include:**

1. Listing year-round on official website
2. Banner displayed at all basketball games
3. One (1) Two Person Pass to all home sporting events
4. Team schedules and list of contact persons with phone numbers for all opponents
5. Access to Purple & White areas during home football and basketball games.
6. Listing in football program
7. Corporate name on football video board during home games.
8. Plowboy Shootout Hole Sponsorship
9. Ten (10) complimentary tickets to one game of your choice. (Call Terri Hardcastle at 254-968-0551 to choose your date)

**Benefits include:**

1. Listing year-round on official website
2. Banner displayed at all basketball games
3. Two (2) Two Person Passes to all home sporting events
4. Team schedules and list of contact persons with phone numbers for all opponents
5. Access to Purple & White areas during home football and basketball games.
6. Listing in football program
7. Corporate name on football video board during home games.
8. Plowboy Shootout Hole Sponsorship
9. One (1) corporate night, which will include fifty (50) complimentary tickets

**Benefits include:**

1. Listing year-round on official website
2. Banner displayed at all basketball games
3. Two (2) Two Person Passes to all home sporting events
4. Team schedules and list of contact persons with phone numbers for all opponents
5. Access to Purple & White areas during home football and basketball games.
6. Listing in football program
7. A-Frame Advertising at home football games.
8. Plowboy Shootout Hole Sponsorship
9. Two (2) corporate nights, which will include fifty (50) complimentary tickets per night

**Benefits include:**

1. Listing year-round on official website
2. Banner displayed at all basketball games
3. Two (2) Two Person Passes to all home sporting events
4. Team schedules and list of contact persons with phone numbers for all opponents
5. Access to Purple & White areas during home football and basketball games.
6. Listing in football program
7. A-Frame Advertising at home football games.
8. Corporate Sponsorship at Plowboy Shootout
9. Two (2) corporate nights, which will include fifty (50) complimentary tickets per night

**RESERVED FOOTBALL TICKETS & PARKING**  
Available upon request at \$75 per seat added to your corporate dues.  
(This includes 1 RESERVED PARKING PASS per business in the Harbin St. Parking Lot)

No. of Tickets \_\_\_\_\_

**LOCAL CONTACT INFORMATION**

Name of Business \_\_\_\_\_  
 Contact Person \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_  
 Fax Number \_\_\_\_\_

\*Members are responsible for design of Online and football program advertising. Call Nate Bural at 254-968-1802 for more info regarding ad design after reserving your membership.  
 Other advertising opportunities also available. Contact Byron Anderson at 254-968-9736.

**10. Online Advertising**  
on official athletics website\*  
 on official athletics website\*  
 panels at Memorial Stadium  
 games in Pavilion Parking Lot  
 program\*  
 on corporate night

**LEVEL OF MEMBERSHIP**

JOHN TARLETON LEVEL (\$10,000 & Up) \_\_\_\_\_  
 TEXAN RIDER LEVEL (\$5,000) \_\_\_\_\_  
 TEXAN LEVEL (\$3,100) \_\_\_\_\_  
 PLOWBOY LEVEL (\$2,100) \_\_\_\_\_  
 PURPLE & WHITE LEVEL (\$1,600) \_\_\_\_\_  
 SPIRIT LEVEL (\$850) \_\_\_\_\_

Please indicate: \_\_\_\_\_ CASH/CHECK  
 \_\_\_\_\_ Trade-Out

**10. Online Advertising**  
on official athletics website\*  
 on official athletics website\*  
 panels at Memorial Stadium  
 games in Pavilion Parking Lot  
 program\*  
 on corporate night

**PAYMENT INFORMATION**

\*\*\* Please choose one option:

1. Payment Enclosed - \$ \_\_\_\_\_  
 2. Payment by Credit Card \_\_\_\_\_ Visa \_\_\_\_\_ Mastercard \_\_\_\_\_ Discover \_\_\_\_\_  
 Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_ CVV \_\_\_\_\_  
 Name of Cardholder \_\_\_\_\_ Phone Number \_\_\_\_\_  
 3. Payment Plan - please bill: \_\_\_\_\_ Monthly \_\_\_\_\_ Quarterly \_\_\_\_\_ Semi-Annually \_\_\_\_\_ Full \_\_\_\_\_  
**Billing Address:** \_\_\_\_\_

**10. Online Advertising**  
on official athletics website\*  
 on official athletics website\*  
 panels at Memorial Stadium  
 games in Pavilion Parking Lot  
 program\*  
 on corporate night

**PAYMENT INFORMATION**

\*\*\* Please choose one option:

1. Payment Enclosed - \$ \_\_\_\_\_  
 2. Payment by Credit Card \_\_\_\_\_ Visa \_\_\_\_\_ Mastercard \_\_\_\_\_ Discover \_\_\_\_\_  
 Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_ CVV \_\_\_\_\_  
 Name of Cardholder \_\_\_\_\_ Phone Number \_\_\_\_\_  
 3. Payment Plan - please bill: \_\_\_\_\_ Monthly \_\_\_\_\_ Quarterly \_\_\_\_\_ Semi-Annually \_\_\_\_\_ Full \_\_\_\_\_  
**Billing Address:** \_\_\_\_\_

**APPLICATION**

**Organization Information**

Date: 8/13/18

TARLETON STATE ATHLETICS

Name of Organization  
Box 70080

Address:  
STEPHENVILLE, TX 76402

City, State, Zip:  
CONN REISMAN

Contact Name:  
254-968-0551

Contact Phone Number:  
TARLETONSPORTS.COM

Website Address for Event/Activity/Facility:

Is your organization:  Non-Profit     Private for Profit

Tax ID#: 756001870

Organization's Creation Date: 9/11

Purpose for your organization: SCHOLARSHIP FUND

**Event/Activity/Facility Information**

VISITING ATHLETIC TEAMS, HIGH SCHOOL PLAYOFFS

Name of Event/Activity/Facility:  
9/1 - 8/31

Date of Event/Activity:  
TARLETON STATE ATHLETIC VENUES

Primary Location of Event/Activity/Facility:  
\$3000.00

Amount of HOT Funding Requested:

Fund Usage: How will the funds be used?

SCHOLARSHIPS &  
STUDENT ENHANCEMENT

Primary purpose if funded Event/Activity/Facility:

Check that statutory categories apply to funding request and amount requested under each category:

Convention center facilities or visitor information centers: the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;

Registration of Tourism and Visitor's Bureau delegates: the furnishing of facilities, personnel, and materials for the registration of tourism and visitor's bureau delegates or registrants;

Advertising, and conducting solicitations and promotional programs to attract tourists and visitor delegates: advertising and conducting solicitations and promotional programs to attract tourists and visitor's delegates or registrants to the municipality or its vicinity;

Promotion of the arts: the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape, and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

Historical restoration and preservation projects or activities: historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and visitor's delegates to visit preserved historic sites or museums: (a) at or in the immediate vicinity of the Tourism and Visitor's Bureau center facilities or visitor information centers; or (b) located elsewhere in the municipality or its vicinity that would be frequented by tourists and visitors delegates;



- Sporting event expenses related to sporting event which substantially increase economic activity at hotels:** for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity. VISITING TEAMS & FANS, HIGH SCHOOL PLAYOFFS, OTHER ATHLETIC FUNCTIONS, NCAA EVENTS
- Signage:** Signage directing tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.
- Transportation system for tourists:** Funding the costs for transporting tourist from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.

(Answer the following three (3) questions only if sporting event-related)

If sporting even-related: How many individuals are expected to participate?  
TOO MANY TO CALCULATE

If sporting event-related: How many of the participants are expected to be from another city or county?  
TOO MANY TO CALCULATE

If sporting event-related: Quantify how the funded event/activity/facilities will substantially increase economic activity at hotel and motels within the City or its vicinity?  
VISITING TEAMS AND FANS WILL STAY IN LOCAL HOTELS, EAT AT LOCAL RESTAURANTS, PURCHASE FUEL AT LOCAL STATIONS

**Questions for all Funding Requests**

How many years have you held this event/activity?  
30

Expected attendance:  
TOO MANY TO CALCULATE

How many people attending the event/activity/facility will use Stephenville hotels, motels, inn s or bed-and-breakfast establishments?  
TOO MANY TO CALCULATE

HOT Funds Application Packet

How many nights will they stay?

TOO MANY TO CALCULATE

Do you reserve a room block for this event/activity/facility at an area hotel and if so, for how many rooms and at which hotels?

ROOM BLOCKS FOR TOURNAMENTS & NCAA CHAMPIONSHIPS.

Please list other years (over the last three years) that you have hosted your event/activity/facility, and list the amount of assistance given from HOT funding and the number of hotel rooms used:

Motel/Year Held	Assistance Amount	Number of Hotel Rooms Used
2017	3000	TOO MANY
2016	3000	TOO MANY
2015	3000	TOO MANY

How will you measure the impact of your event/activity/facility on area hotel activity?

FULL HOTELS DURING ATHLETIC YEAR

Please list all other organizations, government entities and grants that have offered financial support to your event/activity/facility, and respective amounts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please check all promotion efforts your organization is coordinating, and list the financial amounts committed to each media outlet:

- Paid Advertising     Newspaper     Radio     TV     Social Media     Press Releases
- Direct mailing to out-of-town recipients     Other

What specific geographic areas do your advertising materials and promotions reach?


IMPOSSIBLE TO DETERMINE DUE TO EXTENSIVE RANGE OF SOCIAL MEDIA

HOT Funds Application Packet

What number of individuals located in another city or county will your proposed marketing reach?

TOO MANY TO CALCULATE

The above application for HOT funds received for the City of Stephenville, and the explanation of how such funds will be utilized, is true and accurate.

  
Authorized Signature

8/13/18  
Date Signed

This Pre-Fund Analysis must be completely and accurately filled out and returned to the City of Stephenville, Attn: Tourism Coordinator, 298 W. Washington St. Stephenville, Texas 76401, no later than **sixty (60) days** before the event/activity/facility. If the total amount of the HOT funds were not used or were not lawfully used, then those funds must be returned or repaid to the City of Stephenville with the Post-Funding Analysis. Questions may be directed to the Tourism Coordinator at (254) 918-1212 or email [tourism@stephenvilletx.gov](mailto:tourism@stephenvilletx.gov).

Tourism and Visitors Bureau Committee  
**STAFF REPORT**



**SUBJECT:** Hotel Occupancy Tax Application for Larry Joe Taylor's Fall Fest 2018 (Rhymes & Vines)  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Tourism and Visitors Bureau  
**STAFF CONTACT:** Julie Smith

**RECOMMENDATION:**

This application is an allowable expense for Hotel Occupancy Tax funds as it is for transportation for tourists from hotels to tourist attractions near the city. Staff recommends approval of this request.

**BACKGROUND:**

For 13 years, Larry Joe Taylor's Fall Fest 2018 (Rhymes & Vines) has attracted thousands of guests to Stephenville to enjoy live music at Melody Mountain Ranch. This year's Fall Festival anticipates between 3,500-5,000 in attendance, with 300-500 people staying in our local hotels for three to four nights during the event. In addition, Larry Joe Taylor reserves 10-20 rooms for artists performing at the Fall Festival. Extensive advertising is underway including print, radio, direct mail, and social media throughout Texas and Oklahoma.

**ATTACHMENTS:**

[HOT Application LJT Rhymes & Vines 2018.08.28](#)

**FUNDING CONSIDERATION CHECKLIST**

Name of

Event/Activity/Facility: Larry Joe Taylor's Fall Fest 2018 ("Rhymes & Vines")

Does your event/activity/facility pass Part One (1) of the statutory test, defined specifically as directly enhancing and promoting tourism and the convention, and hotel industry in Stephenville?  YES  NO

Does your event/activity/facility pass Part Two (2) of the statutory test, defined specifically as fitting into one of more of the following categories:

- Convention center facilities or visitor information centers
- Facilities, personnel and materials for registration of the Tourism and Visitor's Bureau delegates
- Advertising, and conducting solicitations and promotional programs to attract tourist and visitor's
- Promotion of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion picture, radio, television, tape and sound recording
- Historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists to visit preserved historic sites or museums in the area
- Signage directing tourist to sights and attractions that are visited frequently by hotel guests in the municipality
- Funding the costs for transporting tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city
- Sporting event expenses, including promotion expenses, related to sporting events at which the majority of participants are tourists who substantially increase economic activity at hotels in the area
- Is your application filled out thoroughly and completely, and are all required pages attached?
- Is your request for funding in accordance with the maximum funding guidelines?
- If applicable, have you submitted the Post-Funding Analysis and proofs of payment for last year's event/activity/facility?
- If applicable, have you returned or repaid the City for any previous funds not used or not used lawfully?
- Have you documented how you will accurately track out-of-town guests, showing that your event will attract tourists that will directly support the Tourism and Visitor's Bureau and the Hotel industry in the area?
- Is your request for fifty percent (50%) or less of your total projected revenue from the event/activity/facility?
- If you are applying under the Advertising category, is your request for one hundred percent (100%) or less of your total projected advertising expenditures?
- If you are applying under the Advertising category, have you met the local requirement that advertising must be accomplished in advance of the event/activity/facility, and must utilize legitimate media for promotion outside of the area, i.e. direct mail, newspapers, magazines, radio, television, billboards?
- Will all advertising indicate that the City of Stephenville is a direct sponsor of the event?

APPLICATION

Organization Information

Date: August 23, 2018

Melody Mountain Ranch, Inc.

Name of Organization

4217 CR 423

Address:

Stephonville, Texas 76401

City, State, Zip:

Martha Taylor

Contact Name:

254-434-7020

Contact Phone Number:

www.larryjoetaylor.com/rhymes-and-vines.htm

Website Address for Event/Activity/Facility:

Is your organization:  Non-Profit  Private for Profit

Tax ID#: 20-8701416

Organization's Creation Date: around 2006

Purpose for your organization: Promotion and production of music festivals, and recording studios.

Event/Activity/Facility Information

Larry Joe Taylor's Fall Fest (located at Melody Mountain Ranch)

September 19-22, 2018

Date of Even/Activity:

Melody Mountain Ranch - (Fm 3025) 1290 PK 707, Stephonville, TX

Primary Location of Event/Activity/Facility:

Amount of HOT Funding Requested:

Fund Usage: How will the funds be used?

promotions of the event, facilitating travel to and from the event, for guests and musicians staying at hotels in Stephenville,

Primary purpose if funded Event/Activity/Facility:

providing shuttle for hotel guests to/from event

Check that statutory categories apply to funding request and amount requested under each category:

Convention center facilities or visitor information centers: the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;

Registration of Tourism and Visitor's Bureau delegates: the furnishing of facilities, personnel, and materials for the registration of tourism and visitor's bureau delegates or registrants;

Advertising, and conducting solicitations and promotional programs to attract tourists and visitor delegates: advertising and conducting solicitations and promotional programs to attract tourists and visitor's delegates or registrants to the municipality or its vicinity;

Promotion of the arts: the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape, and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

Historical restoration and preservation projects or activities: historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and visitor's delegates to visit preserved historic sites or museums: (a) at or in the immediate vicinity of the Tourism and Visitor's Bureau center facilities or visitor information centers; or (b) located elsewhere in the municipality or its vicinity that would be frequented by tourists and visitors delegates;

- Sporting event expenses related to sporting event which substantially increase economic activity at hotels:** for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity. \_\_\_\_\_
- Signage:** Signage directing tourists from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.
- Transportation system for tourists:** Funding the costs for transporting tourist from hotels in and near the city to: the commercial center of the city, a convention center in the city, other hotels in or near the city, and tourist attractions in or near the city.

*(Answer the following three (3) questions only if sporting event-related)*

If sporting even-related: How many individuals are expected to participate?  
\_\_\_\_\_

If sporting event-related: How many of the participants are expected to be from another city or county?  
\_\_\_\_\_

If sporting event-related: Quantify how the funded event/activity/facilities will substantially increase economic activity at hotel and motels within the City or its vicinity?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Questions for all Funding Requests**

How many years have you held this event/activity?  
13 years

Expected attendance:  
3500 - 5,000

How many people attending the event/activity/facility will use Stephenville hotels, motels, inn s or bed-and-breakfast establishments?  
300-500



How many nights will they stay?

3-4 nights

Do you reserve a room block for this event/activity/facility at an area hotel and if so, for how many rooms and at which hotels?

Yes - the number varies, and the hotel varies, Generally 10-20 rooms for artists.

Please list other years (over the last three years) that you have hosted your event/activity/facility, and list the amount of assistance given from HOT funding and the number of hotel rooms used:

Motel/Year Held	Assistance Amount	Number of Hotel Rooms Used
2012	2,500	300
2013	2,000	300
2015	2,000	300

Previously from Chamber of Commerce Stephen Wile

How will you measure the impact of your event/activity/facility on area hotel activity?

Surveys, attendance, internet research / market reports

Please list all other organizations, government entities and grants that have offered financial support to your event/activity/facility, and respective amounts:

Please check all promotion efforts your organization is coordinating, and list the financial amounts committed to each media outlet:

- Paid Advertising
- Newspaper
- Radio
- TV
- Social Media
- Press Releases
- Direct mailing to out-of-town recipients
- Other

What specific geographic areas do your advertising materials and promotions reach?

Texas, Oklahoma

What number of individuals located in another city or county will your proposed marketing reach?

around 3,000-5,000

The above application for HOT funds received for the City of Stephenville, and the explanation of how such funds will be utilized, is true and accurate.

