

# CITY OF HUNTSVILLE, TEXAS

Andy Brauninger, Mayor

Keith D. Olson, Mayor Pro Tem, Position 4  
Lydia Montgomery, Position 2 At-Large  
Don H. Johnson, Position 3 At-Large



Joe Emmett, Ward 1  
Tish Humphrey, Ward 2  
Ronald Allen, Ward 3  
Joe Rodriguez, Ward 4

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## HUNTSVILLE CITY COUNCIL AGENDA TUESDAY, APRIL 19, 2016 1:30 P.M. WORK SESSION – 6:00 P.M. REGULAR SESSION

**CITY COUNCIL CHAMBERS AND LARGE CONFERENCE ROOM  
HUNTSVILLE CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS, 77340**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the City Secretary's office (936.291.5403), two working days prior to the meeting for appropriate arrangements.

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**WORK SESSION [1:30 P.M.]** The City Council will receive a presentation from Freese & Nichols on Condition Assessment of Palm Street Water Plant; a review of Planning Commission recommendations on Manufactured Housing and Recreational Vehicles; and a review of Presidential Busts report.

### MAIN SESSION [6:00 P.M.]

#### 1. CALL TO ORDER

#### 2. INVOCATION AND PLEDGES

*U.S. Flag*

*Texas Flag: Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

#### 3. PRESENTATIONS AND PROCLAMATIONS

- Stroke Awareness and *Neon for Neurons* presentation from Huntsville Memorial Hospital
- Recognition of SHSU Ladykats basketball team
- New City calendars are here
- Presentation of FY 14-15 audit by Pattillo, Brown & Hill

#### 4. REQUESTS FOR CITIZEN PARTICIPATION

*An opportunity for citizens to be heard on any topic and for the City Council to participate in the discussion. No action will be taken.*

Consider items for discussion submitted via Citizen Participation Request by Heather Hudacko [Matt Benoit, City Manager]

#### 5. PUBLIC HEARING

City Council will receive comments on proposed updates and consider adopting Ordinance 2016-20, amending the City's Development Code Article 4: Use Regulations, Table 4-1: Use Table; Section 4.203, Mobile Homes and Manufactured housing Units; Article 5: Lot and Setback Regulations, Table 5-1: Lot and Building Setback Regulations; and Section 5.400, Residential Lots of the City of Huntsville Development Code. [Aron Kulhavy, Director of Community and Economic Development]

- a. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adopting Ordinance 2016-20, amending the City's Development Code Article 4: Use Regulations, Table 4-1: Use Table; Section 4.203, Mobile Homes and Manufactured housing Units; Article 5: Lot and Setback Regulations, Table 5-1: Lot and Building Setback Regulations; and Section 5.400, Residential Lots of the City of Huntsville Development Code, first reading. [Aron Kulhavy, Director of Community and Economic Development]
- b. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adopting Ordinance 2016-21, amending Chapter 30 Manufactured Homes and Recreational Vehicles of the Code of Ordinances of the City of Huntsville, first reading. [Aron Kulhavy, Director of Community and Economic Development]

#### 6. CONSENT AGENDA

Public Comments will be called for by the presiding officer before action is taken on these items. *(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)*

- a. Approve the minutes of the City Council meeting held on April 5, 2016 and the Special Session for a combined workshop with the Planning Commission on April 7, 2016. [Lee Woodward, City Secretary]
- b. Authorize the City Manager to submit an application to the Department of Justice Bulletproof Vest Program for \$6,300.00. [Dr. Sherry McKibben, Director of Neighborhood Resources]

#### 7. STATUTORY AGENDA

- a. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adoption of Ordinance 2016-24 amending the City's Code of Ordinances, Chapter 44 "Traffic and Motor Vehicles" to establish paid parking, first reading. [Steve Ritter, Finance Director]
- b. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adopting Ordinance 2016-16, converting the traffic movement along Bearkat Boulevard and Bobby K. Marks Drive from the existing two-way movement to a one-way movement and Ordinance 2016-17 creating paid parking spaces along Bearkat Boulevard and Bobby K. Marks Drive, first reading. [Steve Ritter, Finance Director]
- c. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adoption of Ordinance 2016-15 amending the Fiscal Year 2015-2016 Annual Budget, Ordinance 2015-43, to amend the "Schedules of Fees and Charges" to establish paid parking fees, and declaring an effective date, first reading. [Steve Ritter, Finance Director]
- d. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adopting Ordinance 2016-19 abandoning street rights-of-way for certain streets within the City of Huntsville, Texas, and conveying the same by special warranty deed to Sam Houston State University; providing the maintenance of said streets shall be the responsibility of Sam Houston State University; reserving easements for the right of the City of Huntsville to maintain its utilities; providing access for emergency vehicles; declaring an effective date and containing other provisions incident thereto, first reading. [Matt Benoit, City Manager]
- e. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to adopt Ordinance 2016-23, amending Ordinance 2015-43 for the Fiscal Year 2015-2016 Annual Budget, to amend Exhibit "C" "Schedule of Fees and Charges" to establish credit card usage fees, and declaring an effective date, first reading. [Steve Ritter, Finance Director]
- f. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to sign a construction services agreement with Garney Companies, Inc. for construction services to complete the Town Creek drainage project, second reading. [Matt Benoit, City Manager; Dr. Sherry McKibben, Director of Neighborhood Resources; Y. S. Ram Ramachandra, City Engineer]
- g. *Presentation, public comment, discussion, and possible action* to consider authorizing the City Manager to sign a contract with the Mike Barnes Group, Inc. for professional economic development services. [Matt Benoit, City Manager]

**8. MAYOR/CITY COUNCIL/CITY MANAGER AND CITY ATTORNEY REPORT**

- a. *Presentation, public comment, and discussion* on presentation of FY16-17 budget. [Steve Ritter, Finance Director]
- b. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to approve a contract with Gallagher Benefit Services, Inc. for benefits consulting services and payment in the amount of \$45,000. [Mayor Brauninger and Councilmember Allen]
- c. *Presentation, public comment, discussion, and possible action* to hear the report of the Board and Commissions Review Ad Hoc Committee and to adopt Ordinance 2016-14 amending Ordinance 2002-18, Section 1 (d) *Duties of Board*, second reading. [Committee Chair Councilmember Montgomery]
- d. *Presentation, public comment, discussion, and possible action* on reappointment of Douglas Wright to the Cemetery Advisory Board. [Mayor Brauninger]
- e. *Presentation, public comment, discussion, and possible action* on contract renewal for City Secretary. [Mayor Brauninger]
- f. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to adopt Ordinance 2016-22 to suspend the GRIP rates proposed by CenterPoint Energy, first reading. [Leonard Schneider, City Attorney]

**9. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA**

**10. ITEMS OF COMMUNITY INTEREST**

*(Hear announcements concerning items of community interest from the Mayor, Councilmembers, and City staff for which no action will be discussed or taken.)*

**11. EXECUTIVE SESSION**

- a. City Council will meet in executive session pursuant to Texas Government Code Section 551.071 - consultation with counsel on legal matters regarding the City's bidding process to sell City-owned real property. [Mayor Brauninger]

**12. RECONVENE**

Take action, if necessary, on items addressed during Executive Session.