*Maitha Taylor*  
Authorized Signature

August 23, 2018  
Date Signed

This Pre-Fund Analysis must be completely and accurately filled out and returned to the City of Stephenville, Attn: Tourism Coordinator, 298 W. Washington St. Stephenville, Texas 76401, no later than **sixty (60) days** before the event/activity/facility. If the total amount of the HOT funds were not used or were not lawfully used, then those funds must be returned or repaid to the City of Stephenville with the Post-Funding Analysis. Questions may be directed to the Tourism Coordinator at (254) 918-1212 or email [tourism@stephenvilletx.gov](mailto:tourism@stephenvilletx.gov).



Tourism and Visitors Bureau Committee  
**STAFF REPORT**

**SUBJECT:** MOOLA-FEST Hot Air Balloon Festival  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Tourism and Visitors Bureau  
**STAFF CONTACT:** Julie Smith

**RECOMMENDATION:**

MOOLA-FEST would be an annual celebration of our dairy heritage featuring hot air balloons, live music, bounce houses, cheese pairings, milk, ice cream, etc.

**BACKGROUND:**

Staff has been approached by Pat Harwell of American Escapes Aerosports from Shreveport, Louisiana to create a hot air balloon festival at the Stephenville City Park. The cost for a 20-balloon event would be between \$36,000 - \$40,000, which includes fees, lodging, packs and meals for the pilots, and propane for the balloons. Pat came to Stephenville to meet with staff and survey the possible sites. The general idea is to create a local, annual festival around the hot air balloon event. MOOLA-FEST would be an annual celebration of our dairy heritage, featuring cheese, pairings, milk, ice cream, etc. The event would be held in June for National Dairy Month. In addition to the balloon glow and rides, and dairy products, the three-day event would include live music, a carnival, and bounce houses for children.

Public Works Committee  
**STAFF REPORT**



**SUBJECT:** Spring Bouquet Neighborhood Drainage  
 Technical Memorandum Review

**MEETING:** Council Committee Meetings - 28 Aug 2018

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Nick Williams

#### BACKGROUND:

Staff was contacted by multiple residents in the Spring Bouquet neighborhood following heavy summer rains of 2017. Residents reported flooding of the street as well as homes along Spring Bouquet Street near Midnight Shadow. Staff investigated the surface drainage complaints as well as met on-site and corresponded with neighborhood residents.

The council approved the professional services agreement with Freese and Nichols (FNI) at the May 1, 2018 regular business meeting to perform basic hydraulic modeling of the area in order to identify a right-sized stormwater solutions project to address the problem in the most cost effective manner.

#### FISCAL IMPACT SUMMARY:

The proposed FY18-19 budget currently has allocated \$50,000 for storm drainage maintenance. The estimated construction cost for alternative one, including utility and pavement replacements, is \$1.25 million. The estimated construction cost for alternatives two and three is estimated at \$1.45 million. Detailed cost estimates are attached.

#### ALTERNATIVES:

The following alternatives are provided for consideration:

1. Decline to pursue a project at this time.
2. Construct an undersized, upstream detention pond on city-owned property.

#### ADVANTAGES:

1. There is no impact on the proposed budget if a project is not pursued.
2. Construction of an undersized, upstream detention pond would provide some increase in flooding protection for low-level storm events at a lower construction cost.

#### DISADVANTAGES:

1. A solution is not developed and flooding issues may continue at high-level storm events if a project is not pursued.
2. Construction of an undersized, upstream detention pond would provide low-level storm event protection and would be estimated to cost near \$275,000.

# MEMORANDUM

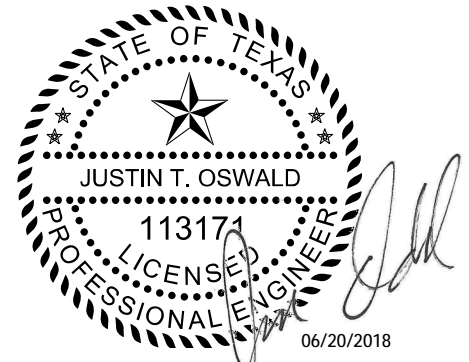


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www.freese.com

**TO:** Nick Williams, P.E., CFM  
**CC:**  
**FROM:** Justin Oswald, P.E., CFM - FNI  
**SUBJECT:** Spring Bouquet Street Flood Study  
**DATE:** June 20, 2018  
**PROJECT:** Spring Bouquet Street Flood Study



Freese and Nichols, Inc.  
Texas Registered Engineering Firm F-2144

## **INTRODUCTION:**

Flooding has been reported in the residential block between Spring Bouquet St and Spring Meadow St. Based on city records of reported flooding and our own observations, the flooding appears to be caused by overflow from a sag location on Midnight Shadow as shown in Exhibit 1. In addition, it appears flooding could be exacerbated by overflow from Spring Meadow St and the grading of the residential lots which may not adequately convey water away from structures towards adjacent streets. The scope of this study is to identify alternatives to mitigate the flooding for the 100-year storm caused by overflow from the sag location on Midnight Shadow only. The implementation of the identified alternatives may not resolve potential flooding caused by these secondary problems. This memo describes the methodology and results of this alternatives analysis.

## **EXISTING CONDITIONS:**

The existing storm drain system was researched based on field investigations by City staff, City GIS data, and our field observations. There are no records available for these lines. As shown in Exhibit 1, an 18" RCP runs down Spring Bouquet St, from Midnight Shadow to Prairie Wind St, where it becomes a 48" RCP until it outfalls to a ditch downstream. A mid-block 18" RCP lateral line also runs from Spring Meadow St to Spring Bouquet St.

## **HYDROLOGIC METHODOLOGY:**

Infoworks ICM software was used for modeling and analysis. The SCS Method was used for the hydrologic computations. The drainage areas were delineated using two-foot contours provided by the City. Flow paths were then created for each drainage area to compute the time of concentrations in accordance with NRCS TR-55. Drainage area delineations and flow paths are shown in Exhibit 1. A weighted curve number was determined for each drainage area using the soils data obtained from the USDA Web Soil Survey. The land cover within the drainage areas was medium density residential quarter-acre lots, with portions of commercial and open space.

Synthetic rainfall was computed for the 2-, 5-, 10-, 25-, 50-, and 100-year storm using Intensity-Duration-Frequency (IDF) curves for Erath County from the 2014 iSWM Technical Manual. Table 1 shows the 24-hour rainfall depths for each design storm.

**Table 1: 24-Hr Rainfall Depths**

Return Period	24-Hr Rainfall Depth (in)
2-yr	3.12
5-yr	4.32
10-yr	5.28
25-yr	6.48
50-yr	7.44
100-yr	8.64

The 100-year rainfall, weighted curve numbers, and time of concentrations were input into Infoworks ICM to compute the runoff for each drainage area. Table 2 shows the hydrologic inputs and resulting peak runoff for each drainage area.

**Table 2: Hydrologic Results for 24-Hr 100-Year Storm**

Drainage Area ID	Area (acres)	SCS Weighted Curve Number	Time of Concentration (min)	Max Runoff (cfs)
DA-1	13.9	89	15.68	96.0
DA-2	7.5	83	13.66	51.1
DA-3	8.0	85	11.35	59.3
DA-4	3.2	79	10.69	22.4
DA-5	10.7	82	14.04	70.5
DA-6	6.1	85	11.14	45.8
DA-7	6.5	86	12.96	46.9
DA-8	16.4	85	11.33	122.1

**HYDRAULIC METHODOLOGY:**

A hydraulic model of the storm drain and streets was developed in Infoworks ICM to evaluate solutions. The hydraulic calculations are based on Manning’s equation. A Manning’s roughness value of 0.015 was assigned to pipes, and a roughness value of 0.02 was applied to streets. Drainage areas were drained to corresponding inlet locations and street intersections. The flow was then routed by the model via storm drain pipes and street sections. The elevations of the storm drain and streets were approximated from contours and field observations as no field survey was performed for this analysis. The model results indicate that drainage areas 1, 4, 5, and 6 contribute over 200 cfs to the inlets along Midnight Shadow which greatly exceeds the 12 cfs capacity of the existing line. This confirms that the existing drainage system is inadequate to protect these properties in a 100-year event. Alternatives were evaluated in the model. Each alternative mitigates the overflow from Midnight Shadow for the 100-year storm.

**ALTERNATIVES:**

**ALTERNATIVE 1 – UPSIZED STORM DRAIN PIPE**

Alternative 1 is to improve the drainage system capacity to carry the 100-year storm. In this alternative the existing 18" RCP and 48" RCP along Spring Bouquet St are replaced with 54" RCP. The proposed 54" RCP runs from Midnight Shadow to the outfall ditch past Prairie Wind Blvd. To capture excessive surface runoff economically, a ditch and headwall is proposed along the south side of Midnight Shadow in lieu of curb inlets. Some of the adjacent intersections would be regraded towards the ditch and proposed pipe to reduce runoff to the Spring Meadow St lateral and reduce surface flow along Spring Bouquet St. Inlets would be added at the intersections of Spring Bouquet St with Midnight Shadow and Cactus Valley to limit runoff in the street. Some property acquisition would be necessary to implement the ditch as proposed. This alternative does not include improvements to the Spring Meadow St lateral although the proposed line is appropriately sized for this area. Exhibit 2 illustrates the upsized storm drain pipe alternative.

The construction cost for this alternative is estimated at \$1.25 million. City records indicate the sewer line is 48" deep and therefore would likely conflict with the proposed storm drain. In addition, the water and sewer lines were constructed in approximately 1980. Due to the expected conflicts and the age of the utilities, our cost estimate includes replacement of these lines and services. The estimate also include costs for repaving the full width of the street. The conceptual cost estimate is attached.

**ALTERNATIVE 2 – SINGLE DETENTION POND**

Alternative 2 is to construct a detention pond to temporarily store runoff in order to relieve the downstream storm drain. For this alternative a pond would be located in the vacant land near the intersection of Midnight Shadow and Spring Bouquet St. One of the adjacent vacant parcels is owned by the City, but the other is privately owned. The pond would outfall into the existing 18" RCP along Midnight Shadow. A berm with a maximum height of 3 feet above grade is proposed for the pond due to the shallow depth of the existing 18" RCP. Without the berm, the pond could only be about 3 feet deep. The proposed pond stores 12.6 acre-feet of water with one foot of freeboard. This alternative assumes the intersection of Moonlight Trail and Midnight Shadow would be sloped to drain into the pond to reduce runoff to the Spring Meadow St lateral. Some regrading would also be performed at the Spring Bouquet St and Midnight Shadow intersection to keep runoff from entering the sag location on Midnight Shadow from Spring Bouquet St. Exhibit 3 illustrates the single detention pond alternative and corresponding assumptions.

The construction cost for this alternative is estimated at \$1.45 million. This includes costs for easement acquisition for the area of pond on private property. It is assumed for this estimate that the 6" water line located within the pond area would be relocated. The conceptual cost estimate is attached.

**ALTERNATIVE 3 – TIERED DETENTION POND**

Alternative 3 is to construct a detention pond in a tiered configuration to maximize the use of the City owned lot to reduce property acquisition needs. The tiered configuration allows for an increased depth of water on the City property which is generally higher in elevation compared to adjacent areas. In the proposed configuration, the upper pond on the City property stores approximately 5.8 acre-ft of water while the lower pond stores 7.7 acre-ft. The lower pond outflows through an 18" RCP to the existing inlet in Midnight Shadow as in Alternative 2.

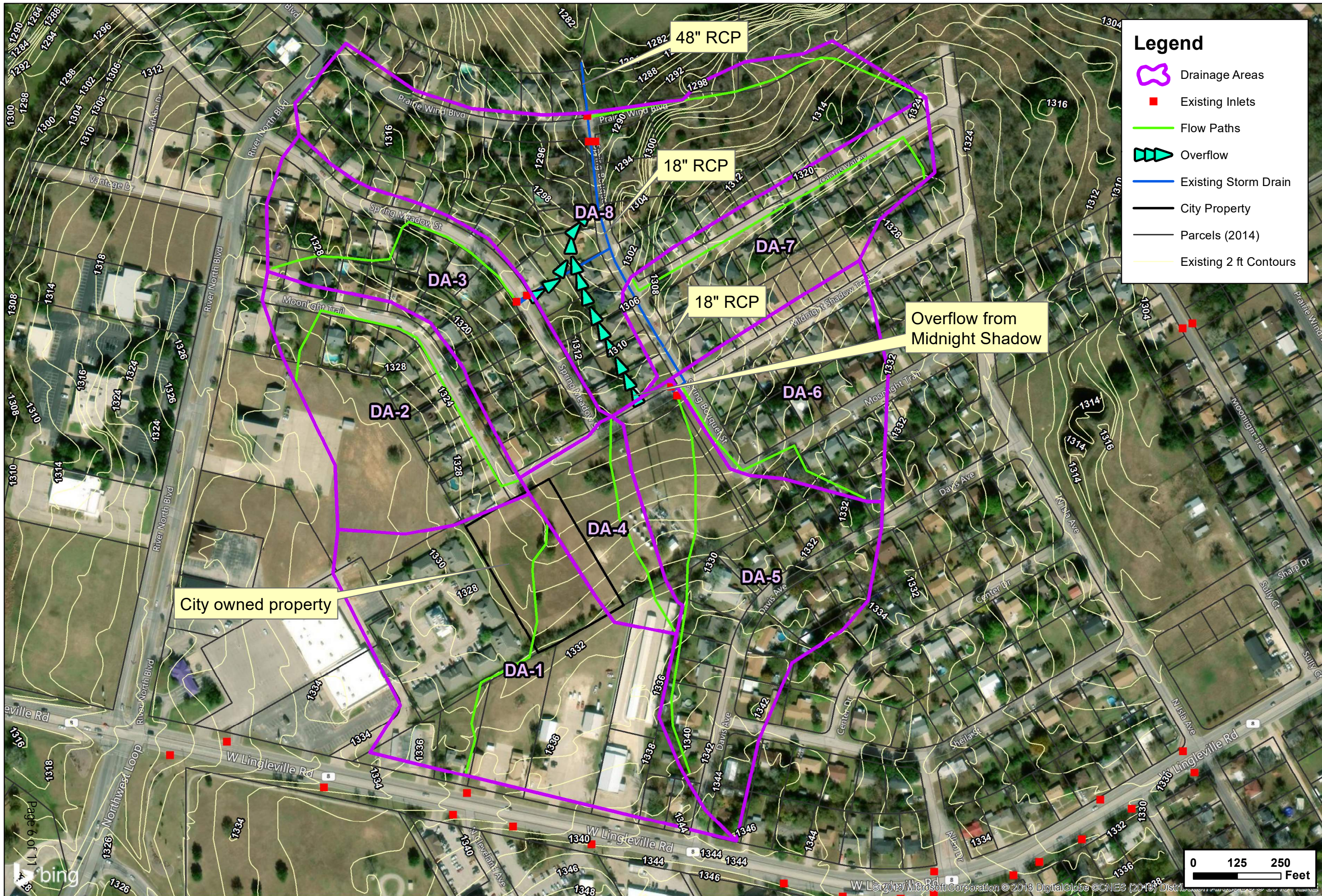
The ponds would be separated by an earthen berm with 4:1 side-slopes. A 24" orifice would connect the upper and lower ponds. This alternative also assumes the same intersection modifications identified in Alternative 2 are made. The footprint of the pond on private property is only marginally decreased in comparison to Alternative 2, but the excavation quantity is significantly increased due to the relatively steep slope of the ground on the City property. Exhibit 4 illustrates the tiered detention pond alternative.

A detailed cost estimate was not performed for Alternative 3 due to its similarity to Alternative 2. Any savings on property costs were outweighed by the additional excavation needed.

**CONCLUSION:**

FNI conducted a study to analyze flooding reported in the block between Spring Bouquet St and Spring Meadow St. Three alternatives were analyzed, and each mitigated the flooding along Spring Bouquet St from Midnight Shadow. Upsizing and improving the existing storm drain to 54" RCP was the most cost-effective option based on the conceptual cost estimates and assumptions made. In addition, upsizing the storm drain provides an opportunity to replace aging utilities and pavement in addition to the improved flood protection. The cost of project implementation versus the value of the properties benefited from mitigation should also be considered. A more detailed analysis of any specific project should be performed before moving forward with implementation.