**13. ADJOURNMENT**

\*If, during the course of the meeting and discussion of any items covered by this notice, City Council determines that a Closed or Executive session of the Council is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Sections: 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; and/or other matters as authorized under the Texas Government Code. If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the City Council will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.

**CERTIFICATE**

I, Lee Woodward, City Secretary, do hereby certify that a copy of the April 19, 2016 City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, [www.huntsvilletx.gov](http://www.huntsvilletx.gov), in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: \_\_\_\_\_

TIME OF POSTING: \_\_\_\_\_ am/pm

TAKEN DOWN: \_\_\_\_\_

\_\_\_\_\_  
Lee Woodward, City Secretary



**CITY COUNCIL AGENDA**

4/19/2016

Agenda Item: 3

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**Item/Subject:** Hear and accept the audit for FY 14-15 from Pattillo, Brown and Hill, LLP, CPAs.

**Initiating Department/Presenter:** Finance

**Presenter:** Steve Ritter, Finance Director

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**Recommended Motion:** No action is appropriate. The Council simply hears/accepts the report without action.

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**Strategic Initiative:** Goal #6 - Finance - Provide a sustainable, efficient and fiscally sound

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**Discussion:** By Charter and State Statutes the City is required to have a financial audit annually by a Certified Public Accountant. The Finance Committee received a presentation at its April 5, 2016, meeting.

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**Previous Council Action:** The CPA firm of Pattillo, Brown and Hill has performed the audits for the 3 previous fiscal years and the City Council approved engaging/renewing Pattillo, Brown & Hill as the City's auditors for the FY 14-15 at its April 7, 2015 meeting. This was the fourth year for the firm as the City's auditors.

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**Financial Implications:**

There is no financial impact associated with this item.

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**Approvals:**       City Attorney               Director of Finance               City Manager

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**Associated Information:**

- Copies of the FY 2015 Comprehensive Annual Financial Report were provided to the City Council members on April 5, 2016.





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 4

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**Item/Subject:** Consider items for discussion submitted via Citizen Participation Request by Heather Hudacko.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager

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**Recommended Motion:** Item is not posted for action. If there appears to be majority support for any action, the motion may be to, "Move to direct the City manager to prepare \_\_\_\_\_ for Council consideration at the \_\_\_\_\_ City Council meeting."

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**Discussion:** On April 1, 2016, Mrs. Hudacko submitted the following requesting Council discussion and consideration via the City's online Citizen Participation Request form:

"I'm finding difficulty in attempting to describe in detail the item I would like to be on the agenda at the next council meeting. But what I can do is give you a rather compelling story. For the last 3 years my husband, dog and I have lived in the same residence. The location made the walk to campus or work the perfect activity. The affordable rent made paying tuition possible. Upon graduation for my bachelor of science I decided to stay in the community and earn a master's degree. 3 days ago I received a notice from the now owner of the property (who took ownership a few months before the beginning of this year) that we had less than 48 hours to decide to vacate the premises or pay rent inflated rent. Had the rent been increased \$50 -\$100 we would have been able to stay at our current location. But the increase demanded was 53%. The individual known as stating, "I do not want, correction, I do not NEED your money" is now taking 46% of our earned income. It doesn't begin or end with me. There was a trailer park demolished to make room for a sand pit. Elderly people that had lived there for decades became homeless. Students that live in dorms are being forced out due to lack of space and the demolition of a residence hall is making any rental property even more scarce. There is a serious issue in the community and the threat of its outcome sickens me. That issue is rental property and rent control. I have meet with or spoken on the phone with virtually every single apartment complex manager and realtor in the Huntsville area and what I have learned disgusts me. For instance, each apartment complex has a different way of billing for water all of them citing that "the city recently increased the cost for water" and "that's just the way we do it." The absolutely absurd part is that even properties owned by the same company are billed to the renter differently and have completely separate policies. One apartment would have billed us \$63 for water, trash and sewer while another property caps the amount at \$50. Yet another property does not include my 1 year old son as a billable tenant while the other two do. The three apartment complexes that I am referring to are all owned by the same investment company and within mere feet of each other. As water conscious users its difficult for me to understand why water is billed this way when for the last 3 years our water, trash and sewer bill has been less than \$15 (and originally included in

the rent). The entire situation stinks of price gouging. And it applies to rental rates as well. It is because of this among a multitude of other reasons as to why I feel the need for the city to intervene. There should be rental property codes and standards; a mandate that requires maintenance to be addressed and completed within a reasonable amount of time (ie 14 calendar days); and rent control. I have several ideas that would solve this issue as well as the looming potential homeless population problem. But first the city must be made aware of the transgressions and negligent behaviour of rental property companies. Hopefully, with intervention from the city, the outcome will make for a more beautiful and connected community. I left out a few choice details. We've been without an oven/ stove since Jan. 25, 2016. The new owner of the property verbally abused me on the phone yelling that we do not pay enough in rent to deserve a replacement. My husband and I have not prepared a meal in 3 months. my 1 year old son has not had a home cooked meal either."

City staff finds it difficult to recommend any specific actions to help Mrs. Hudacko. If, after listening to Mrs. Hudacko the Council wishes to staff to investigate anything in particular, please use the motion above to request and direct further information to be provided at a later Council meeting.



## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 5a

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**Item/Subject: PUBLIC HEARING & FIRST READING:** Consider adopting Ordinance 2016-20, amending the City's Development Code Article 4: Use Regulations, Table 4-1: Use Table; Section 4.203, Mobile Homes and Manufactured housing Units; Article 5: Lot and Setback Regulations, Table 5-1: Lot and Building Setback Regulations; and Section 5.400, Residential Lots of the City of Huntsville Development Code, first reading.

**Initiating Department/Presenter:** Community & Economic Development

**Presenter:** Aron Kulhavy, Director of Community and Economic Development

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**Recommended Motion: FIRST READING** - No action necessary, Public Hearing and first reading at this time.

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**Strategic Initiative:** Goal #8 - Public Safety - Provide safety and security for all citizens.

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**Discussion:** The City of Huntsville Development Code was updated after a lengthy process and became effective on August 31, 2015. Following this, the Planning Commission identified some items that necessitated additional discussion and created a list of projects to address in the 2016 calendar year. The first item the Commission wished to tackle was that of Manufactured Homes (MHs) and Manufactured Home Parks (MH parks).

Beginning in January of 2016, the Planning Commission initiated a process to develop amendments to the Development Code to not only address the placement of new MHs within Huntsville but also to improve the infrastructure in existing MH parks. To best accomplish this outcome, it was determined that the placement of new MHs and the development of new MH parks is best addressed through the Development Code while the standards for existing parks are best addressed through an ordinance in the Huntsville Code of Ordinances. In addition, the Planning Commission and staff were also asked to revisit the placement of Recreational Vehicles (RVs) inside and outside of RV parks for periods of longer than 90 days as required in the adopted Development Code. This agenda item focuses solely on the changes to the Development Code and requires a public hearing before final consideration.

The attached Planning Commission Discussion Form details the content of the proposed ordinance and the staff recommendation for the proposals based upon the City's adopted planning documents. In summary, new MHs must be 20 years old or less, an outdoor storage must be placed at the time of MH occupancy, reduce the number of MHs on a lot to be considered a park from four to two, require that all new MH parks be developed to the same infrastructure standards as all other residential subdivisions, and creating new lot standards for these MH parks/subdivisions.

During the Planning Commission discussions and public hearing on this issue, one citizen spoke in opposition to this request. Charles Smither, Jr. expressed his opposition to adoption of the ordinance and forwarding of the recommendation to the City Council because the Council already considered this issue in the adoption of the Development Code update in 2015 and said that the public should be more involved in the issue. No other comments were received by the staff.

After closing the public hearing on this item, the Planning Commission voted unanimously to recommend adopting the proposed changes to the Development Code related to Manufactured Homes and Manufactured Home Parks. The Planning Commission voted unanimously to take no action and reject delaying the implementation of the prohibition of the future use RVs as a permanent dwelling unit noting that all RVs in place at the time of the adoption of the Development Code are grandfathered.

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**Previous Council Action:** The current Development Code was adopted in 1986. Since that time, several amendments have been adopted, many of those minor changes to address specific issues. In April of 2013, the City entered into a contract with Duncan and Associates to draft a Development Code update. In June of 2014, Duncan and Associates held a joint workshop with the City Council and Planning and Zoning Commission as an overview to the proposed changes to the code. The City Council adopted the Development Code in its current form in August of 2015 with an effective date of August 31, 2015. A workshop on this issue is also scheduled for April 19, 2016. The City Council was briefed on the Planning Commission activities related to Manufactured Homes and Manufactured Home Parks in the City Manager's February 19, 2016 Friday memo. The City Council was also notified about the Recreational Vehicle discussions in the City Manager's March 4 and March 11 Friday memos.

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**Financial Implications:** There are no direct financial implications to the City associated with adopting the Development Code. As the Council reviews and considers the various decision packages, you will note some of the recommendations will add to the cost of developing properties in Huntsville. There is no attempt made to quantify the additional costs associated with any particular Development Code change/amendment because the possible impact will be different for each property and development.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Planning Commission Discussion Form (3-4)
- Draft Ordinance 2016-20 (5-10)
- Survey summary of other communities (11)
- Presentation to Planning Commission from March 3, 2016 (12-13)
- April 7, 2016 Planning Commission minutes (14-15)

## Planning Commission Discussion Form

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Prepared by: Aron Kulhavy, AICP, Community & Economic Development Director/City Planner  
Janet Ridley, Planner; Jasmine Moss, Administrative Assistant

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**MEETING DATE:** April 7, 2016

**SUBJECT:** Placement of new Manufactured Homes and construction of new Manufactured Home Parks

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This discussion form focuses only on the proposed changes to the Development Code concerning Manufactured Housing. A separate discussion form is provided for the ordinance outside of the Development Code to address the existing manufactured housing units and parks.

During the consideration of the Development Code update in 2015, the original recommendation of the Planning Commission to limit the placement of new Manufactured Housing (MH) units within the City limits to only Mobile/Manufactured Home parks (MH parks) was not adopted by the City Council in the final code. The adopted version of the code still allows for the placement of MHs throughout Huntsville, only prohibiting them in the Neighborhood Conservation development district.

In discussions with the Commission concerning topics of discussion for 2016, the Commission's first priority was to revisit the MH park issue as well as the placement of MHs both inside and outside of parks. In February of 2016, some preliminary drafts were presented to the Commission for review and comment. The direction presented by the Commission is summarized below:

1. Require MHs to be no older than **20 years** (currently, built in or after 1996 and changing yearly).
2. Require an outdoor **storage building**. A storage building is a shed or garage used to store outdoor equipment such as gardening tools, bicycles, etc.
3. Change the **Maximum** number of MHs per property to two (2). More than 2 MHs require development as a MH subdivision.
4. Require that the development of a MH park/subdivision be to the same standards as all other subdivisions in the City/ETJ.
5. Create new lot standards for MH lots

The attached draft of the Development Code reflects the changes recommended by the Commission. In addition to the draft language of the Code, a survey of other communities dealing with the placement of MHs as well as a copy of the presentation made at the February 2016 Planning Commission detailing local statistics about MHs are attached with this report.

In addition, staff was requested by the Mayor to bring forth another item for consideration in reviewing the changes to the Development Code on this subject, specifically dealing with recreational vehicles (RVs). Per the definition in the Development Code an RV is, among other things, designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. Under the Development Code update, RVs

are no longer allowed for use as a permanent dwelling unit inside the City limits (all existing RVs were grandfathered in place at the time of code adoption). RVs can now only be located in RV parks and for a maximum period of 90 days. There is currently one RV park within the City limits on SH 75 South. Since the adoption of the code, staff has received more than one application for the use of an RV as a residence outside of an RV park. Both of these applications were denied. The Mayor requested that staff present for Commission review the possibility of delaying the implementation of this section of the code for a period of 2-3 years. This delay would allow the parks and other places in town that allowed RVs to locate for more than 90 days to notify people that they would not be able to do so at a set date in the future. Staff selected a date of January 1, 2018 to implement this section of the Code. This is an arbitrary date and the Commission can make recommendations as appropriate for this date.

#### **STAFF RECOMMENDATION:**

*Chapter 2 of the Huntsville Horizon Comprehensive Plan talks extensively about housing challenges within the community. An example is the specific statement about the growth and development issue of Huntsville having a lack of quality "new housing construction in price ranges affordable to lower and middle income buyers, which can lead to a proliferation of manufactured homes in and around the community." In addition, the award winning Harnessing Huntsville's Potential plan, one key component of the plan was to broaden the range of housing types and price diversity. In the plan, it was noted that the average single family valuation for Huntsville is \$176,671 but is significantly lowered when adding the \$19,013 average valuation for a manufactured home.*

*As the recommendations of the Comprehensive plan and the Harnessing Huntsville's Potential plan clearly state the desire of the community for higher quality housing options of all affordability, staff recommends the approval of the changes to the Development Code with the exception of the delay in implementation of the RV portion of the proposed changes. Per definition, RVs are intended to be temporary in nature and not designed for permanent residency.*

#### **ATTACHMENTS:**

- Development Code revisions draft
- Survey summary of other communities
- Presentation from February 2016

## ORDINANCE 2016-20

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, AMENDING CHAPTER 24 LAND DEVELOPMENT OF THE HUNTSVILLE, TEXAS, CODE OF ORDINANCES BY ADOPTING REVISIONS TO THE DEVELOPMENT CODE OF THE CITY OF HUNTSVILLE, TEXAS; REQUIRING THE PUBLICATION OF THIS ORDINANCE; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR A PENALTY; MAKING OTHER PROVISIONS AND FINDINGS THERETO; AND DECLARING AN EFFECTIVE DATE.**

WHEREAS, the Planning Commission of the City of Huntsville held public hearings prior to consideration of amending the ordinance;

WHEREAS, the Planning Commission recommended adopting the updates to the City of Huntsville Development Code; and

WHEREAS, the City Council held a public hearing at their meeting on \_\_\_\_\_ prior to consideration of amending the Ordinance; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, COUNTY OF WALKER, STATE OF TEXAS:**

### **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Huntsville, Texas, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

### **II. AMENDMENT**

The Development Code of the City of Huntsville, Texas, Chapter 24, Land Development, of the Huntsville, Texas Municipal Code Sections 4.100 Allowed Uses, Table 4-1: Use Table; 4.203 Mobile Homes and Manufactured Housing Units, 4.203.G, 4.203.H, and 4.203.I; 4.205 Recreational Vehicle Parks, 4.205.G; 5.200 Lot Size and Building Setback Regulations, Table 5.1: Lot and Building Setback Regulations; and 5.400 Residential Lots, 5.407 Manufactured Home shall be amended as shown in Exhibit 1 attached hereto and incorporated herein.