FN JOB NO	STE 18308
FILE	DA Delineation Exhibit
DATE	6/20/2018
SCALE	1:3,000
DRAFTED	02758

# Drainage Area Map

## Spring Bouquet Street Flood Study



**FREASE & NICHOLS**  
 4055 International Plaza  
 Suite 200  
 Fort Worth, TX 76109 - 4895  
 Phone - (817) 735 - 7300



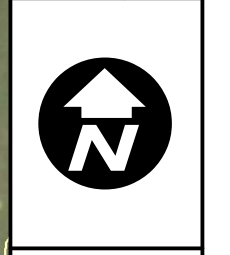
### Legend

- Proposed Inlet
- Existing Inlet
- Water Lines
- Sewer Lines
- > Proposed 54" RCP
- Existing 2ft Contours
- Parcels (2014)

EXHIBIT		2	
FN JOB NO	STE 18308	FILE	Alt. Pipe
DATE	6/20/2018	SCALE	1:1,800
DRAFTED	027568		

## Alternative - Upsized Drainage Pipe

### Spring Bouquet Street Flood Study



**FREASE & NICHOLS**  
 4055 International Plaza  
 Suite 200  
 Fort Worth, TX 76109 - 4895  
 Phone - (817) 735 - 7300

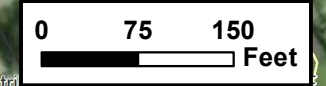
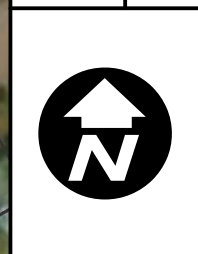




EXHIBIT	<b>3</b>			
FN JOB NO	STE 18308	ALT Pond	DATE	6/20/2018
FILE			SCALE	1:1,200
			DRAFTED	027568

**Alternative - Single Detention Pond**  
Spring Bouquet Street Flood Study



**FREASE NICHOLS**  
4055 International Plaza  
Suite 200  
Fort Worth, TX 76109 - 4895  
Phone - (817) 735 - 7300

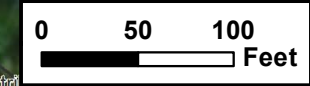
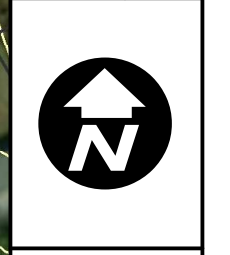




EXHIBIT	4				
FN JOB NO	STE 18308	FILE	ALL TierPond	DATE	6/19/2018
				SCALE	1:1,200
				DRAFTED	02758

**Alternative - Tiered Detention Pond**  
Spring Bouquet Street Flood Study



**FREASE NICHOLS**  
4055 International Plaza  
Suite 200  
Fort Worth, TX 76109 - 4895  
Phone - (817) 735 - 7300

Agenda Item #11



**Upsized Drainage Pipe**  
**Opinion of Probable Construction Cost**  
 Spring Bouquet Street Flood Study  
 City of Stephenville

ACCOUNT NO.	ESTIMATOR	CHECKED BY	DATE
STE18308	MJG	JTO	June 20, 2018

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
	Easement Acquisition	9,900	SF	\$3.50	\$34,650.00
	Traffic Control	1	LS	\$10,000.00	\$10,000.00
	SWPPP	1	LS	\$2,500.00	\$2,500.00
	Erosion Control	1	LS	\$7,500.00	\$7,500.00
	Tree Removal	5	EA	\$700.00	\$3,500.00
	Ditch Excavation	750	CY	\$15.00	\$11,250.00
	Headwall	1	EA	\$7,500.00	\$7,500.00
	Seeding	1,730	SY	\$1.00	\$1,730.00
	54" RCP (Class III)	1,110	LF	\$285.00	\$316,350.00
	18" RCP (Class III)	150	LF	\$80.00	\$12,000.00
	10' Inlet	9	EA	\$8,000.00	\$72,000.00
	Storm Drain Manhole	3	EA	\$10,000.00	\$30,000.00
	Flume	160	LF	\$60.00	\$9,600.00
	Asphalt Pavement Repair	3,350	SY	\$75.00	\$251,250.00
	6" PVC Waterline	800	LF	\$60.00	\$48,000.00
	8" PVC Waterline	20	LF	\$80.00	\$1,600.00
	Ductile Iron Fittings	0.50	TON	\$10,000.00	\$5,000.00
	Waterline Connection	2	EA	\$5,000.00	\$10,000.00
	Water Service Connection	16	EA	\$2,000.00	\$32,000.00
	6" PVC Sanitary Sewer	460	LF	\$80.00	\$36,800.00
	8" PVC Sanitary Sewer	365	LF	\$100.00	\$36,500.00
	Sanitary Sewer Manhole	3	LF	\$8,000.00	\$24,000.00
	Sanitary Sewer Service	16	EA	\$2,000.00	\$32,000.00
	Trench Safety	2,085	LF	\$1.50	\$3,127.50
<b>Subtotal</b>					<b>\$998,857.50</b>
	Mobilization	5	%	\$49,942.88	\$49,942.88
	Contingency	20	%	\$199,771.50	\$199,771.50
<b>Project Total</b>					<b>\$1,250,000</b>

- Notes:
1. Utility relocation quantities are based on City GIS.
  2. It is assumed that the full width of the pavement will be replaced.
  3. Engineering costs are not included in this estimate.
  4. This cost estimate was based on the year 2018 costs.



**Detention Pond Storage**  
Opinion of Probable Construction Cost  
 Spring Bouquet Street Flood Study  
 City of Stephenville

ACCOUNT NO.	ESTIMATOR	CHECKED BY	DATE
STE18308	MJG	JTO	June 20, 2018

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
	Easement Acquisition	105,000	SF	\$3.50	\$367,500.00
	Traffic Control	1	LS	\$5,000.00	\$5,000.00
	SWPPP	1	LS	\$5,500.00	\$5,500.00
	Erosion Control	1	LS	\$10,000.00	\$10,000.00
	Tree Removal	17	EA	\$700.00	\$11,900.00
	Pond Excavation	42,000	CY	\$15.00	\$630,000.00
	Embankment	600	CY	\$10.00	\$6,000.00
	18" RCP (Class III)	75	LF	\$80.00	\$6,000.00
	Headwall	1	EA	\$5,000.00	\$5,000.00
	Reinforced Concrete Pilot Channel	350	LF	\$70.00	\$24,500.00
	Spillway	1	LS	\$12,000.00	\$12,000.00
	Seeding	18,900	SY	\$1.00	\$18,900.00
	Asphalt Pavement Repair	400	SY	\$75.00	\$30,000.00
	6" PVC Waterline	250	LF	\$60.00	\$15,000.00
	Ductile Iron Fittings	0.2	TON	\$10,000.00	\$2,000.00
	Waterline Connection	2		\$5,000.00	\$10,000.00
	Trench Safety	75	LF	\$1.50	\$112.50
<b>Subtotal</b>					<b>\$1,159,413</b>
	Mobilization	5	%	\$57,971	\$57,971
	Contingency	20	%	\$231,883	\$231,883
<b>Project Total</b>					<b>\$1,450,000</b>

- Notes:
1. Utility relocation quantities are based on City GIS.
  2. It is assumed that the full width of the pavement will be replaced.
  3. Engineering costs are not included in this estimate.
  4. This cost estimate was based on the year 2018 costs.

Public Works Committee  
**STAFF REPORT**



**SUBJECT:** 536 Acre Lease Agreement  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Public Works  
**STAFF CONTACT:** Nick Williams

**RECOMMENDATION:**

Staff recommends renewal of the existing lease agreement of the 536-acre tract with Wesley Wood Cattle Company for a term of one year.

**BACKGROUND:**

The City of Stephenville entered into a lease of the city's 536-acre tract with Wesley Wood Cattle Company in April of 2017. The lease agreement was renewed and is set to expire on October 1, 2018. Mr. Wood wishes to continue leasing the property.

Mr. Wood has been made aware of the city's pending development of the 536 Well Field. The proposed lease agreement is modified under Section IV.1. where Mr. Wood agrees to allow the city to perform the necessary activities associated with preparation of well field development, including test drilling. A copy of the draft lease agreement is attached to this memorandum.

**FISCAL IMPACT SUMMARY:**

The lease term would be from October 1, 2018 through October 1, 2019. Lessee agrees to pay a rate of \$12.00 per acre annually for a total of \$6,432 annually. A copy of the draft lease agreement is attached to this memorandum.

**ALTERNATIVES:**

The following alternatives are provided for consideration:

1. Do not renew the lease agreement;
2. Revise the lease agreement.

**ADVANTAGES:**

1. Approval of the draft lease agreement with Wesley Wood Cattle Company provides a small income to the city.
2. Approval of the draft lease agreement ensures the property remains occupied, is not vacant and fences are maintained.

**DISADVANTAGES:**

There are no disadvantages identified at this time associated with extending the existing lease agreement with Wesley Wood Cattle Company.

**ATTACHMENTS:**

[536 Lease Agreement - Wood - 2018 08-28 - DRAFT](#)

## Agreement

STATE OF TEXAS           §

COUNTY OF ERATH       §

This agreement made and entered into on this the 4<sup>th</sup> day of September, 2018, by and between the **CITY OF STEPHENVILLE**, a municipal corporation (hereinafter called "CITY"), and **WESLEY WOOD CATTLE COMPANY, LLC.** (hereinafter called "WOOD").

### I.

The term of this agreement shall be for one (1) year, from October 1, 2018 until October 1, 2019. Both parties shall have the option to terminate this agreement at any time upon ninety days' written notice to the other party at the address set out herein.

This contract shall be subject to extension or renewal upon mutual agreement of the CITY and WOOD, if not otherwise terminated as provided in this agreement, upon completion of the initial contract term.

### II.

The property, which is the subject of this agreement, is approximately 536 acres out of the John W. Bradley, Daniel Bell, Edward Bond, James Conger, M. S. Crow, W. D. Richardson, M. J. Leech, Hancock C. Smith, and Ira Foster Surveys, situated in Erath County, Texas, and described on Exhibit "A" attached hereto and being a part hereof for all purposes.

The property currently consists of approximately 360 acres of native pasture and 176 acres of cultivated land.

### III.

CITY agrees to allow WOOD full access to subject property for the purpose of grazing cattle and farming to support the grazing operation.

### IV.

WOOD agrees as follow:

1. To allow CITY full access to subject property upon prior notice to WOOD.
  - a. CITY may conduct survey, excavation, construction, test drilling or similar activities.
  - b. CITY will be responsible for any damage sustained to fences or gates during activities performed under Item 1.a. above.
    - i. When any work is performed by CITY, Gates will be left in the position found.
  
2. To allow no more than 75 head of cattle to graze on the property at any one time except that in the event Wood plants a crop for additional cattle grazing, WOOD shall be allowed to graze up to 200 head of cattle for up to a four (4) month period.
  
3. To cultivate and remove any non-grazed crop as soon as practical after the termination of this agreement.



4. To use the subject property in compliance with all Federal, State and Local laws and to ensure no actions require permits for nor qualify as a feeding operation. Concentrated wastes from temporarily confined livestock shall be managed in accordance with all applicable laws.
5. To pay for any electrical or other utilities used by WOOD.
6. To utilize property AS-IS and not alter or make improvements, unless under emergency conditions, to any facilities, trees, grounds or fences without written consent of CITY. WOOD shall have the option to add gates and shall have the option to remove only those added gates upon termination of the agreement. CITY shall have the option to pay for and retain gates or other approved improvements or to deduct cost of the improvements from the lease payment.
7. To repair any damage to structures, pens or fencing, including interior and perimeter fencing, caused by WOOD'S livestock or equipment within ten (10) days of the damage occurrence.
8. To not assign, sublease or permit third parties to occupy or use any portion of the subject property during the term of the agreement without written consent of CITY.
9. To not remove any earth, valuable stone or other substances on or under the surface of the subject property without written consent of CITY.

**V.**

As consideration, WOOD agrees to pay to CITY the amount of \$6,432 or \$12.00 per acre annually. Payment, in full, shall be received by the City of Stephenville, 298 West Washington, Stephenville, Texas, 76401, on or before October 31, 2018. The cost per acre considers and recognizes the estimated amount of both cultivated and native pasture land.

**VI.**

WOOD agrees to indemnify and hold CITY harmless from any claim, judgment or expense, which may occur due to the use of the subject property or due to the negligence of WOOD in WOOD'S operation or performance of this agreement. WOOD specifically agrees to indemnify and hold CITY harmless for any loss, damage, or injury incurred as a result of the terms of this agreement.

**VII.**

If any action at law or in equity, including an action for declaratory relief is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the Court in the trial of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.

**VIII.**

This agreement is non-transferable and non-assignable in whole or in part without written consent by CITY.

**IX.**

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Erath County, Texas.

X.

This agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

XI.

This agreement is the entire agreement of the parties, and there are no oral representations, warranties, other agreements or promises pertaining to this agreement not incorporated in writing. This agreement may be amended only by an instrument in writing signed by both parties.

EXECUTED in duplicate originals this 4<sup>th</sup> day of September, 2018.

**Contact Address:**  
**CITY OF STEPHENVILLE**  
298 West Washington  
Stephenville, TX 76401

**Contact Address:**  
**WESLEY WOOD CATTLE COMPANY, LLC.**  
1409 Melissa Drive  
Stephenville, TX 76401

\_\_\_\_\_  
DOUG SVIEN, HONORABLE MAYOR

\_\_\_\_\_  
WESLEY WOOD

STATE OF TEXAS §

COUNTY OF ERATH §

This instrument was acknowledged before me on the \_\_\_ day of September, 2018, by DOUG SVIEN, Mayor of the City of Stephenville, a municipal corporation, for and on behalf of said corporation.

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

STATE OF TEXAS §

COUNTY OF ERATH §

This instrument was acknowledged before me on the \_\_\_ day of September, 2018, by WESLEY WOOD on behalf of WESLEY WOOD CATTLE COMPANY, LLC.

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



Public Works Committee  
**STAFF REPORT**



**SUBJECT:** Garfield Ground Storage Tank Rehabilitation Project  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Finance, Public Works  
**STAFF CONTACT:** Tricia Wortley, Nick Williams

**RECOMMENDATION:**

It is the recommendation of the Purchasing Department to award the contract for the Repairing and Repainting of the Garfield Ground Storage Tank to N.G. Painting of Kerrville, Texas.

**BACKGROUND:**

Bids for the Garfield Ground Storage Tank Rehabilitation Project were opened on August 16, 2018. Six (6) bids were received as shown below:

VENDOR	LOCATION	AMOUNT
N.G. Painting	Kerrville, TX	423,590.00
Tecorp, Inc.	Joliet, IL	472,124.00
Clear Creek Coatings	New Carlisle, OH	489,744.00
Maguire Iron, Inc.	Sioux Falls, SD	509,760.00
American Suncraft	Medway, OH	517,194.00
TMI Coatings	Saint Paul, MN	793,000.00

A contractor review letter (copy attached) has been received from the engineer of record with Tank Industry Consultants, Inc. indicating there are no objections to awarding the bid to N.G. Painting.

**FISCAL IMPACT SUMMARY:**

The project work was budgeted over two fiscal years with \$300,000 allocated in FY17-18 and \$300,000 allocated in the proposed FY18-19 budget.

Funds allocated for the technical specifications and estimated construction inspections costs total \$52,900. Including the \$423,590 bid received by N.G. Painting, the project is anticipated to cost \$476,490 leaving approximately \$123,510.00, which can be applied to other projects such as the development of the 536 well field.

**ATTACHMENTS:**

[2018\\_08-22 - TIC Garfield GST - Bid Review](#)

**TIC  
TANK  
INDUSTRY  
CONSULTANTS**

7740 West New York Street  
Indianapolis, Indiana 46214  
317 / 271-3100 - Phone  
317 / 271-3300 - FAX

San Luis Obispo, California  
805 / 538-4206

Plainfield, Illinois  
815 / 556-8335

Pittsburgh, Pennsylvania  
412 / 262-1586

El Paso, Texas  
915 / 790-0790

Houston, Texas  
281 / 367-3511

August 22, 2018

Mr. Nick Williams, P.E.  
City of Stephenville  
298 West Washington Street  
Stephenville, Texas 76401-4257

RE: Bid Review for Repairing and Repainting the Interior and Exterior  
of One 750,000 Gallon Steel Ground Storage Tank, "Garfield  
Ground Tank," Stephenville, Texas; TIC 18.092.S1508.002

Dear Mr. Williams:

The City of Stephenville received six bids for the above-referenced project with bids ranging from \$423,590 to \$793,000 with an average of bids of \$534,235. The engineer's estimate for the project was \$589,500. Tank Industry Consultants received copies of the six bids from the City of Stephenville for review.

The lowest bid was N.G. Painting for \$423,590. Tank Industry Consultants can see no reason not to award the project to N.G. Painting.

If you have any questions, please feel free to contact me.

Respectfully submitted,

Tank Industry Consultants



Patrick J. Brown

cc: Ray Penny - TIC Southwest

Public Works Committee  
**STAFF REPORT**



**SUBJECT:** 536 Water Well Field Development Project  
 Professional Services Proposal

**MEETING:** Council Committee Meetings - 28 Aug 2018

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Nick Williams

#### RECOMMENDATION:

Recommend approval of the professional services proposal with Parkhill, Smith and Cooper to advance the development of the 536 Water Well Field.

#### BACKGROUND:

In 2013, the City of Stephenville purchased a 536-acre tract adjacent to the city's existing Airport Well Field with the intention of utilizing the property to augment the city's groundwater supply. In FY17-18, funding was authorized for the preparation of a test well drilling plan including bid documents and an analysis to provide final water well production site recommendations.

Qualification packages were requested and the submittal from Parkhill, Smith and Cooper (PSC) received the highest ranking by all selection committee members. The ranking was largely due to the firm's documented experience and volume of successfully completed well field design projects, which consisted of approximately 300 Texas water wells over the last ten years, as well as the firm's significant experience in projects securing Texas Water Development Board funding.

At the July 17, 2018 Council Work Session, staff was directed to negotiate a professional services agreement with PSC for the 536 Water Well Field Development Project.

#### PROPOSAL:

The proposal identifies a phased approach for the engineering services necessary for the evaluation, design (including raw water transmission main layout), permitting, bidding and construction of the well field as well as assistance with a funding application to the Texas Water Development Board.

Phase One of the proposal provides detailed procedural specifications and support for test drilling, groundwater modeling, as well as a technical report including schematics

The proposal's phased format requires the city's approval prior to commencement of each successive phase. The approach is intended to protect PSC from unforeseen work conditions, identified only as each phase progresses and to protect the city from conservatively high cost contingencies.

Exhibit B of the proposal provides for a six (6) month timeline in anticipation of meeting the March 2019 application submittal timeline to the Texas Water Development Board (TWDB). The proposal also provides a liquidated damages clause to encourage adherence to project schedules.

A copy of the proposed agreement is attached to this memorandum.

**FISCAL IMPACT SUMMARY:**

Phase One of the proposal provides detailed procedural specifications and support for test drilling, groundwater modeling, as well as a technical report including schematics for \$55,000, which was included in the FY17-18 budget.

An additional service to provide the drilling of five (5) test wells is offered as a pass-through, no markup cost for an amount not-to-exceed \$142,371, which includes the physical drilling of the test wells in addition to the subsurface hydrogeological analysis of the drill cuttings used to predict water production potential. The test wells would be drilled by a local well drilling company under the supervision of PSC. The data gathered by the test well drilling program would be used to further solidify the funding application to the TWDB.

Savings realized from the Garfield Ground Storage Tank Rehabilitation project are anticipated to be approximately \$123,510 and could be used towards the additional services if desired and approved by council. Discussions with the Finance Department indicate the remaining necessary funds for test drilling (approximately \$18,861) could be covered from enterprise reserves with little impact. Performing the test drilling within Phase One would expedite the process and allow a funding application to be submitted by the March 2019 timeline to the TWDB. Again, this is an option offered by PSC and is not obligatory.

**ATTACHMENTS:**

[536 Well Field Development - PSC - 2018 08-28 - DRAFT](#)



4222 85th Street  
Lubbock, Texas 79423  
806.473.2200

July 31, 2018

Eugene Calvert, PE, PTOE – City Engineer  
Nick Williams, PE, CFM – Director of Public Works  
City of Stephenville  
298 W Washington St.  
Stephenville, TX 76401

Re: Professional Engineering Services for 536 Water Well Field Development Project

Dear Mr. Calvert & Mr. Williams:

Parkhill, Smith & Cooper, Inc. (PSC) is pleased to provide this proposal to deliver professional services under our engineering and construction management team. These tasks are related to the planning, development and funding of the City’s “536 Well Field” to aid in enhancing the City’s groundwater availability.

Please see Exhibit A for a detailed listing of work to be accomplished, along with associated costs. As part of the total scope and fee presented, a hydrogeological investigation performed by PSC’s teaming partner Daniel B. Stephens & Associates, Inc. has been included.


*\*Please note that the stated fee is allocated for tasks solely related to **Phase 1** of this project. It is PSC’s understanding that compensation for Phases 2-5 will be comprised at a later date.*

Exhibit B includes an additive cost proposal for a test hole drilling program to be incorporated within PSC’s prime agreement. Project team costs are displayed as both a lump sum and unit price fixture, with an estimated not-to-exceed budget.

Thank you for the opportunity to provide our services on this project. We trust this letter is responsive to your request, and we look forward to your approval. Should you have any questions, please do not hesitate to call me at 806.473.3537.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By:   
Zane Edwards, P. E.  
Principal

Enclosures

X:\2015\0016.15\CIVIL\ENGR\Stephenville Well Field RFQ\Scope & Fee\Stephenville WF Proposal Doc & Exhibit A.docx.docm





August 23, 2018

Mr. Nick Williams, PE, CFM  
Director of Public Works  
298 West Washington Street  
Stephenville, Texas 76401-4257

Subject: 536 Water Well Field Development Project

Dear Mr. Williams:

Parkhill, Smith and Cooper, Inc., at the City of Stephenville's pleasure, recommends and is prepared to provide the City of Stephenville the opportunity to include the test well drilling program under Phase 1 of PSC's agreement for the 536 Water Well Field Development Project.

The test well drilling program is to be completed as a "pass-through" cost and without markup using a local water well drilling company. As a part of preparing to perform professional services for the City of Stephenville, PSC has already contacted local, Stephenville-based water well drillers and solicited competitive bids for the work.

PSC recommends completing the test well drilling program under Phase 1 in order to accelerate the project schedule and allow the City of Stephenville to submit a funding application to the Texas Water Development Board prior to March 1, 2019.

Thank you for considering our recommendation to include a test well drilling program for this project under the guidance of PSC's professional services agreement.

Should you have questions or concerns regarding the recommendation please feel free to contact me at (817) 694-6324.

Sincerely,

A handwritten signature in blue ink that reads "Kent Riker".

Kent W. Riker, P.E.  
Client Manager

**AGREEMENT  
BETWEEN CITY OF STEPHENVILLE  
AND  
PARKHILL, SMITH & COOPER, INC.  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 4, 2018, ("Effective Date")  
between the City of Stephenville ("OWNER") and Parkhill, Smith & Cooper, Inc. ("ENGINEER").

OWNER'S Project, of which ENGINEER'S services under this AGREEMENT are a part, is generally identified as follows: 536 Water Well Field Development ("Project").

ENGINEER'S services under this AGREEMENT are generally identified as follows:

Phase 1: Analysis and Report Phase

Authorized Additional Services: To include test hole drilling program.

OWNER and ENGINEER further agree as follows:

*\*This agreement is for Phase 1 – Analysis and Report Phase services ONLY. The contract will be mutually amended after the completion of Phase 1 to include the following:*

Phase 2: Project Funding Phase

Phase 3: Final Design and Permitting Phase

Phase 4: Bidding and Negotiating Phase

Phase 5: Construction Phase

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**ARTICLE 1 - SERVICES OF ENGINEER**

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**1.01 Scope**

- A. ENGINEER shall provide or cause to be provided the services set forth herein and in Exhibit A.
- B. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit C.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

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**2.01 General**

- A. OWNER shall have the responsibilities set forth herein.
- B. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including, design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any, budgetary limitations.
- C. Furnish copies of all design and construction standards, which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- D. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- E. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.
  - 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 5. Any known explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  - 6. Any know environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  - 7. Any known data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- F. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of

performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

G. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property, as required for ENGINEER to perform services under the Agreement.

H. Provide, as required for the Project in pursuing outside funding in the Project Funding Phase, it is understood the OWNER, at OWNER's discretion will provide the following:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.

3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.

I. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Construction Contract Documents in the Construction Phase, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof unless authorized as Additional Services under Exhibit A - Part 2.

J. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may, be necessary for completion of each phase of the Project.

K. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely, decisions pertaining thereto.

N. Place and pay for advertisement for Bids in appropriate publications.

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and final payment.

P. Authorize ENGINEER to provide Additional Services as set forth in Exhibit A - Part 2 of the Agreement as required prior to ENGINEER performing the work in each phase.

Q. Make decisions and carry out OWNER'S responsibilities in a timely manner. Owner shall bear all costs incidental thereto so as not to delay the services of the ENGINEER.

## ARTICLE 3-SCHEDULE FOR RENDERING SERVICES

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### 3.01 Commencement

- A. ENGINEER is authorized to begin rendering services as of the Effective Date.

### 3.02 Time for Completion

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

C. If OWNER authorizes changes in the scope, extent, or character of the Project or ENGINEER's services, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.

### 3.03 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

## ARTICLE 4 - PAYMENTS TO ENGINEER

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### 4.01 Methods of Payment for Basic Services and Additional Services of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A - Part 1, as set forth in Exhibit B.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A - Part 2, as set forth in Exhibit B.

### 4.02 Other Provisions Concerning Payments

A. *Preparation and Submittal of Invoices.* ENGINEER will prepare invoices in accordance with ENGINEER's standard invoicing practices and will submit to OWNER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit B.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and ENGINEER may (after giving seven-day notice to

OWNER), suspend services under this Agreement until OWNER has paid in full all amounts due for services. Owner waives any and all claims against ENGINEER for any such suspension.

C. *Disputed Invoices*: If OWNER disputes an invoice, either as to the amount or entitlement, then OWNER shall promptly advise ENGINEER in writing of the specific basis for doing so, may withhold that portion so disputed, and must pay the undisputed portion.

D. *Records of ENGINEER's Costs*. Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER.

E. *Legislative Actions*. In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other compensation under this Agreement then Engineer may invoice for reimbursement by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

## ARTICLE 5 - OPINIONS OF COST

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### 5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional specifically familiar with the industry. However, because ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER.

## ARTICLE 6 - GENERAL CONSIDERATIONS

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### 6.01 Standards of Performance

A. *Standard of Care*. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by ENGINEER.

B. *Technical Accuracy*. OWNER shall not be responsible for discovering deficiencies in the technical accuracy of ENGINEER's services. ENGINEER shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in OWNER-furnished information.

C. *Consultants*. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. *Compliance with Laws and Regulations.* ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. *Reliance on Others.* OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER in any way contingent upon the ENGINEERs signing any such certification.

G. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

H. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

I. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

J. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee, C-700 (2007 Edition) unless both parties mutually agree to use other General Conditions.

## **6.02 Authorized Project Representatives**

A. ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

## **6.03 Design without Construction Phase Services**

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A - Part 1.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for the application and interpretation of the construction Contract Documents and waives all claims against the ENGINEER that may be in any way connected to Construction Phase administration, engineering or professional services except for those services that are expressly required of Engineer in Exhibit A.



#### **6.04 Use of Documents**

A. All Documents are instruments of service and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants.

C. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

D. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

E. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

G. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

H. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

#### **6.05 Insurance**

A. ENGINEER shall procure and maintain the following insurance: Worker's Compensation, General Liability and Professional Liability.

B. At OWNER's request ENGINEER shall deliver certificates of insurance evidencing the coverage. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of this agreement.

C. OWNER shall require Contractor to purchase and maintain Workers' Compensation, General Liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER'S Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. PSC shall provide to City certificates of insurance which shall contain the following minimum coverage:

<p><b>Commercial General Liability</b>                  General Aggregate      \$2,000,000</p> <p><b>Automobile Liability (Any Auto)</b>                  CSL                              \$1,000,000</p>	<p><b>Workers' Compensation</b>                  Each Accident      \$1,000,000</p> <p><b>Professional Liability</b>                  \$3,000,000 Annual Aggregate</p>
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**6.06 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause, by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
2. For convenience, by OWNER effective upon the receipt of notice by ENGINEER.

B. *Payments Upon Termination.* In the event of any termination, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit B for all services performed or furnished and all expenses incurred through the effective date of termination.

**6.07 Controlling Law**

A. This Agreement is to be governed by the law of the state in which the Project is located.

**6.08 Successors, Assigns, and Beneficiaries**

A. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law.

**6.09 Dispute Resolution**

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a minimum of 30 days from the date of notice. Should such negotiations fail, the OWNER and ENGINEER agree that any dispute between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation prior to exercising any other rights under law, unless the parties mutually agree otherwise.

**6.10 Hazardous Environmental Condition**

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a

Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

#### **6.11 Allocation of Risks**

A. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

B. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

C. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

#### **6.12 Third-Party Beneficiaries**

A. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER. The ENGINEER'S services under this Agreement are being performed solely for the OWNER'S benefit, and no other party or entity shall have any claim against the ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. The OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

#### **6.13 Miscellaneous Provisions**

A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival.* All express representations included in this Agreement will survive its completion or termination for any reason.

C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver.* Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Headings*. The headings used in this Agreement are for general reference only and do not have special significance.

## **ARTICLE 7 - DEFINITIONS**

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### **7.01 Defined Terms**

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. Definitions as defined by EJCDC standards

## **ARTICLE 8-EXHIBITS AND SPECIAL PROVISIONS**

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### **8.01 Exhibits Included**

- A. Exhibit A, "ENGINEER's Services", consisting of 4 pages.
- B. Exhibit B, "Payments to Engineer", consisting of 2 pages.

**8.02 Total Agreement**

A. This Agreement (consisting of pages 1 to 18 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, the Effective Date of which is indicated on page 1

OWNER:

ENGINEER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

By: Doug Svien

By: Zane Edwards, PE

Title: Honorable Mayor

Title: Principal

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

City of Stephenville

Parkhill, Smith & Cooper, Inc.

298 W Washington Street

4222 85<sup>th</sup> Street

Stephenville, Texas 76401

Lubbock, Texas 79423

254.918.1223

806.473.2200

IN DUPLICATE

**EXHIBIT A  
ENGINEER'S SERVICES**

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and authorized Additional Services as set forth below.

**EXHIBIT A - PART 1 -- BASIC SERVICES**

*A I.01 Phase 1 - Analysis and Report*

**A. ENGINEER shall:**

**1. Scope Development: (Weeks 1 - 6)**

a. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.

b. Advise OWNER as to the necessity of OWNER's providing data or services, which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.

c. Establish the scope along with internal software setup, and advise the OWNER, of any special investigations, field surveys or soil and foundation investigations which, in the opinion of the ENGINEER, may be required for the proper execution of the Analysis and Report Phase; and arrange with the OWNER for the conduct of such investigations and tests. Special investigations may include, for example, an investigation due to uncovering any reasonably unknown or unforeseen conditions that may materially affect project costs, such as unanticipated expansive soil conditions. The performance of these investigations and tests is not a part of the ENGINEER's Basic Services, and compensation therefor is not included in the Basic Fee. The investigations and tests may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by the applicable portions of Exhibit B.

**2. Testing Documents and Alternative Solutions: (Weeks 7 – 17)**

a. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER.

b. Identify and evaluate alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions, which in ENGINEER's judgment meet OWNER's requirements for the Project.

c. Develop subsurface analysis testing documents as required by ENGINEER for development and implementation purposes.

**3. Modeling and Feasibility Report: (Weeks 18 – 26)**

a. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, proposed pipeline alignments, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and ENGINEER's recommended solution(s) based upon hydraulic analysis and operational considerations. ENGINEER shall utilize subconsultant services as required for the data collection in reference to applicable hydrogeologic and groundwater modeling.

b. Furnish three (3) review copies of the Report to OWNER and review it with OWNER.

c. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish three (3) final copies and a PDF copy of the revised Report to the OWNER.

B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.

A 1.02 *Phase 2 - Project Funding Phase*: Scope and Schedule to be determined after Phase 1 complete and added via Contract Amendment.

A 1.03 *Phase 3 - Final Design Phase and Permitting*: Scope and Schedule to be determined after Phase 1 complete and added via Contract Amendment.

A 1.04 *Phase 4 - Bidding or Negotiating Phase*: Scope and Schedule to be determined after Phase 1 complete and added via Contract Amendment.

A 1.05 *Phase 5 - Construction Phase*: Scope and Schedule to be determined after Phase 1 complete and added via Contract Amendment.

## EXHIBIT A - PART 2 -- ADDITIONAL SERVICES

A 2.01 *Additional Services Requiring OWNER's Authorization in Advance*

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Providing design and/or construction surveys and staking to enable ENGINEER to perform its services and Contractor to perform their work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

2. Services of a Resident Project Representative and other field personnel, as required, for on-the-site observation of construction and for construction layout surveys.

3. Soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations.

4. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

5. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

6. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

7. Services required as a result of OWNER's providing incomplete or incorrect Project information.

8. Providing additional renderings or models for OWNER's use.

9. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; cash flow and economic evaluations, rate schedules, and appraisals; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

10. Furnishing services of ENGINEER's Consultants for other than Basic Services.

11. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

13. Preparation of operation and maintenance manuals.

14. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.



15. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER.

16. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.

17. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

18. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

19. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition as defined in the EJCDC documents, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule due to emergency involving services beyond normal working hours, or (6) default by Contractor.

20. Services in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

21. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

22. Reimbursable expenses associated with providing additional services.

**EXHIBIT B  
PAYMENTS TO ENGINEER  
LUMP SUM METHOD**

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

B 4.01 *Compensation for Basic Services - Lump Sum Method of Payment*

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A-Part 1, as follows:

1. A Lump Sum amount of \$ 55,000 based on the following distribution of compensation:

- |   |  |
|---|--|
| a. Phase 1 - Analysis and Report Phase:         | <u>\$ 55,000</u>                                   |
| i. Scope Development                            | (\$4,315)  |
| ii. Testing Documents and Alternative Solutions | (\$10,840)   |
| iii. Modeling and Feasibility Report            | (\$39,845)   |
| b. Phase 2 - Project Funding Phase:             | <u>\$ TBD via Contract Amendment after Phase 1</u> |
| c. Phase 3 - Final Design Phase and Permitting: | <u>\$ TBD via Contract Amendment after Phase 1</u> |
| d. Phase 4 - Bidding and Negotiating Phase:     | <u>\$ TBD via Contract Amendment after Phase 1</u> |
| e. Phase 5 - Construction Phase:                | <u>\$ TBD via Contract Amendment after Phase 1</u> |

2. The Lump Sum includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Direct Expenses.

3. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

4. The Lump Sum is conditioned on Construction Contract Times to complete the Work not exceeding six (6) months in anticipation of meeting the March 2019 application submittal deadline to the Texas Water Development Board for the Project Funding Phase. Should the Construction Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

5. Failure to meet the time for completion of the plans and specifications for the project, as stated above under section B 4.01-A.4, will result in liquidated damages of \$50.00 per consecutive calendar day until plans are submitted. Liquidated Damages are only applicable to services, which commence upon receipt of Notice-to-Proceed if outside funding is obtained.

6. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A - Part 1, the ENGINEER shall be compensated an additional amount equal to \$            \* for all Basic Services for each prime contract added.

\*To be negotiated if required.

B 4.02 *Compensation for Authorized Additional Services --Standard Unit Price Method of Payment.*

A. OWNER shall pay ENGINEER for authorized Additional Services set forth in Exhibit A - Part 2 as follows:

1. For reimbursable expenses, on the basis of cost times a factor of 1.08.
2. Anticipated Reimbursable Additional Services and associated costs are as follows, and may not be exceed without prior authorization by OWNER:

a. Test Hole Driller (5 Test Hole Borings at assumed 600VF/EA):	<u>\$100,950</u>
i. Site Investigation	(\$100)
ii. Mobilization/Demobilization of Equipment and Per Diem	(\$500)
iii. Provide Water Truck and Driver	(\$500)
iv. Drill Test Hole at \$28.70/VF	(\$86,100)
v. Geophysical Logging at \$2,250/EA	(\$11,250)
vi. Slush Pits at \$500/EA	(\$2,500)
b. Hydrogeological Consultant:	<u>\$33,921</u>
i. Drilling Oversight, Collect Cuttings, Sieve Analysis & Report	
c. Engineering	<u>\$7,500</u>
i. Management of Drilling Consultant & Field Oversight	

Public Works Committee  
**STAFF REPORT**



**SUBJECT:** Master Infrastructure Management Plan  
 Professional Services Proposal

**MEETING:** Council Committee Meetings - 28 Aug 2018

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Nick Williams

#### RECOMMENDATION:

Recommend approval of the professional services proposal with Freese and Nichols for the Master Infrastructure Management Plan.