### **III. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

### **IV. SEVERABILITY**

Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance

as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**V. EFFECTIVE DATE**

This Ordinance shall take effect on \_\_\_\_\_. The City Secretary shall publish the caption of this Ordinance in the official City newspaper at least twice within ten (10) days of its passage.

**VI. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 1 of the Development Code of the City of Huntsville, Texas.

**PASSED AND APPROVED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

THE CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauning, Mayor

ATTEST:

\_\_\_\_\_  
Lee Woodward, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney

USE CATEGORY Subcategory Specific use	Definition/Description	Districts			Supplemental Regulations
		NC	D	M	
<b>P = Permitted by right   C = Conditional use approval required (Sec. Error! Reference source not found.)   X = Prohibited</b>					
<b>RESIDENTIAL</b> Uses that provide living accommodations for one or more persons.					
<b>Household Living</b>	Residential occupancy of a dwelling unit by a household. When dwelling units are rented, tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential; they are considered a form of lodging.				
Detached house	A single dwelling unit on a single lot, with private yards on all sides.	P	P	P	
Townhouse	A single dwelling unit on a single lot that shares at least one common or abutting wall with another attached house located on a separate lot.	X	C	P	
Two-unit house	Two dwelling units within the same principal building, located on a single lot. The 2 dwelling units are attached and may be located on separate floors or side-by-side. Also known as "duplexes."	X	P	P	
Apartment/condo	One or more residential buildings occupied by 3 or more dwelling units that share common walls and/or common floors/ceilings.	X	P	P	
Mobile/Manufactured dwelling unit (outside of MH park)	One or more <u>Two or fewer</u> mobile homes or manufactured dwelling units located on a single lot outside of a mobile/manufactured home park. See also the definition in Sec. Error! Reference source not found..	X	X	P	1.1004.203
Mobile/Manufactured home park/subdivision	A lot upon which <u>more than two</u> manufactured housing units are available for lease or upon which multiple spaces intended for occupancy by manufactured housing units are available for lease. Mobile/manufactured home parks have an internal street network, park management buildings and common areas for residents.	X	X	C	
Recreational Vehicle (outside of RV park)	One or more recreational vehicles located on a single lot outside of a recreational vehicle park. See also the definition in Sec. Error! Reference source not found..	X	X	X	<del>1.1004.203</del> 205G
<b>Group Living</b>	Residential occupancy of a building or any portion of a building by a group other than a household. Group living uses typically provide communal kitchen/dining facilities.				
Community home	A community-based residential home occupied by no more than 8 disabled persons and 2 nonresident supervisory personnel and that otherwise complies with the <i>Community Homes for Disabled Persons Location Act</i> , Chapter 123.001, Texas Human Resources Code.	P	P	P	
Nursing home	An institution providing meals and resident care and services for persons who are generally admitted for periods of time exceeding 30 days. Such service includes custodial or attendant care, and may or may not provide for routine and regular medical and skilled nursing services. Nursing homes include homes for the aged, and convalescent and rest homes.	X	P	P	
All Other Group Living Uses		X	C	C	
<b>PUBLIC, CIVIC AND INSTITUTIONAL</b> Public, quasi-public and private uses that provide unique services that are of benefit to the public at-large.					
<b>Aircraft Landing Area</b>	Facilities where fixed-wing aircraft or helicopters take off and land, including customary accessory uses and structures.	X	X	C	
<b>College or University</b>	Institutions of higher learning (beyond senior high school) that offer courses of general or specialized study and are authorized to grant academic degrees.	X	P	P	
<b>Community Center</b>	A building and its surrounding premises owned, leased or otherwise controlled by a unit of local government or a school district and that contains rooms or other facilities limited to use for purposes of meetings, gatherings or other functions or activities carried on or performed by or under the supervision of a unit of local government, a school district or a civic, educational, religious or charitable organization.	C	P	P	
<b>Governmental Facility</b>	Uses (not otherwise classified) that are related to the administration of local, state or federal government services or functions.	C	P	P	

#### 4.203 Mobile Homes and Manufactured Housing Units

- 4.203.A The installation of any mobile home or manufactured housing unit for use as a dwelling unit is prohibited except as expressly stated in this section.
- 4.203.B A lawfully existing mobile home may be replaced with a (HUD-code) manufactured housing unit.
- 4.203.C A lawfully existing mobile home may not be relocated within the city limits. The owner of a mobile home or manufactured housing unit may remove the home or housing unit from its location and install a replacement manufactured housing unit on the same property if the replacement is a newer model manufactured housing unit and it contains at least as much living space (floor area) as the mobile home or manufactured housing unit that was removed.
- 4.203.D It is unlawful for a person to place a manufactured housing unit within the City unless the manufactured housing unit is equipped with permanently affixed skirting that effectively hides the underside of the manufactured housing unit or mobile home from view. The owner and occupant will have 30 days from the date of the electrical inspection to install the required skirting. All skirting must be constructed of rock, brick, plastic, metal, treated wood, concrete masonry materials or other materials approved by the Building Official, and must be installed so there is no visible gap between the finished floor of the manufactured housing unit and the ground. Cloth of any type, or shrubbery, is not acceptable material for skirting. Existing manufactured housing units or mobile homes with existing skirting that is in good condition may be allowed until replacement is needed.
- 4.203.E The skirting used on a particular manufactured housing unit or mobile home must be consistent in material, orientation and color, must be of such design as to not permit the passage of a sphere 4 inches or greater in diameter and must present a continuous and complete surface.
- 4.203.F The skirting requirements of ~~§1.1004.2034.203.D~~ and ~~§1.1004.2034.203.E~~ also apply to all other building types utilizing pier and beam or post and beam construction.
- 4.203.G No more than 2 manufactured housing units may be placed on or occupy a single lot except within a mobile home/manufacturing housing park. Mobile home/manufactured housing parks are allowed only in those development districts indicated in **Error! Reference source not found.** and are subject to the supplemental use regulations of Sec. ~~1.1004.2044~~
- In conjunction with the placement of a new manufactured home, a storage building that is a minimum of 50 square feet in size must be located on the same lot or space. 4.203.I Any new manufactured housing units placed inside the city limits shall be less than 20 years old on the date of application.