#### BACKGROUND:

In FY17-18, funding was authorized for the preparation of a Master Utility Infrastructure Management Plan to develop a single, integrated master plan to identify, assess, and prioritize infrastructure repairs to support residential, commercial and industrial activities and efficiently and cost-effectively coordinate capital improvement projects.

Although the submittals were of very sound quality, the submittal by Freese and Nichols, Inc. was the highest ranked due the firm's demonstrated modeling experience and multi-utility master plan projects completed as well as demonstrating a clear mastery of GIS coordination abilities

At the July 17, 2018 Council Work Session, staff was directed to negotiate a professional services agreement with FNI for the Master Infrastructure Management Plan.

#### PROPOSAL:

The professional services proposal provides hydraulic modeling and calibration of the city's water, wastewater and stormwater utility systems and provides risk assessments and rankings to identify and develop a prioritized comprehensive capital improvement plan (CIP) in conjunction with the city's pavement management plan. The CIP will be developed to include costs, a phasing plan for identified projects, and will be integrated with the city's mapping system to show the proposed improvements and the project areas.

A discussion of funding methodologies is also included as well as specific discussions on utility rates and impact fees.

Article III of the proposal outlines a 24-month timeline, in order to capture data during both high and low demand periods, and also provides a liquidated damages clause to ensure adherence to the project schedule.

#### FISCAL IMPACT SUMMARY:

Fiscal Year Budget 2017-2018 allocated enterprise funding of \$160,000 water, \$75,000 in wastewater and \$75,000 in stormwater for a total availability of \$310,000. The professional services agreement proposes a cost to meet the budget.

#### ATTACHMENTS:

[FNI - Master Infrastructure Management Plan - 2018 08-28](#)

07/16

**AGREEMENT FOR PROFESSIONAL SERVICES**

STATE OF TEXAS §

COUNTY OF ERATH §

This Agreement is entered into by City of Stephenville, Texas, hereinafter called "City" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreements herein, the parties agree as follows:

I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement: City agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; City agrees to pay to FNI compensation. The Project is described as follows: Master Utility Management Plan

II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of City which is attached to and made a part of this Agreement.

III. **COMPENSATION:** City agrees to pay FNI for all professional services rendered under this Agreement in accordance with Attachment CO - Compensation which is attached hereto and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of \$310,000.00. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by City, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the City and FNI.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than City and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between City and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this Agreement, the \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

**City of Stephenville, Texas**  
(City)

\_\_\_\_\_

By: \_\_\_\_\_

Print Name and Title

ATTEST:

**Freese and Nichols, Inc.**  
(FNI)

  
\_\_\_\_\_

By: Kelly Dillard Digitally signed by Kelly Dillard  
DN: c=US, E=ktd@freese.com, O=FNI, OU=Stephenville, CN=Kelly Dillard  
Reason: I have reviewed this document  
Date: 2018.08.24.10:54:28 -0500

**Kelly Dillard, Vice President**

Print Name and Title

## SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

### Scope Task Outline

- A - Project Management
- B - General Data Collection
- C - Land Use Assumptions, Water Demands and Wastewater Load Projections
- D - Water and Wastewater Hydraulic Modeling, Existing and Future System Analysis
- E - Water and Wastewater Risk Based Assessment and Capital Improvement Plan
- F - Drainage Modeling and Project Identification
- G - Drainage Capital Improvement Plan
- H - Comprehensive Capital Improvement Plan
- I - Funding Opportunities Assessment

### ARTICLE I

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project:

#### **Task A – Project Management**

- A.1 **Project Administration:** FNI will provide project management services including project coordination and communications with the City. Monthly invoices and status reporting will be conducted.
- A.2 **Council Presentations:** FNI will prepare presentations and present at up to two (2) council presentations.

Project progress and milestone meetings are outlined in the individual scope tasks.

#### **Task B – General Data Collection**

- B.1 **Kick-Off Meeting:** FNI will meet with the City to review scope, project team, schedule of the project, and present a data request.
- B.2 **Data Collection:** FNI will compile information from the City including as-built files, GIS files, drainage complaints, facility sizing, water billing meter data, recently completed or under construction system improvements, groundwater well production data, and wastewater flow data. City planning documents are required to develop future population projections and the Land Use Assumptions. FNI will also obtain a 10-year water and wastewater capital improvements plan of completed projects from the City for review and inclusion in the impact fee calculations. Other data collection includes population and employment demographics data from North Central Texas Council of Governments (NCTCOG).
- B.3 **Review of City Planning Documents:** FNI will review the City's available planning documents and coordinate with the City to revise and adjust the projections based on published NCTCOG information or other data sources.
- B.4 **System Inventory Assistance:** FNI will provide up to 30 hours of GIS support to facilitate additional system inventory data collection to be incorporated in the masterplan study. FNI will develop a dataset format for field data collection. It is expected the City will collect information on approximately 250 features (sewer manhole measure downs and drainage infrastructure measurements). Field data collection by FNI is an additional service.

**Task C - Land Use Assumptions, Water Demands and Wastewater Load Projections**

- C.1 **Develop Land Use Assumptions:** FNI will utilize available data on impending developments and available lots to develop 5-year, 10-year, and 20-year land use assumptions. CCN, ETJ, and proposed annexation boundaries will be evaluated to define future water and wastewater service areas.
- C.2 **Meet with City to Discuss Proposed Land Uses throughout Future Service Area and Timing of Growth Expansion:** FNI will meet with the City to discuss the existing land uses and current and projected NCTCOG population projections, and update as necessary for 5-year, 10 year and 20-year conditions including the ETJ.
- C.3 **Review Historical Water Usage Records:** FNI will review historical records and use information to determine per capita water usage, commercial usage and peaking factors.
- C.4 **Develop Diurnal Water Demand Curves:** FNI will utilize SCADA data to develop average day and maximum day diurnal water demand curves for representation of daily water usage through the City for typical operating conditions.
- C.5 **Utilize Wastewater Field Testing Results to Develop Flow Data for Existing Wastewater Model Input:** FNI will utilize flow monitoring data conducting by the City in previous years and historical records to develop per capita wastewater flows, commercial flows and infiltration/inflow allowances. No flow monitoring is included as part of this contract.
- C.6 **Develop Water Demand and Wastewater Flow Projections:** FNI will develop water demand and wastewater flow projections for 5-year, 10-year, and 20-year conditions using the future land use assumptions and historical usage trends. The projections will be used to evaluate the sizing and timing of the capital improvement projects.
- C.7 **Progress Meeting:** FNI will meet with the City to discuss the land use assumptions, water demand and wastewater load projections. FNI will address comments from City staff and make revisions as necessary.

**Task D – Water and Wastewater Hydraulic Modeling, Existing and Future System Analysis**

- D.1 **Hydraulic Water and Wastewater Model Development:** FNI will develop the water model in the Innovyze InfoWater software to include 6-inch and larger water lines and other critical water lines in the modeling software. FNI will develop the wastewater model in the Innovyze InfoSewer software and utilize GIS data to include 10-inch and larger wastewater lines and other critical wastewater lines and lift stations in the modeling software. FNI will utilize the City's water and wastewater GIS mapping to create an electronic hydraulic model for both the water and wastewater systems.
- D.2 **Geocode Water Billing Meter Data:** FNI will create an electronic shapefile of the City's water customers showing location and usage by assigning a spatial location to each meter through a process called geocoding. This information will be used as part of the model validation and verification process.
- D.3 **Develop and Distribute Existing Water Demands:** FNI will utilize field testing results and data from the City utility billing system database to allocate existing demands throughout the City. The data will consist of metered usage fields for each customer account.

- D.4 **Conduct Water Pressure Testing:** FNI will identify up to ten locations for field testing based on areas of concern from the City. FNI will prepare procedures for the field testing showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from the City. City staff will provide FNI with SCADA data from pressure testing period.
- D.5 **Review Wastewater Treatment Plant Permit Status:** FNI will conduct a review of the historical flows to the wastewater treatment plant and current permit status to determine future expansion triggers.
- D.6 **Conduct Water Model Calibration:** FNI will conduct model calibration by adjusting pump flows, water line C-values, demand distribution, and system pressures. FNI will present information showing the degree of accuracy for the flows, tank levels, and pressures in the hydraulic model.
- D.7 **Allocate Existing Wastewater Flows throughout City and Conduct Model Calibration:** FNI will use utility billing information to allocate wastewater flows throughout the system and conduct model calibration by adjusting peaking factors and wastewater flow distribution.
- D.8 **Meet with City to Review Water and Wastewater Model Calibration Results:** FNI will prepare mapping showing comparison of water pressure results vs. model pressure results for water model calibration and of wastewater meter results vs. modeling results for wastewater model calibration.
- D.9 **Evaluate Water Supply, Pumping and Storage Capacity:** FNI will evaluate existing and future pumping capacity with regards to TCEQ requirements and general industry recommendations. Ground and elevated storage will also be evaluated. FNI will also analyze the amount of existing water supply plus future needs based on the water demand projections.
- D.10 **Conduct Wastewater Inflow and Infiltration Data Analysis:** FNI will review existing and on-going flow monitoring results conducted by the City. FNI will develop dry and wet weather flows, quantity of infiltration and inflows from each sewer basin and develop recommendations for infiltration and inflow allowances for the recommended 5-year design storm event.
- D.11 **Perform Extended Period Modeling and Analysis of Existing and Future Water System:** FNI will utilize calibrated water model to perform an extended period simulation of the existing and future water system under maximum day and peak hour water demands. FNI will utilize water demand projections and calibrated model to develop future water system model scenarios.
- D.12 **Perform Steady State Modeling and Analysis of Existing and Future Wastewater System:** FNI will utilize calibrated wastewater model to perform a steady state simulation of the existing and future wastewater system under peak wet weather flows. FNI will utilize wastewater load projections and calibrated model to develop future wastewater water system model scenarios.
- D.13 **Develop Water System Improvement Alternatives for 5-year, 10-year and 20-year Conditions:** FNI will utilize 20-year model to simulate system improvement alternatives to meet 5-year, 10-year and 20-year future growth. Water system facilities and lines will be sized to meet maximum day demands, peak hour demands and to provide adequate fire flows of 1,500 gpm.
- D.14 **Develop Wastewater System Improvement Alternatives for 5-year, 10 year and 20-year Conditions:** FNI will utilize wastewater flow projections and the calibrated wastewater model to develop a 20-year wastewater modeling scenario. FNI will utilize the 20-year model to simulate system improvement alternatives to meet 5-year, 10-year and 20-year future growth. Wastewater facilities and lines will be sized to meet peak wet weather flows.



**Task E - Water and Wastewater Risk Based Assessment and Capital Improvement Plan**

- E.1 **Meeting with City Staff on RBA Parameters:** FNI will conduct a workshop with City to discuss risk-based renewal prioritization strategies and to define level of service expectations for each delivery point and to select facility outage conditions for modeling. Goals of this workshop are to:
- Identify condition variables (pipe material, age, maintenance history, etc.) and components (structural, mechanical, electrical, etc.) for each facility type (pump station and storage) and pipelines
  - Identify criticality variables (capacity provided, line size and access issues, redundancy, etc.) for each facility type (pump station and storage) and pipelines
  - Identify scoring parameters within each variable.
  - Identify scoring system and relative weight factors of each component
- E.2 **Assess Condition of Water and Wastewater Piping:** FNI will develop the coarse scoring system and ranges for the parameters defined and assign a condition score to each pipe segment. Coarse scoring is an assumed condition based on pipe age, material, work order history, etc.
- E.3 **Assign Criticality to Facilities and Pipelines:** FNI will evaluate the criticality of facilities and pipeline segments by assessing the capacity provided, accessibility, and system redundancy among other factors. Assign a criticality score to each pipeline segment and each facility. Water pipeline segments are defined as the span between system valves. Wastewater pipeline segments are defined as the span between manholes.
- E.4 **Develop Prioritization Scoring System Criteria and Assign Overall Risk Score:** In consultation with City staff, FNI will develop prioritization scoring system criteria. Scoring system for the condition of facilities based on several criteria such as pipeline diameter, material, age, capacity, history of repairs, criticality, etc., would be used to prioritize projects. For above ground facilities, some of the criteria might include mechanical, site, structural, etc. Assign an overall risk score to each facility and pipeline segment.
- E.5 **Meeting to Review Results of RBA Scoring Analysis:** FNI will conduct a workshop with City Staff to discuss the results of the condition and criticality scoring analysis for pipelines and facilities.
- E.6 **Prioritize Renewal Projects with Business Cases:** FNI will utilize scoring system to prioritize recommended renewal actions for assets with high risk scores. Renewal projects will be prioritized based on results of the scoring system assessment and include the following:
- Select threshold/trigger for inclusion in CIP
  - Evaluate renewal actions including replacement, rehabilitation, further inspection, etc.
  - Define CIP categories including:
    - Appurtenance replacement
    - Facility and pipeline rehabilitation
    - Facility and pipeline replacement
  - Prepare business cases for each high-risk project

- E.7 **Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping:** Develop costs and phasing for each proposed project. Costs will be in Year 2019 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon water and wastewater system requirements and reliability needs and mapping showing project locations.
- E.8 **Workshop with City on Draft Capital Improvement Plan:** FNI will conduct a workshop with City to discuss draft CIP, project phasing, results of prioritization and analyze alternative completion dates as necessary.
- E.9 **Revise CIP and Prepare Preliminary Water and Wastewater System CIP Report:** FNI will revise computer modeling based upon the City's comments and modifications and prepare a CIP report discussing field test results, assumptions, water demand and wastewater flow projections and recommended capital improvement plans including schedule and costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI will provide the City with two (2) copies of the draft report for review. FNI will address one iteration of City review comments and incorporate into the final report. FNI will provide the City with five (5) copies of the final report along with digital copies in PDF format.

#### **Task F – Drainage Modeling and Project Identification**

- F.1 **Rain-on-Mesh Analysis:** FNI will develop a citywide rain-on-mesh drainage model in HEC-RAS 2D. This model is intended as a visual analysis tool to identify areas of high flood risk and conceptually quantify flood impacts to roads and private property. This model will be executed for up to three storm frequencies to evaluate the impacts of a range of flood events. The model will not include the effect of existing storm drain pipes although some modifications will be made to the 2D mesh to represent certain significant drainage features. The model will be based on best available topography provided by the City which is expected to be two-foot interval contours.
- F.2 **Flood Hazard Assessment:** Based on the rain-on-mesh analysis, FNI will map structures and roadway flooding depths. FNI will develop an objective scoring system to assess the flood hazard of each area. This information will be used to identify areas of interest for inclusion in the CIP.
- F.3 **Renewal Condition and Criticality Assessment:** FNI will perform a desktop analysis of existing drainage assets for consideration for renewal improvements. FNI will evaluate factors such as age, known condition, evidence of erosion, and criticality of the asset in this assessment.
- F.4 **Progress Meeting:** FNI will present the areas of interest identified in the flood hazard assessment and the risk-based renewal assessment to City staff. The purpose of the meeting is to corroborate the findings of the analysis against institutional knowledge of flood prone areas and discuss the causes and possible solutions to those areas. Candidates for capital improvement will be identified at this time.
- F.5 **Field Visit:** After identifying areas of interest, FNI will perform up to two days of field visits of the candidate areas with City staff. The field visit will be used to perform limited data collection of existing drainage infrastructure in these areas. The field visit will also allow the team to develop a more complete understanding of the drainage problems in these areas to facilitate the development of improvement concepts.

### Task G – Drainage Capital Improvement Plan

- G.1 **Conceptual Analysis and Improvements Identification:** FNI will develop a conceptual solution for each project area with enough detail to identify the major infrastructure needs. Both structural and non-structural alternatives will be considered (watershed management strategies, detention, buyouts, increased capacity, maintenance, public awareness etc.) One alternative will be selected per project area through coordination with City staff. Existing studies will be used, or limited modeling will be performed to develop the alternative. Up to twenty (20) project areas will be considered and up to five (5) will be analyzed where hydrologic and hydraulic modeling is necessary to adequately define the scope of improvements. Any field survey necessary for the analysis is an additional service.
- G.2 **Develop CIP Cost and Mapping:** Develop costs and mapping for each proposed project. Costs will be in Year 2019 dollars and will include engineering and contingencies. Mapping will be developed depicting the proposed improvements and demonstrating the project locations.
- G.3 **Develop Prioritization Scoring System Criteria:** In consultation with City staff, FNI will develop prioritization scoring criteria. Expected parameters include project cost, condition and criticality, flooding depth, overtopping velocities, and property damage. FNI will rank the proposed projects based on the preliminary scoring criteria.
- G.4 **Workshop to Review Draft Capital Improvements:** FNI will conduct a meeting to review the draft capital improvements and to evaluate prioritization criteria and ranking.
- G.5 **Revise CIP and Prepare Preliminary Drainage CIP Report:** FNI will address City comments from the workshop and prepare a report discussing the methodology of the study with final project descriptions, mapping, and cost estimates. FNI will provide the City with two (2) copies of the draft report for review.
- G.6 **Final Report:** FNI will address one iteration of City review comments and incorporate into the final report. FNI will provide the City with five (5) copies of the final report along with digital copies in PDF format.

### Task H – Comprehensive Capital Improvement Plan

- H.1 **Desktop Analysis of Comprehensive Projects:** FNI will prepare maps overlaying the identified capital improvements for water, wastewater, drainage, and paving and prepare tabular summaries of the prioritization scoring and cost of comprehensive project combinations.
- H.2 **Comprehensive Project CIP Workshop:** FNI will conduct a workshop to evaluate the comprehensive project analysis and the expected synergies of combining projects. The driver of each comprehensive project will be identified, and the prioritization will be evaluated based on the synergies of the project.
- H.3 **Comprehensive CIP Documentation:** FNI will summarize and document the outcome of the workshop in a memorandum format to be used in developing the City's capital improvement plan.

**Task I – Funding Opportunities Assessments**

- I.1 **Water and Wastewater Utility Rates:** FNI will obtain historical data on number of connections, metered water sales, wastewater flow, and historical water and wastewater rates etc. FNI will compare the CIP cost to available utility revenue to determine the adequacy of the existing rates to pay for capital improvements.
- I.2 **Stormwater Utility Fee:** FNI will review the City’s current fee structure and compare it to rates of nearby communities. FNI will compare the CIP cost to the available stormwater utility revenue to determine the adequacy of the existing rates to pay for capital improvements. FNI will describe the process of revising the rate structure and the allowable exclusions and components of an equitable structure.
- I.3 **Water, Wastewater, and Roadway Impact Fees:** FNI will describe the purpose, implementation process, and arguments for and against water, wastewater, and roadway impact fees. FNI will review the impacts fees of nearby communities as a benchmark for what developers pay in the region.
- I.4 **Documentation:** The results of any analyses and discussion of these funding sources will be presented in a memorandum.

**ARTICLE II**

**ADDITIONAL SERVICES:** Additional Services to be performed by FNI, if authorized by City, which are not included in the above described basic services, are described as follows:

- A. Field surveying topographic services.
- B. Field visits and field data collection in excess of the scoped services.
- C. GIS mapping services or assistance with these services in excess of the scoped of services.
- D. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- E. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- F. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
- G. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

**ARTICLE III**

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in 24 months from receipt of notice to proceed.

Failure to complete the project in accordance with the schedule will result in liquidated damages of \$50.00 per consecutive calendar day until the final deliverables are submitted.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

**ARTICLE IV**

**RESPONSIBILITIES OF CITY:** City shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which City will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Give prompt written notice to FNI whenever City observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services.
- G. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.

ARTICLE V

**DESIGNATED REPRESENTATIVES:** FNI and City designate the following representatives:

City's Designated Representative – Nick Williams, P.E., 298 W. Washington Street, Stephenville, Texas 76401, Phone 254-918-1223

City's Accounting Representative – Monica Harris, 298 W. Washington Street, Stephenville, Texas 76401, Phone 254-918-1211

FNI's Designated Representative – Justin Oswald, P.E., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; Phone 817-735-7506; Email: [jto@freese.com](mailto:jto@freese.com)

FNI's Accounting Representative – Stephanie Kirchstein, 2711 North Haskell Avenue, Suite 3300, Dallas, Texas 75204; 2174-217-2212; Email [stephanie.kirchstein@freese.com](mailto:stephanie.kirchstein@freese.com)

ATTACHMENT CO

COMPENSATION

Compensation to FNI shall be the lump sum fee of Three Hundred Ten Thousand Dollars (\$310,000.00). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify CITY for CITY'S approval before proceeding. Additional Services shall be computed based on the Schedule of Charges. Compensation is broken down as follows:

<u>Task</u>		
A	Project Management	17,000
B	General Data Collection	12,000
C	Land Use Assumptions and Water and Wastewater Load Projections	34,000
D	Water and Wastewater Hydraulic Modeling	81,000
E	Water/Wastewater RBA and CIP Development	60,000
F	Drainage Modeling	25,000
G	Drainage CIP Development	52,000
H	Comprehensive CIP	20,000
I	Funding Opportunities Assessments	<u>9,000</u>
	<b>Total</b>	<b>\$310,000</b>

**Schedule of Charges:**

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional 1	79	125
Professional 2	102	150
Professional 3	130	208
Professional 4	141	246
Professional 5	196	305
Professional 6	206	374
Construction Manager 1	83	164
Construction Manager 2	113	170
Construction Manager 3	161	192
Construction Manager 4	172	259
CAD Technician/Designer 1	62	121
CAD Technician/Designer 2	98	142
CAD Technician/Designer 3	115	188
Corporate Project Support 1	46	110
Corporate Project Support 2	66	155
Corporate Project Support 3	89	242
Intern / Coop	42	73

**Rates for In-House Services**

**Technology Charge**

\$8.50 per hour

**Bulk Printing and Reproduction**

	<u>B&amp;W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

**Travel**

Standard IRS Rates

**OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually in February. Last updated February 2018.

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12-01-16

**TERMS AND CONDITIONS OF AGREEMENT**

1. **DEFINITIONS:** The term City as used herein refers to the City of Stephenville, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
2. **CHANGES:** City, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by City and City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to City certificates of insurance which shall contain the following minimum coverage:

<b>Commercial General Liability</b>	<b>Workers' Compensation</b>
General Aggregate	Each Accident
\$2,000,000	\$1,000,000
<b>Automobile Liability (Any Auto)</b>	<b>Professional Liability</b>
CSL	\$3,000,000 Annual Aggregate
\$1,000,000	
7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and City.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the City upon payment of FNI's fees for services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI will be at City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.



9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this AGREEMENT, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
  
10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
  
11. **CONSTRUCTION REPRESENTATION:** If required by the AGREEMENT, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect City against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If City designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
  
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to CITY and in acceptance of the services as satisfactory by the CITY. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this AGREEMENT will be added to FNI's compensation.  
  
 If CITY fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to CITY, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.
  
13. **ARBITRATION:** No arbitration arising out of, or relating to, this AGREEMENT involving one party to this AGREEMENT may include the other party to this AGREEMENT without their approval.
  
14. **SUCCESSORS AND ASSIGNMENTS:** CITY and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and FNI are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.  
  
 Neither CITY nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.
  
15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this AGREEMENT. Should there be any conflict between the Purchase Order and the terms of this AGREEMENT, then this AGREEMENT shall prevail and shall be determinative of the conflict.

Public Works Committee  
**STAFF REPORT**



**SUBJECT:** City of Stephenville Municipal Solid Waste  
 Exclusive Franchise Agreement Amendment No. 2

**MEETING:** Council Committee Meetings - 28 Aug 2018

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Nick Williams

#### RECOMMENDATION:

Recommend approval of Amendment No. 2 to the Exclusive Franchise Agreement with Progressive Waste Solutions of TX, Inc. (doing business as WC of Texas) for the collection, hauling and disposal of municipal solid waste and construction and demolition waste in the City of Stephenville.

#### BACKGROUND:

The city entered into an exclusive franchise agreement with IESI, TX Corporation in January of 2005. In 2012, the corporation changed names to Progressive Waste Solutions of TX, Inc. The agreement was updated and approved in January of 2014 for a term of five years with an expiration date of December 31, 2018.

The agreement grants the service provider the exclusive franchise, license and privilege to collect, haul and dispose of municipal solid waste and construction and demolition waste generated within the city's corporate limits.

Copies of the existing agreement as well as the proposed amendment are attached to this memorandum.

#### FISCAL IMPACT SUMMARY:

Amendment No. 2 proposes to extend the term of the agreement for five (5) years until December 31, 2023.

No changes to the fee structure have been proposed since 2015 and no changes to the fee structure are proposed in the amendment.

Changes to the hours of service are proposed for commercial and industrial customers only whereby service could begin at 5:00 a.m. instead of 7:00 a.m. A provision is included whereby the city could require service hours to be reinstated not to start prior to 7:00 a.m. should complaints be received.

#### ATTACHMENTS:

[Solid Waste Franchise Agreement - Amendment No 2](#)

[Solid Waste Franchise Agreement - 2014\\_01-01](#)

**SECOND AMENDMENT TO THE EXCLUSIVE FRANCHISE AGREEMENT**

This Second Amendment to the Exclusive Franchise Agreement (the "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Progressive Waste Solutions of TX, Inc. d/b/a WC of Texas (the "Service Provider") and the City of Stephenville, Texas (the "City"). Any capitalized terms not otherwise defined herein shall be given the meaning ascribed to them within the Agreement (as defined below).

**RECITALS:**

**WHEREAS**, the City and the Service Provider entered into an Exclusive Franchise Agreement dated January 1, 2014 followed by a First Amendment dated January 6, 2015 (as amended, the "Agreement") to provide collection, hauling, and disposal services for Municipal Solid Waste and Construction Waste within the City (as such terms are defined in the Agreement); and

**WHEREAS**, the City and the Service Provider mutually desire to extend and amend the Agreement as further described herein.

**AGREEMENT:**

**NOW, THEREFORE**, and in consideration of the premises and such other lawful consideration, the receipt and sufficiency of which each of the parties hereto acknowledge, the parties agree as follows:

1. Section 12. – "TERM OF AGREEMENT" is hereby deleted in its entirety and replaced with the following:

**"TERM OF AGREEMENT**. The term of this Agreement shall be for a period of five (5) years, commencing on January 1, 2019 and concluding on December 31, 2023. At the expiration of the term of this Agreement, the Agreement will be extended for successive periods of five (5) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least one hundred eighty (180) days prior to the expiration date of this Agreement or one hundred eighty (180) days prior to any of the then applicable individual five-year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year Agreement, or at the end of the subsequent five (5) year extension period, as applicable."

2. Section 18 – "HOURS OF SERVICE" is hereby deleted in its entirety and replaced with the following:

**"HOURS OF SERVICE**. For all the Services provided hereunder to Residential Units, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. For all the Services provided hereunder to Commercial and Industrial Units, the Service Provider's hours of service shall be between 5:00 a.m. to 7:00 p.m., Monday through Friday; provided, however, that, if the City receives three (3) or more complaints within any calendar month regarding Service Provider's rendering of the Services pursuant to this sentence prior to 7:00 a.m., the City may, at its discretion, notify the Service Provider in writing that the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., which notice shall be effective

forty-eight (48) hours after receipt by Service Provider. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following Business Day.”

3. Reaffirmation. The parties hereby reaffirm their agreement with all the terms and provisions of the Agreement as amended by this Amendment.

4. Entire Agreement. The Agreement and this Amendment represent the entire agreement among the parties with respect to the matters that are the subject hereof

5. Counterparts; Facsimile Signatures. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument representing this Amendment between the parties hereto, and it shall not be necessary for the proof of this Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures:

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the date first written above.

CITY OF STEPHENVILLE, TEXAS

PROGRESSIVE WASTE SOLUTIONS OF TX, INC. D/B/A  
WC OF TEXAS

By: \_\_\_\_\_  
Doug Svien

By: \_\_\_\_\_  
Greg Brown

Title: Honorable Mayor

Title: Division Vice President

ATTEST:

By: \_\_\_\_\_  
Staci L. King

Title: City Secretary

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR THE COLLECTION, HAULING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE  
IN THE CITY OF STEPHENVILLE, TEXAS**

**JANUARY 1, 2014**

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR THE COLLECTION, HAULING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE  
IN THE CITY OF STEPHENVILLE, TEXAS**

**STATE OF TEXAS**

**COUNTY OF ERATH**

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of January 1, 2014, by and between Progressive Waste Solutions of TX, Inc., a Texas Corporation (the "Service Provider"), and the City of Stephenville, Texas (the "City").

WHEREAS, the City and IESI TX Corporation ("IESI") entered into an Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Municipal Solid Waste and Construction and Demolition Waste in the City of Stephenville, Texas dated as of January 1, 2005 (the "Original Contract");

WHEREAS, on December 2, 2008, the City and IESI entered into the First Amendment, (the "First Amendment"), where the parties amended and extended the Original Contract;

WHEREAS, the Original Contract and the First Amendment are hereby collectively referred to as the "Contract";

WHEREAS, on June 20, 2012 IESI TX Corporation changed its name to Progressive Waste Solutions of TX, Inc.;

WHEREAS, the Contract is scheduled to terminate as of December 31, 2013;

WHEREAS the City and the Service Provider mutually desire to amend, renew and restate the Contract as further described herein; and

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

**SECTION 1. DEFINED TERMS.**

The following terms, as used herein, will be defined as follows:

**Bag** - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed thirty-five (35) pounds.

**Bulky Item** - Any item not measuring in excess of either seventy-two (72) inches in length or one hundred fifty (150) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household items.

**Bundles** - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers and tree trimmings.

**Business Day** - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

**Commercial Hand Collect Unit** - A small Commercial Unit that utilizes a Roll-Out(s) for the collection of its Municipal Solid Waste for its regularly scheduled collection days.

**Commercial Unit** - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

**Construction and Demolition Waste** - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste or Bulky Items.

**Container** - Any receptacle, including, but not limited to, dumpsters, Roll-Offs and Roll-Outs, provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste or Construction and Demolition Waste. Containers are designed to hold between thirty (30) gallons and forty (40) cubic yards of Solid Waste.

**Hazardous Waste** - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

**Handicapped Residential Unit** - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid

Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Administrator and agreed to by the Service Provider.

**Holidays** - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

**Industrial Unit** - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste or Construction and Demolition Waste during, or as a result of, its operations.

**Landfill** - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

**Multi-Family Residential Unit** - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste.

**Municipal Solid Waste** - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

**Recyclable Materials** -

- (a) **Paper** - Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) **Metal** - Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (c) **Plastic** - Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

**Residential Unit** - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

**Roll-Off** - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

**Roll-Out** - A Container with ninety-five (95) gallons of capacity.



**Single-Family Residential Unit** - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

**Solid Waste** - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(34) whether such waste is mixed with or constitutes recyclable materials.

**White Good** - Any item not measuring in excess of either two (2) cubic yards in size or one-hundred fifty (150) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

## **SECTION 2. EXCLUSIVE FRANCHISE GRANT.**

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the City's present and future streets, alleys, bridges and public properties. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages.

## **SECTION 3. OPERATIONS.**

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste and Construction and Demolition Waste (as provided herein) (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Services").

B. **Nature of Operations.** The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the title to all Municipal Solid Waste and Construction and Demolition Waste collected, hauled and disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

**SECTION 4. SINGLE-FAMILY RESIDENTIAL AND COMMERCIAL HAND COLLECT UNIT COLLECTIONS.**

A. Single-Family Residential Units. The Service Provider will collect Municipal Solid Waste from Single-Family Residential Units; provided, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider, (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day and (iii) such Roll-Outs are placed no closer than five (5) feet from mailboxes, vehicles or other obstructions.

B. Commercial Hand Collect Units. The Service Provider will collect Municipal Solid Waste from Commercial Hand Collect Units; provided, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider, (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Commercial Hand Collect Unit no later than 7:00 a.m. on the scheduled collection day and (iii) such Roll-Outs are placed no closer than five (5) feet from mailboxes, vehicles or other obstructions; provided, however, the Service Provider and City agree to work together to determine a mutually agreeable procedure for the placement and collection of Roll-Outs from those Commercial Hand Collect Units located on the City Square.

C. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Roll-Outs provided by the Service Provider. Municipal Solid Waste in excess of the Roll-Outs' limits, or placed outside or adjacent to the Roll-Outs, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste continues, the City shall require the Single-Family Residential or Commercial Hand Collect Unit to utilize an additional Roll-Out so that the excess or misplaced Municipal Solid Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9 hereto.

D. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Roll-Outs; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need. The customer shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder to Single-Family Residential Units.

**SECTION 5. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

The Service Provider will collect Municipal Solid Waste from Commercial, Industrial and Multi-Family Residential Units, as provided for in Section 9 hereof. The Service Provider shall

only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9 hereof. The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Commercial, Industrial or Multi-Family Residential Unit assumes all liabilities for damage to pavement or road surface.

**SECTION 6. SPECIAL COLLECTIONS AND SERVICES.**

A. Municipal Locations. The Service Provider will provide, at no cost to the City, up to an aggregate number of thirteen (13) Containers (each up to six (6) cubic yards in size) to collect Municipal Solid Waste at certain municipal locations within the City once or twice per week, as needed. Specifically, the provisions of this Section 6.A. shall apply to the following locations:

- Municipal Service Center – 2 dumpsters
- Public Safety Building – 2 dumpsters
- City Hall - 3 Roll-Outs
- Senior Citizens Center – 1 dumpster
- City Park/City Recreation Hall Building – 3 dumpsters
- Animal Shelter – 1 dumpster
- City Library – 1 dumpster

B. Recycling Drop-Off. The Service Provider will provide, at no cost to the City, up to three (3) Roll-Offs for citizens of the City to deposit Recyclable Materials for collection and processing by the Service Provider. Such Roll-Offs shall be located at the Service Provider's facility located at 1291 N. Bates, Stephenville, TX 76401 and shall be emptied on an as needed basis.

C. Annual City Report. Beginning on or before August 31, 2014, and on or before each August 31 of this Agreement thereafter, the Service Provider shall provide the City with a written annual report containing the following information: (i) a brief description of the Service Provider's community involvement within the City during the previous calendar year; (ii) a brief description of any governmental violations received by the Service Provider while performing the Services during the previous calendar year; (iii) tonnage of Municipal Solid Waste collected from within the City during the previous calendar year; (iv) tonnage of Recyclable Materials collected from within the City during the previous calendar year; (v) tonnage of Construction and Demolition Waste collected from within the City and the percentage hauled to the City of Stephenville Class IV Landfill during the previous calendar year; (vi) percentage of complaints resolved during the previous calendar year; and (vii) link to Service Provider's parent company's audited financial statement for the previous calendar year.