**4.204 Mobile Home/Manufactured Housing Parks/Subdivisions**

Mobile home/manufactured housing parks/Subdivisions are subject to all applicable city regulations including the subdivision plat standards of §12.700 and the infrastructure and public improvement standards of Article 10.

**4.205 Recreational Vehicle Parks**

Recreational vehicle parks are subject to all of the following regulations.

- 4.205.A The maximum number of RV or camping spaces may not exceed 25 units per acre.
- 4.205.B Each RV or camping space must have a minimum area of 1,200 square feet.
- 4.205.C At least 5% of the overall RV park area must be set aside and improved as a common recreation area for RV park guests.
- 4.205.D Infrastructure and public improvements must be provided in accordance with **Error! Reference source not found.**
- 4.205.E The maximum rental and occupancy period per unit per space may not exceed 90 days.
- 4.205.F All recreational vehicles must be separated from other RVs and other buildings by a distance of at least 10 feet.
- 4.205.G The provisions of this code prohibiting the placement of RVs outside recreational vehicle parks for periods of more than 90 days shall not go into effect until January 1, 2018.

**Table Error! No text of specified style in document.-1: Lot and Building Setback Regulations**

See Sec. Error! Reference source not found. for measurement rules	Residential							Nonresidential
	Rural Residential	Urban Residential	Patio Home	Town-house	Two-Unit	Apartment/Condo	Manufactured Home	
<b>Minimum Lot Size</b>								
Lot Area (sq. ft.)	26,136	6,000	5,000	2,400	6,000	7,500	3,500	7,500
Lot Area per Unit (sq. ft.)	26,136	6,000	5,000	2,400	3,000	1,500	3,500	1,500
Lot Width (feet) [1]	150	50	45	24	50	75	35	75
<b>Minimum Building Setbacks</b>								
Street (feet)[2]	25	25	25	25	25	25	25	25
Side (% of lot width)	10[3]	10[3]	10[3]	10[3][4]	10[3][4]	10[3]	10[6]	10[3][5]
Rear (feet)	10	10	10	10	10	10	10	10

[1] The width must be at least 33% of the lot's depth, but not more than 2 times the lot's depth.

[2] No minimum street setbacks apply in D district. The sight triangle requirements of §Error! Reference source not found. do apply.

[3] Or a minimum 10 feet between principal buildings on abutting lots, whichever results in the least required setback.

[4] Applies only to end units. No setback required between units with attached/abutting walls.

[5] Side setback only required when abutting lots occupied by residential uses.

[6] Or minimum 20 feet, between housing units.

**5.407 Manufactured Home**

Manufactured home lots may only be located within a Manufactured Home Park/Subdivision and are subject to compliance with the manufactured home lot and building setback regulations of Table Error! No text of specified style in document.-1. Only manufactured homes can be placed on lots developed to the manufactured home lot standard.

## MH Placement Summary

- Huntsville
  - Allow in all places in town
- Nacogdoches
  - Prohibit except in parks
- Lufkin
  - Allowed only in MR zoning district
    - Very small districts
    - Few in number
  - Have 13 zoning districts in town
- Navasota
  - Prohibit except in parks
- Tyler
  - Permit only in MH zoning district
- Conroe
  - Permit only in defacto area
  - Had at one point a petition system where property owner had to get 75% of surrounding property signatures to approve petition
- Bryan
  - Permit only in special zoning districts
- Corsicana
  - Only in special areas
  - Must be 5 years or newer for single wide
  - Must be 7 years or newer for double wide
- Brenham
  - Must be at least 16' in width
- Longview
  - Allow in all places
- Willis
  - Prohibit except in parks
-

## Manufactured Homes in Huntsville

City of Huntsville  
Planning Commission  
March 3, 2016

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### 2011 Statistics Appraisal District and COH Survey

- ✦ 1,639 Mobile/Manufactured homes in City
  - 933 on Property
  - 706 in Parks
- ✦ 113 Mobile Homes
  - 64 on Property
  - 49 in Parks
  - 8% of total units
- ✦ 30% of units did not have skirting
  - 67/231 units sampled

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### MH Park Inventory 2011 COH Data

- ✦ 35 "Parks"
  - Allow for 880 MH homes
  - 805 spaces occupied
- ✦ Plat or layout on file
  - About half
- ✦ Some allow RVs
  - 40 RVs as residences
- ✦ Six parks have some portion located in the floodplain

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Single Family Residential Vs.  
Manufactured Homes  
Huntsville 2009-Present

- ✦ Single Family Residential
  - 313 Units
  - \$187,500 average valuation
  - \$59.25 million total valuation
- ✦ Manufactured Housing
  - 357 Units
  - \$20,350 average valuation
  - \$7.2 million total valuation

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Single Family Residential Vs.  
Manufactured Homes: 2009-Present

- ✦ Single Family Residential
  - 313 Units
  - \$187,500 average valuation
  - \$59.25 million total valuation
- ✦ Manufactured Housing
  - 357 Units
  - \$20,350 average valuation
  - \$7.2 million total valuation

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Single Family Residential Vs.  
Manufactured Homes  
US Department of Commerce 2013

- ✦ Single Family Residential
  - 618,000 starts
  - \$250,00 average valuation
  - \$93.70/square foot
- ✦ Manufactured Housing
  - 60,000 shipments
  - \$64,000 average valuation
  - \$43.54/square foot
  - 30% in parks/communities
  - 14% titled as real estate

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**EXCERPT FROM THE MINUTES OF THE MEETING OF THE PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS, AT CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS ON THE 7TH DAY OF APRIL, 2016 AT 6:00 PM.**

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Members present: Woods; Barry; Johnston; Durda; Cummings

Members absent: Hiton; Anderson

City staff present: Kulhavy; Ridley; Moss; Woodham

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6. **PUBLIC HEARING** regarding amending Article 4: Use Regulations, Table 4-1: Use Table; Section 4.203, Mobile Homes and Manufactured housing Units; Article 5: Lot and Setback Regulations, Table 5-1: Lot and Building Setback Regulations; and Section 5.400, Residential Lots of the City of Huntsville Development Code.

**Chairman Johnston opened the public hearing. [6:14 PM]**

**Aron Kulhavy** gave an overview, per the discussion form, of the proposed changes to the Development Code to define the development requirements for the construction of new manufactured home parks and some additional requirements for the new placement of manufactured homes on lots outside of manufactured homes parks. He explained that staff is recommending that the proposed upgrades for existing mobile/manufactured home parks and existing mobile/manufactured homes located inside of parks and outside of parks will be done by municipal code which will be addressed in Agenda Item No. 8. The updated Development Code which was adopted by City Council in August of 2015 prohibited manufactured housing units from being placed in Neighborhood Conservation Districts and has the requirement that new manufactured home parks be permitted with a Conditional Use Permit. There currently are not any development/construction standards for new manufactured home parks. These proposed changes to the Development Code will define the development/construction standards for new manufactured home parks and also add some requirements for the placement of new manufactured homes on lots outside of manufactured home parks. Kulhavy briefly outlined the proposed revisions to the Code.