D. Quality Control/Assurances. The Service Provider will maintain a quality control program to ensure the Services are performed under commonly accepted industry standards as well as the provisions of this Agreement. As quality assurance, the City may assess liquidated damages against the Service Provider for the failures expressly provided for in Section 30 hereof. The Service Provider shall designate a point of contact that will be responsible for working with the City on any quality control issues.

**SECTION 7. BULKY ITEMS AND BUNDLES.**

A. Pre-Arranged Collections. The Service Provider will collect (i) one (1) Bulky Item and (ii) up to one (1) cubic yard of Bundles from Single-Family Residential Units once per week, as designated by the Service Provider; provided, that (i) the Single-Family Residential Units requiring such collections notify the Service Provider no later than the end of the Business Day the Friday prior to the scheduled collection day, and (ii) the Bulky Items and/or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) are as defined in Section 1 hereof. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Single-Family Residential Units that have complied with Sections 1 and 7.A. hereof. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 7.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste, White Goods or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off Services.

**SECTION 8. TITLE TO EQUIPMENT.**

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

**SECTION 9. RATES AND FEES.**

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

A. Single-Family Residential Unit Services. For the twice weekly collection Services provided to Single-Family Residential Units under Section 4.A. hereof, the Service Provider shall charge (i) \$11.34 per month for each Single-Family Residential Unit utilizing one Roll-Out, plus (ii) \$5.67 per month for each additional Roll-Out utilized by such Single-Family Residential

Unit. These rates apply to all Single-Family Residential Units that are located within the City's corporate limits and billed by the City for water and sewer services.

B. Commercial Hand Collect Unit Services. For the twice weekly collection Services provided to Commercial Hand Collect Units under Section 4.B. hereof, the Service Provider shall charge (i) \$18.81 per month for each Commercial Hand Collect Unit utilizing one Roll-Out, plus (ii) \$9.41 per month for each additional Roll-Out utilized by such Commercial Hand Collect Unit. These rates apply to all Commercial Hand Collect Units that are located within the City's corporate limits and billed by the City for water and sewer services.

C. Commercial, Industrial and Multi-Family Residential Unit Services. For the as needed/requested Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilized the following rates:

Container Size	1 Collection per Week	2 Collections per Week	3 Collections per Week	4 Collections per Week	5 Collections per Week	6 Collections per Week
2 Cubic Yards	\$64.52	\$108.44	N/A	N/A	N/A	N/A
3 Cubic Yards	\$88.14	\$118.15	\$180.17	\$236.79	\$293.41	N/A
4 Cubic Yards	\$96.68	\$138.96	\$244.51	\$329.45	\$414.38	\$499.30
6 Cubic Yards	\$114.58	\$173.30	\$302.41	\$405.37	\$508.32	\$612.77
8 Cubic Yards	\$129.50	\$237.11	\$352.21	\$470.31	\$592.00	\$711.91

For any collection that the Service Provider is required to make in excess of the above weekly figures, the Service Provider shall charge the following rates, per Container.

Size of Container	Each Additional Collection
2 Cubic Yards	\$40.71
3 Cubic Yards	\$48.22
4 Cubic Yards	\$54.90
6 Cubic Yards	\$68.26
8 Cubic Yards	\$81.46

The foregoing rates apply to all Commercial, Industrial and Multi-Family Residential Units that are located within the City's corporate limits and billed by the City for water and sewer services.

D. Roll-Off Services. Subject to adjustment by the Service Provider in its sole discretion, for the Services provided under Sections 7.B. and 11 hereto, the Service Provider shall charge for each Roll-Off utilized the following fees:

Delivery or Exchange Fee	\$117.00 per delivery or exchange
Rental Fee	\$5.50 per day
Haul Fee	\$200.00 per haul
Disposal Fee	\$50.00 per ton (3 ton minimum required)

The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Unit on an individual basis regarding the Roll-Off Services to be provided. The Roll-Off Services will be billed directly to such Commercial, Industrial or Residential Unit and will be collected by the Service Provider. The Roll-Offs provided pursuant to this Section 9.D. must be located within the City in accordance with City ordinances and policies. Notwithstanding anything to the contrary contained herein, the Franchise Fee (as defined below) shall not apply to the services set forth in this Section 9.D.

E. Sludge Services. The Service Provider will provide hauling and disposal services for sludge from the City's wastewater treatment plant; provided, that the sludge is accompanied by requisite documentation of the State of Texas and meets the TCEQ's disposal guidelines. The City agrees to assist the Service Provider and, if necessary, agrees to adjust and regulate load weights in order to comply with the Texas Department of Transportation's weight guidelines. For the sludge Services provided to the City under this Section 9.E., the Service Provider will charge \$365.00 for each Container hauled and emptied.

F. Stephenville Type IV Landfill. Subject to adjustment by the Service Provider, in its sole discretion, the Service Provider shall attempt to haul twenty-five percent (25%) of the Roll-Offs containing Construction and Demolition Waste that are generated within the City's corporate limits to the City's landfill located at 669 County Rd. 385, Stephenville, TX 76401.

**SECTION 10. RATE ADJUSTMENT.**

A. CPI-U Adjustment. On each anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the City, to increase or decrease the rates set forth in Section 9 hereof (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The following website (or any successor website) will be the source for such information: [http://data.bls.gov/pdq/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUUR0300SA0,CUUS0300SA0](http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0,CUUS0300SA0). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 10.A. The amount of the increase or decrease under this Section 10.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., at any time during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments

herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City shall not unreasonably withhold, condition or delay its consent to any requested rate increase. In the event the City fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right, in its sole discretion, to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, upon giving prior notice to the City, to increase the Initial Rates by an amount equal to the sum of (x) the amount, if any, that the disposal fees charged to the Service Provider at such other Landfill exceed those previously charged to the Service Provider at the Initial Landfill(s), and (y) the amount, if any, that the transportation costs incurred by the Service Provider in connection with transporting the Municipal Solid Waste and Construction and Demolition Waste to such other Landfill exceed those that would have been incurred by the Service Provider if such Municipal Solid Waste and Construction and Demolition Waste was transported to the Initial Landfill(s).

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

E. Fuel Surcharge. The Service Provider shall (i) charge the City a Fuel Surcharge (as defined herein) for any month in which the average price of diesel fuel during the preceding month exceeded \$3.00 per gallon (the "Base Price") or (ii) credit the City with a Fuel Refund (as defined herein) for any month in which the average price of diesel fuel during the preceding month fell below \$2.50 per gallon (the "Refund Price") in accordance with this Section 10.E. In the event the Average Monthly Price (as defined herein) is (i) equal to or exceeds the Refund Price and (ii) equal to or lower than the Base Price, then there will be no Fuel Surcharge charged or Fuel Refund credited to the City for the next month. The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration's published price for diesel fuel – gulf coast region. The following website (or any successor website) will be the source for such information: <http://www.eia.gov/petroleum/gasdiesel/>. The average price of

diesel fuel for each month (each, an "Average Monthly Price") shall be the average of the weekly fuel prices published for each week during such month.

The Fuel Surcharge payable for any month (each, a "Fuel Surcharge") shall be determined by referring to the schedule attached hereto as Exhibit "A" in accordance with the Average Monthly Price. The Fuel Refund credited to the City during any month (each, a "Fuel Refund") shall be determined by referring to the schedule attached hereto as Exhibit "A" in accordance with Average Monthly Price. In the event the Average Monthly Price is greater than the Base Price, the applicable Fuel Surcharge will be included on the invoice to the City for the following month. In the event the Average Monthly Price is less than the Refund Price, the City will be credited with the applicable Fuel Refund on the following month's invoice. Notwithstanding anything to the contrary contained herein, the Franchise Fee shall not apply to the Fuel Surcharge or Fuel Refund.

#### **SECTION 11. EXCLUSIONS.**

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human, dead animals, auto parts or used tires from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition Waste, auto parts or used tires by utilizing the Service Provider's Roll-Off Services.

#### **SECTION 12. TERM OF AGREEMENT.**

The term of this Agreement shall be for a period of five (5) years, commencing on January 1, 2014 and concluding on December 31, 2018. At the expiration of the term of this Agreement, the Agreement will be extended for successive periods of five (5) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 90 days prior to the expiration date of this Agreement or 90 days prior to any of the then applicable individual five-year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year Agreement, or at the end of the subsequent five (5) year extension period, as applicable.

#### **SECTION 13. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.



**SECTION 14. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

**SECTION 15. PROCESSING, BILLING AND FEES.**

A. Monthly Statement. On a monthly basis, the Service Provider agrees to bill the City the rates and fees charged under Sections 9.A through 9.C. hereto for all Commercial, Industrial and Residential Units possessing active water meters within the City's corporate limits, as well as from all other Commercial, Industrial and Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste within the City's corporate limits (the "Monthly Statement") on or around the 1<sup>st</sup> day of the month, immediately following the month in which such Services were provided, commencing on February 1, 2014. Thereafter, the City will remit to the Service Provider in arrears an amount equal to (y) the gross receipts collected from such Monthly Statement, less (z) a franchise fee equal to seven percent (7%) of the gross receipts collected from such Monthly Statement (the "Franchise Fee"). Such remittance shall be made by the City on or before the last day of each month (for the immediately preceding month's service) commencing on February 28, 2014. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the service type, size, location, and rate for Commercial Units and Industrial Units, as well as the number and rate of Residential Units which have been billed for that month. The City shall be solely responsible for billing and collecting such rates and fees from all Commercial, Industrial and Residential Units possessing active water meters within the City's corporate limits, as well as from all other Commercial, Industrial and Residential requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. Taxes. In addition to the amounts billed and collected by the City under Section 15.A., the City shall also be responsible for billing, collecting and remitting/paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Delinquent Accounts. Each month the City shall notify the Service Provider in writing of any Commercial, Industrial or Residential Unit that is thirty (30) or more days delinquent in paying the City for the Services provided by the Service Provider and billed by the City under this Agreement. Upon receipt of such written notice of delinquency, the Service Provider may

discontinue its Services to such delinquent Commercial, Industrial or Residential Unit. Upon further written notification by the City that such Commercial, Industrial or Residential Unit has paid the delinquent amount owed, the Service Provider shall resume its Services to such Commercial, Industrial or Residential Unit on the next regularly scheduled collection day.

D. Billings for Roll-Off Services. Notwithstanding the above, the Service Provider will bill and collect the rates and fees contained in Section 9.D. hereof, from all Residential, Commercial and Industrial Units for services performed with respect to Roll-Off Containers. The Service Provider shall also bill and collect the rates and fees contained in Sections 9.D. and 9.E. from the City for all services performed for the City with respect to Roll-Off Containers.

#### **SECTION 16. SPILLAGE.**

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Construction and Demolition Waste not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Construction and Demolition Waste placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider may report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Construction and Demolition Waste. Should excess Municipal Solid Waste or Construction and Demolition Waste continue to be placed outside of the Containers, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste or Construction and Demolition Waste, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste or Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9 hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

#### **SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.**

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container as directed in Sections 4 and 5 hereof, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste or Construction and Demolition Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste or Construction and Demolition Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate

the correction required in order that such Municipal Solid Waste or Construction and Demolition Waste may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste or Construction and Demolition Waste has not been removed from such Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Construction and Demolition Waste from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Construction and Demolition Waste on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time.

#### **SECTION 18. HOURS OF SERVICE.**

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following Business Day.

#### **SECTION 19. CUSTOMER SERVICE.**

The City agrees to field all inquiries and complaints from Commercial, Industrial and Residential Units relating to the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. The Service Provider shall maintain an office or other facility through which it may be contacted. Such office shall be equipped with sufficient personnel and telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. Calls received shall be responded to in a courteous manner, and calls received but not answered during normal office hours shall be responded to within twenty-four (24) hours.

#### **SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.**

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this

Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Agreement.

**SECTION 21. VEHICLES AND EQUIPMENT.**

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste and Construction and Demolition Waste onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week.

**SECTION 22. DUE CARE.**

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

**SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.**

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

**SECTION 24. INSURANCE COVERAGE.**

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000

(3) Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 in the aggregate, combined single limit for Bodily Injury and Property Damage Liability
(4) Automobile Liability	\$2,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability
(5) Pollution Legal Liability	\$2,000,000 each loss
(6) Excess or Umbrella	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. Upon the City's request, the Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 24.

**SECTION 25. INDEMNITY.**

To the extent covered by applicable insurance, the Service Provider assumes all risks of loss or injury to property or persons caused by its performance of the Services. The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants.

**SECTION 26. SAVINGS PROVISION.**

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

**SECTION 27. TERMINATION.**

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

**SECTION 28. FORCE MAJEURE.**

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

**SECTION 29. GOVERNING LAW.**

In the event of any controversy, claim or dispute between the parties hereto arising out of or relating in any matter whatsoever to this Agreement, such controversy, claim or dispute shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, for any controversy, claim or dispute between the parties hereto arising out of or relating in any matter whatsoever to this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all controversies, claims or disputes arising out of or relating in any manner whatsoever to this Agreement shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such controversy, claim or dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

**SECTION 30. LIQUIDATED DAMAGES.**

In the event the Service Provider fails to perform in accordance with the provisions of this Agreement, the City may withhold from any monies due to the Service Provider, not as a penalty but as liquidated damages for such breach of contract, the amounts defined herein for the failures provided in this Section 30.

Failure to clean any spill on the City's streets caused by a sudden and unforeseen mechanical failure resulting in oil, Solid Waste, or fluid loss from the Service Provider's collection vehicles within 24 hours of notification from the City	\$250.00 per incident, per day
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Failure to collect a missed collection within the  
cure period specified in Section 17 hereof

\$100.00 per day

Prior to the assessment of any liquidated damages, the City shall notify the Service Provider in writing of the liquidated damages to be assessed and the basis for each assessment, and allow a reasonable opportunity for the Service Provider to contest the assessment of such liquidated damages.

**SECTION 31. NOTICES.**

Any notices required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at the address set forth below:

If to the City:

City of Stephenville, Texas  
298 West Washington St.  
Stephenville, TX 76401  
Attn: City Administrator

If to the Service Provider:

Progressive Waste Solutions of TX, Inc.  
1291 N. Bates  
Stephenville, TX 76401  
Attn: District Manager

With a Copy to:

IESI Corporation  
2301 Eagle Parkway, Suite 200  
Ft. Worth, TX 76177  
Attn: Legal Department

or such other addresses as the parties may hereafter specify by written notice and delivered in accordance herewith.

**SECTION 32. ATTORNEYS' FEES.**

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

**SECTION 33. ACCEPTANCE.**

PASSED AND APPROVED BY THE CITY OF STEPHENVILLE COMMISSION MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 3RD DAY OF DECEMBER, 2013.

PROGRESSIVE WASTE SOLUTIONS  
OF TX, INC.

CITY OF STEPHENVILLE, TEXAS

By: \_\_\_\_\_  
John Gustafson, Vice President

By: *Jerry K. Weldon*  
Jerry K. Weldon, II, Mayor

ATTEST:

*Cindy L. Stafford*  
Cindy L. Stafford, City Secretary





Exhibit "A"

City of Stephenville Fuel Surcharge/Refund Schedule

Average Monthly Price		Fuel Surcharge/Refund
\$ 2.05	\$ 2.09	\$ (2,159.53)
\$ 2.10	\$ 2.14	\$ (1,919.58)
\$ 2.15	\$ 2.19	\$ (1,679.63)
\$ 2.20	\$ 2.24	\$ (1,439.68)
\$ 2.25	\$ 2.29	\$ (1,199.74)
\$ 2.30	\$ 2.34	\$ (959.79)
\$ 2.35	\$ 2.39	\$ (719.84)
\$ 2.40	\$ 2.44	\$ (479.89)
\$ 2.45	\$ 2.49	\$ (239.95)
\$ 2.50	\$ 2.54	\$ -
\$ 2.55	\$ 2.59	\$ -
\$ 2.60	\$ 2.64	\$ -
\$ 2.65	\$ 2.69	\$ -
\$ 2.70	\$ 2.74	\$ -
\$ 2.75	\$ 2.79	\$ -
\$ 2.80	\$ 2.84	\$ -
\$ 2.85	\$ 2.89	\$ -
\$ 2.90	\$ 2.94	\$ -
\$ 2.95	\$ 2.99	\$ -
\$ 3.00	\$ 3.04	\$ -
\$ 3.05	\$ 3.09	\$ 239.95
\$ 3.10	\$ 3.14	\$ 479.89
\$ 3.15	\$ 3.19	\$ 719.84
\$ 3.20	\$ 3.24	\$ 959.79
\$ 3.25	\$ 3.29	\$ 1,199.74
\$ 3.30	\$ 3.34	\$ 1,439.68
\$ 3.35	\$ 3.39	\$ 1,679.63
\$ 3.40	\$ 3.44	\$ 1,919.58
\$ 3.45	\$ 3.49	\$ 2,159.53
\$ 3.50	\$ 3.54	\$ 2,399.47
\$ 3.55	\$ 3.59	\$ 2,639.42
\$ 3.60	\$ 3.64	\$ 2,879.37
\$ 3.65	\$ 3.69	\$ 3,119.32
\$ 3.70	\$ 3.74	\$ 3,359.26
\$ 3.75	\$ 3.79	\$ 3,599.21
\$ 3.80	\$ 3.84	\$ 3,839.16
\$ 3.85	\$ 3.89	\$ 4,079.11
\$ 3.90	\$ 3.94	\$ 4,319.05
\$ 3.95	\$ 3.99	\$ 4,559.00
\$ 4.00	\$ 4.04	\$ 4,798.95
\$ 4.05	\$ 4.09	\$ 5,038.90
\$ 4.10	\$ 4.14	\$ 5,278.84
\$ 4.15	\$ 4.19	\$ 5,518.79
\$ 4.20	\$ 4.24	\$ 5,758.74
\$ 4.25	\$ 4.29	\$ 5,998.69
\$ 4.30	\$ 4.34	\$ 6,238.63
\$ 4.35	\$ 4.39	\$ 6,478.58
\$ 4.40	\$ 4.44	\$ 6,718.53
\$ 4.45	\$ 4.49	\$ 6,958.48
\$ 4.50	\$ 4.54	\$ 7,198.42
\$ 4.55	\$ 4.59	\$ 7,438.37
\$ 4.60	\$ 4.64	\$ 7,678.32
\$ 4.65	\$ 4.69	\$ 7,918.27
\$ 4.70	\$ 4.74	\$ 8,158.21
\$ 4.75	\$ 4.79	\$ 8,398.16
\$ 4.80	\$ 4.84	\$ 8,638.11
\$ 4.85	\$ 4.89	\$ 8,878.06
\$ 4.90	\$ 4.94	\$ 9,118.00
\$ 4.95	\$ 4.99	\$ 9,357.95
\$ 5.00	\$ 5.04	\$ 9,597.90

**FIRST AMENDMENT**

This **FIRST AMENDMENT** (the “First Amendment”) is entered into as of the 6<sup>th</sup> day of January 2015 to be effective as of January 1, 2015 (the “Effective Date”) by and between the City of Stephenville, Texas, a municipal corporation (the “City”) and Progressive Waste Solutions of Texas, Inc., formerly known as IESI TX Corporation, a Texas corporation (the “Service Provider”).