**Kulhavy** then stated that staff has been asked to revisit the Development Code prohibition of RVs as permanent residences within the City limits also. Since the adoption of the updated Development Code, staff has received two applications for the use of an RV as a permanent residence outside of an RV park. Both of these applications were denied. Mayor Brauninger has requested that staff present, for Commission review, the possibility of delaying the implementation of this section of the Code for a period of 2-3 years. This will allow parks and other places in town that allowed RVs to be located for more than 90 days to notify people that they will not be able to do so at a set date in the future. Staff has presented revised language to allow for the continued placement of RVs as permanent residences until the date of January 1, 2018 to implement this section of the Code. The date has been arbitrarily set by staff and Commission may make recommendations as appropriate for this date. Kulhavy concluded his presentation by stating the staff recommends denial of the RV provision revision to the Development Code.

**Chairman Johnston** then asked for any public comments in support of the proposed changes to the Development Code as presented. There were none.

**Chairman Johnston** then asked for any public comments in opposition of the proposed changes to the Development Code as presented. **Charles Smither, Jr.** was the only speaker in opposition stating that he disapproved of the process and the proposed ordinance. He feels that the public should be more involved in the process.

The Commissioners then discussed the proposed revisions to the Development Code. The discussion clarified the following:

- If approved, there will not be any limitations set on the construction material for the

required storage buildings.

- There is only one existing RV Park located within the City Limits and it operates under the 90 day rental period requirement and without permanent utility connections.
- Any existing RV currently in place and in use as a permanent residence is “grandfathered” and allowed to remain in place.
- In the review and consideration of the proposed changes to the Development Code, City Council may approve or reject the revisions; they may not add to the revision language. Additional Code revision language must come back to the Planning Commission for consideration and recommendation.
- In comparison to the surrounding communities’ manufactured home placement criteria, Huntsville, along with Longview, has the most liberal placement allowance.
- Manufactured homes provide economical housing for citizens. They are especially a viable housing option for SHSU students. Manufactured Home Parks/Subdivisions need to be developed and maintained to ensure safe and sanitary living environment for the residents.

**Chairman Johnston closed the public hearing. [6:35 PM]**

7. **CONSIDER** amending Article 4: Use Regulations, Table 4-1: Use Table; Section 4.203, Mobile Homes and Manufactured housing Units; Article 5: Lot and Setback Regulations, Table 5-1: Lot and Building Setback Regulations; and Section 5.400, Residential Lots of the City of Huntsville Development Code.

The Commission reviewed each one of the proposed revisions to the Development Code. The Commissioners agreed with the language in each of the revisions regarding manufactured homes and manufactured home parks/subdivisions. The Commission did not agree with the proposed revision to extend the allowance for RVs to be used as permanent residences until a future date. Aron Kulhavy stated that the Commission making a motion to approve the proposed revisions to the Development Code per Staff recommendation would take care of this.

*Commissioner Woods made a motion to approve and forward the proposed Development Code revisions to City Council per Staff recommendations. (Approval of all revisions except 4.205.F) Second was by Commissioner Barry. The vote was unanimous.*





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 5b

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**Item/Subject:** **FIRST READING** - Consider adoption of Ordinance 2016-21, amending Chapter 30 Manufactured Homes and Recreational Vehicles of the Code of Ordinances of the City of Huntsville, first reading.

**Initiating Department/Presenter:** Community & Economic Development

**Presenter:** Aron Kulhavy, Director of Community and Economic Development

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**Recommended Motion:** **FIRST READING** No action necessary, Public Hearing and first reading at this time.

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**Strategic Initiative:** Goal #8 - Public Safety - Provide safety and security for all citizens.

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**Discussion:** The City of Huntsville Development Code was updated after a lengthy process and became effective on August 31, 2015. After this process, the Planning Commission identified some items that necessitated additional discussion and created a list of projects to address in the 2016 calendar year. The first item the Commission wished to tackle was that of Manufactured Homes (MHs) and Manufactured Home Parks (MH parks).

Beginning in January of 2016, the staff worked with the Commission to develop amendments to the Development Code to provide a draft ordinance for their review. In completing this review, the Commission expressed a desire to not only address the placement of new MHs within Huntsville but also to improve the infrastructure in existing MH parks. To best accomplish this outcome, it was determined that the placement of new MHs and the development of new MH parks is best addressed through the Development Code while the standards for existing parks are best addressed through an ordinance in the Huntsville Code of Ordinances. This agenda item focuses solely on the changes to the Code of Ordinance as it applies to existing MHs and MH parks.

The attached Planning Commission Discussion Form details the content of the proposed ordinance and the staff recommendation for the proposals based upon the City's adopted planning documents. In summary, the required improvements for existing MH parks were divided into one-year and three-year (per Planning Commission recommendation) improvements. One-year improvements included identifying all streets and MH spaces with appropriate signage, providing lighting to the existing entrances to the park, making repairs to the existing access throughout the park, and ensuring that the connections to utilities within the park are in compliance with the appropriate codes. Three-year improvements include construction of an adequate storm drainage system, construction of an all-weather access to all lots within the park, installation of street lights in accordance with subdivision standards, construction of a fence or other screen around the perimeter of the park, installation of dumpster screening fences, and improvements to the utility infrastructure throughout the park to ensure safety and fire protection throughout the park. Finally, all existing MHs within the city limits will require skirting within 90 days of notification from the City.

Although Planning Commission review and recommendation is not required on this item since it is not part of the Development Code, the Planning Commission decided to receive public comments and make

recommendations on this ordinance due to the similar nature of it and the proposed changes to the Development Code. During the Planning Commission discussions and public comment on this issue, one citizen spoke in opposition to this request and another addressed the Commission in general. Charles Smither expressed his opposition to adoption of the ordinance due to the possibility of conflicting language between the proposed ordinance and language in the Development Code. Councilman Olson expressed his thanks to the Planning Commission for their service. No other comments were received by the staff.

After closing the public comments on this item, the Planning Commission recommended some changes to the draft provided to them from staff. These changes included requiring improvements and repairs to the existing access within a park as part of the one-year improvement requirements and reducing the staff proposed 5-year standards for major improvements to three years. The Planning Commission unanimously recommended approval of repealing the existing Chapter 30 of the Code of Ordinances and adoption of the revised ordinance with the changes noted above. The attached ordinance for consideration reflects the changes as recommended by the Commission. Minutes from the meeting are attached with this report summarizing their discussion in more detail.

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**Previous Council Action:** The current Chapter 30, Manufactured Housing and RVs, of the Code of Ordinances, was adopted in 1986 and revised in 1999. The old Development Code was adopted in 1986. Since that time, several amendments have been adopted, many of those minor changes to address specific issues. In April of 2013, the City entered into a contract with Duncan and Associates to draft a Development Code update. In June of 2014, Duncan and Associates held a joint workshop with the City Council and Planning and Zoning Commission as an overview to the proposed changes to the code. The City Council adopted the Development Code in its current form in August of 2015 with an effective date of August 31, 2015.

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**Financial Implications:** There are no direct financial implications to the City associated with adopting the Development Code. As the Council reviews and considers the various decision packages, you will note some of the recommendations will add to the cost of developing properties in Huntsville. There is no attempt made to quantify the additional costs associated with any particular Development Code change/amendment because the possible impact will be different for each property and development.

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**Approvals:**     City Attorney                       Director of Finance                       City Manager

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**Associated Information:**

- Planning Commission Discussion Form (3-4)
- Existing Chapter 30 (5)
- Draft Ordinance 2016-21 (6-14)
- April 7, 2016 Planning Commission minutes (15)

## Planning Commission Discussion Form

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Prepared by: Aron Kulhavy, AICP, Community & Economic Development Director/City Planner  
Janet Ridley, Planner; Jasmine Moss, Administrative Assistant

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**MEETING DATE:** April 7, 2016

**SUBJECT:** Standards for existing Manufactured Homes and Manufactured Home Parks

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This discussion form focuses only on the proposed changes to Huntsville Code of Ordinances concerning Manufactured Housing. This ordinance is outside the scope of the Development Code and does not require Planning Commission review; however, since it covers the same subject matter as the Development Code discussion, a review by the Planning Commission is appropriate. A separate discussion form is provided for the changes to the Development Code concerning the placement and location of new structures and parks.

Chapter 30 of the Code of Ordinances of the City of Huntsville, Manufactured Homes and Recreational Vehicles, currently covers the MH and RV regulations of the City of Huntsville. These regulations were originally included in the Code in 1961 and were last modified in 1999. A copy of this short 1-page ordinance is attached with this report. All of the items within the existing code are now covered under the Development Code.

In discussions with the Commission concerning Manufactured Housing issues, staff received direction to provide additional research and standards for the existing MHs and MH parks located in the community. In February of 2016, some preliminary drafts were presented to the Commission for review and comment. The direction presented by the Commission is summarized below:

1. All existing homes, regardless of age, should be **skirted**.
2. Require a **screen or buffer** surrounding the park.
3. Require a **paved impervious surface** for emergency vehicle access throughout the park.
4. Require **screening** around dumpster areas.
5. Require outside **signage** that includes name and address and clear identification of each structure within the park.
6. Require outside **lighting** at a rate similar to that of subdivision lighting standards.
7. Improve the **utility infrastructure** to ensure safe conditions and fire protection.

The attached draft of the revision to the Code of Ordinances reflects the desires of the Commission to create some minimum standards for the existing MHs and MH parks in Huntsville. The proposed changes fall into three basic categories, each with their own distinct time frame for implementation.

First, all existing manufactured homes, either inside or outside of parks, must be skirted within 90-day notification from the City.

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Second, a series of improvements must be made to all of the existing MH parks within one-year of the adoption of the proposed ordinance. These changes include identifying all streets within the park through appropriate signage, displaying addresses or space numbers for all of the lots within the park, providing lighting at the entrances and exits to the park, and ensuring that the utility connections and installation of all of the MHs within the park are in compliance with the adopted codes of the City.

Finally, a second set of improvements must also be completed within a five-year time frame from the adoption of this ordinance. These improvements include construction of an adequate storm drainage system, construction of an all-weather access to all lots within the park, installation of street lights consistent with subdivision standards, construction of a fence or other screen around the boundaries of the park, installation of fire hydrants and an adequate water supply to provide fire protection, installation of garbage dumpster screening fences, and improvements to the utility mains throughout the park to ensure their safety and utility throughout the park.

The proposed ordinance also includes all of those items necessary for this to be a stand-alone ordinance. A separate set of definitions and purpose of intent are spelled out specifically in the ordinance. In addition, enforcement authority and penalties are provided for in the ordinance.

#### **STAFF RECOMMENDATION:**

*Chapter 2 of the Huntsville Horizon Comprehensive Plan talks extensively about housing challenges within the community. An example is the specific statement about the growth and development issue of Huntsville having a lack of quality "new housing construction in price ranges affordable to lower and middle income buyers, which can lead to a proliferation of manufactured homes in and around the community." In addition, the award winning Harnessing Huntsville's Potential plan discussed the need to revise and enforce development regulations. The recommendations in this plan state that the City should revise and enforce development regulations addressing the livability principles of valuing communities and neighborhoods by providing a policy framework that encourages healthy and safe neighborhoods.*

*As the proposed ordinance furthers the goals of the Huntsville Horizon Comprehensive Plan and the Harnessing Huntsville's Potential plan by promoting healthy, sustainable and safe affordable housing, **staff recommends approval** of the ordinance as submitted.*

#### **ATTACHMENTS:**

Existing Chapter 30

Proposed Chapter 30

## Existing Chapter 30 Huntsville Code of Ordinances

### Footnotes:

--- (1) ---

**State Law reference**— Regulation of certain types of housing and buildings, reservation of municipal authority, V.T.C.A., Occupations Code § 1202.251; regulation by municipality of mobile and manufactured housing, V.T.C.A., Occupations Code § 1201.008.

Sec. 30-1. - Manufactured homes, recreational vehicle parks; permit required.

- (a) Definitions. The definitions found in the Manufactured Housing Standards Act, V.T.C.A., Occupations Code § 1201.001 et seq., shall apply to this section.
- (b) Prohibitions.
  - (1) A person shall not place or allow to be placed a manufactured home or mobile home on any lot within the corporate limits of the city without first obtaining a certificate of compliance in accordance with the requirements of the city's development code, adopted by reference in chapter 24.
  - (2) A person shall not connect or allow to be connected any manufactured home or mobile home within the corporate limits of the city to any water, sewer, gas or electrical connection without first obtaining the necessary permits, including a certificate of compliance, in accordance with the requirements of the city's development code.
  - (3) A person shall not construct, alter or extend a manufactured home development without first obtaining the necessary permits or authorization to do so in accordance with the requirements of the city's development code.
  - (4) A person shall not construct, alter or extend a recreational vehicle (RV) park without first obtaining the necessary permits or authorization to do so in accordance with the requirements of the city's development code.
- (c) Violation; penalty. It shall be unlawful for any person or his representative, agent, seller, or installer to violate any of the provisions enumerated in subsection (b) of this section, and any person violating or failing to comply with subsection (b) of this section shall be fined, upon conviction, in accordance with the provisions in section 1602 of the city's development code, and a separate offense shall be deemed committed upon each and every day that this provision of the Code is violated.

(Code 1961, § 19.01.02; Ord. No. 86-15, § 6, 6-10-1986; Ord. No. 99-15, 6-8-1999)

**ORDINANCE NO. 2016-21**

**AN ORDINANCE AMENDING THE CITY OF HUNTSVILLE, TEXAS CODE OF ORDINANCES, SPECIFICALLY CHAPTER 30 “MANUFACTURED HOMES AND RECREATIONAL VEHICLES; PROVIDING FOR A PENALTY; MAKING OTHER PROVISIONS AND FINDINGS THERETO; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the Huntsville Code of Ordinances, Chapter 30 “MANUFACTURED HOMES AND RECREATIONAL VEHICLES” provides for regulations to ensure clean, safe, sanitary living environments for the protection of the public health, safety and public welfare of the City’s residents:

**WHEREAS**, the City of Huntsville, as a home rule city may regulate this activity pursuant to its broad powers of self-government; and

**WHEREAS**, City Council finds it necessary to amend its existing regulations of these activities to protect the health and public safety; now therefore

**WHEREAS**, the City Council of the City of Huntsville, Texas now wishes to amend Chapter 30 to help promote the health, safety and welfare of its residents;

**WHEREAS**, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:**

**SECTION 1:** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**SECTION 2:** Huntsville Code of Ordinances Chapter 30 “MANUFACTURED HOMES AND RECREATIONAL VEHICLES” is hereby amended in its entirety and replaced with a revised Chapter 30 as shown on the attached Exhibit “A”.