**RECITALS:**

**WHEREAS**, the City and Service Provider entered into an Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Municipal Solid Waste and Construction and Demolition Waste on or about January 1, 2005 (the “Agreement”) and a First Amendment on December 2, 2008 extending the Agreement until December 31, 2013 followed by Second and Third Amendments on February 8, 2011 and December 6, 2011 adjusting rates to reflect CPI fluctuation for Fiscal Year 2011. An amended and renewed Agreement was approved on January 7, 2014 for a term of five years set to expire December 31, 2018.

**WHEREAS**, the City and Service Provider desire to further amend, extend and restate the Agreement as more fully described herein;

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and in the Agreement as amended, the City and Service Provider hereby agree as follows:

1. Rates and Fees. Section 9 of the Agreement is hereby deleted in its entirety and replaced with the following:

A. Single-Family Residential Unit Services. For the twice weekly collection Services provided to Single Family Residential Units under Section 4.A. hereof, the Service Provider shall charge (i) \$11.58 per month for each Single-Family Residential Unit utilizing one Roll-Out, plus (ii) \$5.79 per month for each additional Roll-Out utilized by such Single-Family Residential Unit. These rates apply to all Single-Family Residential Units located within the City’s corporate limits and billed by the City for water and/or sewer services.

B. Commercial Hand Collect Unit Services. For the twice weekly collection Services provided to Commercial Hand Collect Units under Section 4.B. hereof, the Service Provider shall charge (i) \$18.80 per month for each Commercial Hand Collect Unit utilizing one Roll-Out, plus (ii) \$9.61 per month for each additional Roll-Out utilized by such Commercial Hand Collect Unit. These rates apply to all Commercial Hand Collect Units that are located within the City’s corporate limits and billed by the City for water and sewer services.

C. Commercial, Industrial and Multi-Family Residential Unit Services. For the as needed/requested Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilizing the following rates:

**COMMERCIAL MONTHLY RATE SCHEDULE**

**Collections Per Week**

Size / Pickup	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week	Extra Pickups
2 Cu Yd	\$ 65.90	\$ 110.76	\$ 155.62	\$ -	\$ -	\$ -	\$ 41.58
3 Cu Yd	\$ 90.02	\$ 120.68	\$ 184.02	\$ 241.86	\$ 299.68	\$ -	\$ 49.25
4 Cu Yd	\$ 98.75	\$ 141.93	\$ 249.74	\$ 336.49	\$ 423.24	\$ 509.98	\$ 56.07
6 Cu Yd	\$ 117.03	\$ 177.00	\$ 308.88	\$ 414.04	\$ 519.20	\$ 625.88	\$ 69.72
8 Cu Yd	\$ 132.27	\$ 242.18	\$ 359.74	\$ 480.37	\$ 604.66	\$ 727.14	\$ 83.20

**Roll-Out Containers**

Residential	\$ 11.58
Additional Cart	\$ 5.79
Commercial Hand	\$ 18.80
Commercial Extra	\$ 9.61

The foregoing rates apply to all Commercial, Industrial and Multi-Family Residential Units located within the City's corporate limits or billed by the City for water and/or sewer services.

D. Roll-Off Services. Subject to adjustment by the Service Provider in its sole discretion, for the Services provided under Sections 7.B. and 10 hereto, the Service Provider shall charge for each Roll-Off utilized the following fees:

**Open Top Roll-Off Containers**

Haul Fee	\$ 203.31
Disposal Fee per ton (3 ton min.)	\$ 50.00
Delivery and Exchange	\$ 118.94
Daily Container Rental	\$ 5.59

The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Unit on an individual basis regarding the Roll-Off Services to be provided. The Roll-Off Services will be billed directly to such Commercial, Industrial or Residential Unit and will be collected by the Service Provider. The Roll-Offs provided pursuant to this Section 9.D. must be located within the City in accordance with City ordinances and policies. Notwithstanding anything to the contrary contained herein, the Franchise Fee (as defined below) shall not apply to the services set forth in this Section 9.D.

E. Sludge Services. The Service Provider will provide hauling and disposal services for sludge from the City's wastewater treatment plant; provided, that the sludge is accompanied by requisite documentation of the State of Texas and meets the TCEQ's disposal guidelines. The City agrees to assist the Service Provider and, if necessary, agrees to adjust and regulate load weights in order to comply with the Texas Department of Transportation's weight guidelines. For the Services provided under this Section 9.E., the Service Provider will charge \$372.81 for each Container hauled and emptied.

F. Stephenville Type IV Landfill. Subject to adjustment by the Service Provider, in its sole discretion, the Service Provider shall attempt to haul twenty-five percent (25%) of the Roll-Offs containing Construction and Demolition Waste that are generated within the City's corporate limits to the City's landfill located at 669 County Rd. 385, Stephenville, TX 76401.

2. Reaffirmation. The parties hereto hereby restate and reaffirm their agreement with all of the terms and provisions of the Agreement, as amended hereby.

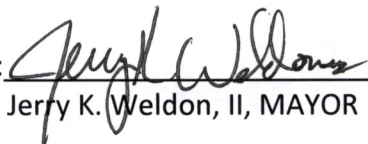
3. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument representing this Second Amendment between the parties hereto, and it shall not be necessary for the proof of this Second Amendment that any party produce or account for more than one such counterpart.

**IN WITNESS WHEREOF**, the undersigned have executed this First Amendment as of the 6<sup>th</sup> day of January 2015.

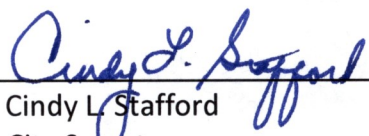
PROGRESSIVE WASTE SOLUTIONS OF TX, INC.  
1910 S. Highway 317  
Mcgregor, TX 76657

CITY OF STEPHENVILLE, TX  
298 West Washington  
Stephenville, TX 76401

By:   
\_\_\_\_\_  
Greg Brown, District Manager

By:   
\_\_\_\_\_  
Jerry K. Weldon, II, MAYOR

ATTEST:

By:   
\_\_\_\_\_  
Cindy L. Stafford  
City Secretary



Personnel Committee  
**STAFF REPORT**

**SUBJECT:** Amend Code Compliance Officer Job Description to Code Enforcement and Health Inspector  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Planning and Building Services  
**STAFF CONTACT:** Jeremy Allen

**RECOMMENDATION:**

Staff is recommending amending the job description for the Code Compliance Officer to Code Enforcement and Health Inspector.

**BACKGROUND:**

This position is skilled administrative and inspection work pertaining to the enforcement of the various codes and ordinances. The person performs routine inspection of sites to enforce ordinances concerning high grass, weeds, junk, abandoned vehicles, dangerous buildings, and food establishments. This person also performs a variety of routine and complex work in the interpretation and enforcement of adopted codes and related rules and regulations. Work is performed with considerable independence with established laws, codes, ordinances and technical guidelines, and is reviewed by an administrative superior.

A staff member acts as liaison for the contracted health inspector. The Code Compliance Officer has acted as the liaison in this position to contact the state certified health inspector, process applications and fees, take phone calls, assist vendors, and perform inspections on demand.

**FISCAL IMPACT SUMMARY:**

With the increased responsibilities staff is recommending changing the pay range for the position from \$15.30 - \$17.73 (\$31,824 - \$36,878) to \$16.24 - \$20.30 (\$33,779 - \$42,224).

Currently there is not an assigned certification pay for the position. Staff is recommending certification pay for the position in the amount of \$30 per month for each certification.

**ALTERNATIVES:**

1. Keep the Code Compliance Officer job description the same.
2. Add the responsibilities to another employee

**ATTACHMENTS:**

[Code Enforcement and Health Inspector 8-2018](#)



**Job Title:** Code Compliance Enforcement and Health Inspector  
**Department:** Development Services  
**Reports To:** Director of Development Services  
**FLSA Classification:** Non-Exempt  
**Pay Range:** ~~\$15.30 - \$17.73~~ \$16.24 - \$20.30  
**Certification Pay:** Health/Food Handler, Code Enforcement Officer I, II

**Job Summary:**

This position is skilled administrative and inspection work pertaining to the enforcement of the various codes and ordinances. The person performs routine inspection of sites to enforce ordinances concerning high grass, weeds, junk, abandoned vehicles, dangerous buildings, and food establishments. This person also performs a variety of routine and complex work in the interpretation and enforcement of adopted codes and related rules and regulations. Work is performed with considerable independence with established laws, codes, ordinances and technical guidelines, and is reviewed by an administrative superior.

**Typical Duties:** Duties may include but are limited to, the following:

1. Periodically patrols or inspects an assigned area to monitor for violations of local codes;
2. Responds to complaints of potential code violations relating to signing, high grass and weeds, nuisances, hazardous conditions, dangerous buildings abatement housing conditions, land use, zoning, subdivision ordinances, animals, noise, dumping, polluting, sanitation or other code related matters;
3. Performs work in accordance with safety policies and procedures;
4. Conducts field investigations of potential violations; gathers evidence; questions witnesses; compares facts to code requirements; makes findings' and issues warnings, correction notices, or citations;
5. Meets with owners, tenants, contractors, developers, businesses, etc. to review and explain code requirements and violations or potential violations; secures code compliance;
6. Maintains a variety of logs and records related to inspection and enforcement activities;

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Code Enforcement and Health Inspector  
Revised 8/2018

prepares recommendations for amendments and additions to codes or regulations which relate to the position;

7. Coordinates efforts with the police, planning, building, fire, and related departments, the city attorney, and other staff or agencies, as needed;
8. Works with police and prosecutors to obtain written or tape-recorded statements, depositions, or admissions, as needed;
9. Reviews cases being prepared for trial with emphasis on the evidentiary and legal issues crucial to successful prosecution;
10. Reports violations of fire safety regulations and safety standards to fire Marshall;
11. Performs related work or any other duties as may be required or requested.

**Minimum Qualification:**

- Must be a United States Citizen;
- Must have a valid Texas driver’s license and maintain a satisfactory driving record;
- High school diploma or GED required
- Ability to communicate (read, write, and speak) effectively in the English language;
- Modern office procedures, methods, and equipment including computers;
- Business letter writing and basic report preparation;
- English usage, spelling, grammar and punctuation;
- Certified with the Texas Department of Health as a Code Enforcement Officer or be able to attain certification within 1 year.

**Ability to:**

1. Perform required mathematical computations;
2. Effectively communicate technical information, orally and in writing, to contractor, property owners, employees, other governmental agency representatives, City officials, and the general public;
3. Analyze situations, problems and data, and use sound judgment in drawing conclusions and making decisions;
4. Establish and maintain working relationships with citizens, employees, supervisors and the general public;
5. Handle stressful situations and effectively deal with difficult or angry people;
6. Enforce laws, ordinances, codes and regulations of the City and State; with firmness, tact and impartiality;
7. Learn local geography including the location of streets, water mains and hydrants, and the major hazards of the City;
8. Stay abreast of new codes and ordinances in the field;
9. Prepare clear and accurate correspondence, documents, and reports;
10. Prioritize and organize various assignments in order to produce efficient and effective

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Code Enforcement and Health Inspector  
Revised 8/2018

- results;
11. Communicate clearly and concisely, both orally and in writing;
  12. Maintain ability appropriate to the performance of assigned duties and responsibilities which may include the following:
    - \*holding and sorting reports and paperwork
    - \*sitting or standing for extended periods of time
    - \*performing the functions of data entry on a personal computer
    - \*vehicle operation in the performance of a variety of errands
  13. Establish and maintain cooperative working relationships with those contacted in the course of work

### **License or Certificate:**

- Private vehicle driver's license
- Certified with the Texas Department of Health as a Code Enforcement Officer or be able to attain certification within 1 year.

### **Work Environment:**

Some work is performed in an office environment and may be subject to ordinary risks typically found in an office environment. Some tasks are routinely performed without exposure to adverse environmental conditions; however, some tasks are performed with dust or pollen, heat/cold or extreme weather conditions. The noise level in the work environment is usually quiet to moderate. At times when work is performed outdoors, this may be during hot or cold weather conditions. The noise level could be moderately higher. Dust, pollen, wind, rain, or other outdoor conditions could be a factor.

### **Physical Requirements:**

Position requires the ability to stand, sit, run, walk, push, pull, squat, kneel, twist, reach, crouch, crawl, climb and stoop while assisting others or working alone. Walking, standing or sitting for extended periods of time may be required in this position during the day-to-day functions. You may be required to drive and operate a motor vehicle according to state and local regulations for extended periods of time. Maintain effective audio-visual discrimination and perception is needed for making observations, communicating with others, reading and writing and or operating assigned equipment. Possibly dealing with personal danger which may include exposure to (a) natural and man-made disasters; (b) hazardous materials and/or toxic gases. This position also requires repetitive hand movement in using computer keyboard and typewriter. Must be able to lift and carry up to 40 pounds of supplies or working materials.

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Code Enforcement and Health Inspector  
Revised 8/2018





Finance Committee  
**STAFF REPORT**

**SUBJECT:** Proposals for Audit Services  
**MEETING:** Council Committee Meetings - 28 Aug 2018  
**DEPARTMENT:** Finance  
**STAFF CONTACT:** Monica Harris

**RECOMMENDATION:**

Staff recommends requesting council to accept the proposal from Brooks Watson & Co. to perform the city's audit for the year ending September 30, 2018 with the option to renew the agreement for three (3) subsequent years.

**BACKGROUND:**

City Charter requires the city to request proposals for audit services every five years. The city is not required to change auditors, but must evaluate the proposals.

Requests for Proposals for auditing services were mailed out on July 17, 2018, to various accounting firms and advertised on July 18th and 25th, as well as being posted on the city's website. Proposals were opened on August 6, 2018. We received six (6) proposals.

Proposals were evaluated. The combined Evaluation Worksheet is attached.

**FISCAL IMPACT SUMMARY:**

The cost for audit services from Brooks Watson & Co. for fiscal year ending September 30, 2018 will be \$37,380, which includes the cost for the single audit if needed.

**ATTACHMENTS:**

[Audit RFP Evaluation Worksheet](#)

**CITY OF STEPHENVILLE  
PROPOSALS FOR AUDIT SERVICES  
EVALUATION WORKSHEET**

	Pattillo, Brown & Hill	Rutledge Crain & Associates	Carr Riggs & Ingram	Clifton Larson Allen	Brooks Watson & Co.	Fox Byrd & Co.
<b>I. Mandatory Criteria:</b>						
A. Licensed CPAs	Yes	Yes	Yes	Yes	Yes	Yes
B. Independent auditor	Yes	Yes	Yes	Yes	Yes	Yes
C. No record of substandard work	Yes	No	No	No	No	No
D. Meets all RFP requirements	Yes	Yes	Yes	Yes	Yes	Yes
<b>II. Technical Criteria</b>						
A. Technical experience of firm						
1. City government (0-15)	14	14	14	13	14	9
2. Other government entities (0-5)	5	5	4	4	4	3
B. Characteristics of staff						
1. Size and structure (0-5)	5	3	5	4	4	4
2. Qualifications (0-20)	18	17	15	18	18	12
3. Supervision (0-15)	14	13	13	13	13	11
C. Understanding of work to be performed						
1. Comprehensiveness of work plan (0-5)	5	5	5	4	5	4
2. Realistic time estimate (0-10)	6	6	6	6	6	4
<b>III. Cost criteria (0-25)</b>	20	21	16	21	21	25
<b>IV. Oral interview (if necessary) (0-15)</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total points</b>	<b>86</b>	<b>84</b>	<b>77</b>	<b>83</b>	<b>85</b>	<b>72</b>
<b>Time Estimate</b>	<b>370</b>	<b>304</b>	<b>400</b>		<b>344</b>	<b>226</b>
Proposed costs 2018	\$39,100	\$37,560	\$49,000	\$37,500	\$37,380	\$31,000
Proposed costs 2019	\$39,100	\$38,700	\$49,000	\$38,600	\$38,365	\$31,000
Proposed costs 2020	\$39,100	\$39,861	\$49,000	\$39,800	\$39,380	\$32,500
Proposed costs 2021	\$39,100	\$40,675	\$49,000	\$41,000	\$40,425	\$32,500