**SECTION 3:** All ordinances or parts of Ordinances that are in conflict or inconsistent with the provisions of this Ordinance shall be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 4:** Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION 5:** This Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Article 4.14 of the Charter of the City of Huntsville, Texas.

**PASSED AND APPROVED** on this the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2016.

THE CITY OF HUNTSVILLE

\_\_\_\_\_  
Andy Brauning, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

## EXHIBIT "A"

### CHAPTER 30 – MANUFACTURED HOMES AND RECREATIONAL VEHICLES

#### ARTICLE I. - IN GENERAL

##### **Sec. 30-1. -Purpose and Intent.**

The purpose of these regulations is to ensure clean, safe, and sanitary living environments for the protection of the public health, safety, and welfare of the citizens of the city.

##### **Sec. 30-2. -Applicability.**

This chapter governs:

The maintenance and operation of manufactured home parks and manufactured homes outside of parks existing prior to August 31, 2015.

Appropriate areas for installation of manufactured housing

##### **Sec. 30-3. -Definitions.**

The following terms and phrases shall have the following meanings when used in this chapter:

*All-weather surface* - a dust free surface constructed of concrete or asphalt.

*Approved* – when used with reference to a material or method of installation or construction, means an approval by the building official. Approval shall be granted if the building official finds that the item is suitable for its intended purpose and is not dangerous or detrimental to life, safety or welfare of people or property except as otherwise provided in this chapter. Such finding shall be based on the results of investigation or tests conducted by the building official, accepted principles of safety, or the results of tests by reliable national or state authorities or technical or scientific organizations.

*Building Official* - the building official of the City of Huntsville or his designee.

*HUD-code manufactured home* means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development; built on a permanent chassis; designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities; transportable in one or more sections; and in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; includes the plumbing, heating, air conditioning, and electrical systems of the home; and does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

*Installation* - the construction of the foundation system and the placement of a manufactured home on that foundation. The term includes supporting, blocking, leveling, securing, anchoring, and connecting multiple sections or components and making minor adjustments.

*Manager* - the person responsible for the control, direction, maintenance and supervision of a manufactured home park, whether an owner or otherwise. Executors, guardians, receivers or trustees may be regarded as owners/managers.

*Manufactured home or Manufactured housing* means a HUD-code manufactured home or a mobile home. ~~- a structure, built on or after June 15, 1976, constructed in accordance with the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).~~

*Manufactured home space* - a space within a manufactured home park upon which a single manufactured home is or may be placed. This term shall also include a "lot" or "site" on which a manufactured home is placed.

*Manufactured home park* - a contiguous development of land that, on the effective date of this chapter, contains more than six (6) manufactured home spaces ~~that are offered for rent.~~

~~*Mobile home* - a structure constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode is eight (8) body feet or more in width or forty (40) feet or more in length, or, when erected on site is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.~~

*Mobile home:* - means a structure constructed before June 15, 1976; built on a permanent chassis; designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities; transportable in one or more sections; and in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and includes the plumbing, heating, air conditioning, and electrical systems of the home.

*Non-conforming* - a building or other structure that was legal when constructed or placed into operation but that is in violation of subsequently adopted regulations.

*Parcel* - a tract or plot of land of any size that may or may not be subdivided or improved.

*Person* - includes both the singular and plural tense and means any individual, firm, partnership, association, company, corporation, society or other group, however organized.

*Replaced* - the relocation of a manufactured home whether upon the same lot or tract of land or from one lot or tract of land to another.

*Street* - any street, alley, avenue, lane, boulevard or drive within the boundaries of the manufactured home park.

#### **Sec. 30-4. -Authority, enforcement and inspection.**

- (a) Authority. The building official shall be the issuing officer for all permits and licenses under this chapter. The building official is authorized to establish administrative rules and regulations relating to the performance of his or her duties under this chapter.
- (b) Enforcement. The building official will direct enforcement actions against an owner or licensee, manufactured home installer and/or retailer, and/or a manufactured home park owner or manager for violations of this chapter.
- (c) Inspection. The building official is authorized to conduct inspections to determine compliance with this chapter and all other laws.

#### **Sec. 30-5. -Penalty.**

Any person who shall violate any of the provisions of this chapter, upon conviction, shall be fined as prescribed by section 1-11 of the Huntsville, Texas, Code of Ordinances.

#### **Sec. 30-6. -Fees.**

The fees set forth in the City of Huntsville fee schedule shall apply to this chapter.

#### **Secs. 30-7---30-20.-Reserved.**

### **Article II. Manufactured Homes Outside of Parks**

#### **Sec. 30-21. -Purpose and Intent.**

It is the purpose and intent of the city by this article to ensure that all residents in manufactured homes have clean, safe, and sanitary living conditions.

#### **Sec. 30-22. -Requirements.**

- (a) The owners and occupants of manufactured homes lawfully in place on the effective date of this chapter shall have ninety (90) days following notice to the owner to install the required skirting.
- (b) The **replacement** of non-conforming or lawfully placed manufactured homes on the effective date of this ordinance shall be required to comply with the placement requirements of the City of Huntsville Development Code.

**Sec. 30-23. -Submittal requirements.**

All applications must be forms provided by the city and contain the following:

1-The name and address of the person having title to the manufactured home;

2-A description of the manufactured home including exterior dimensions when fully assembled, total square footage, name of the manufacturer, date of manufacture, and the serial or identification number;

3-The proposed location for placement of the manufactured home by a plat or metes and bounds legal description and a plot plan, diagram, or other means adequate to advise the building official of the exact location contemplated and its compliance with applicable codes and ordinances.

4-Any additional information the building official requires to aid in the enforcement of this chapter or other laws applicable to the manufactured home.

5-Authorized signature. The application shall be signed by the owner of the manufactured home and the owner of the land on which the manufactured home is proposed to be replaced.

6-Finalization of replacement permit and issuance of a certificate of occupancy. Upon meeting the following criteria, the building official shall issue a certificate of occupancy for a replacement manufactured home:

7-The applicant has obtained all applicable permits and inspections; and

8-The building official has inspected the replacement of the manufactured home and found that the manufactured home and its placement meet all applicable requirements of this chapter and other applicable city ordinances, as well as any state laws which may be enforced by the city.

**Secs. 30-24---30-37.- Reserved.**

**ARTICLE III. MANUFACTURED HOME PARKS**

**Sec. 30-38. -Purpose and intent.**

- (a) It is the purpose and intent of the city by this article to ensure that all residents in manufactured home parks have clean, safe, and sanitary living conditions. This article will:

1-Establish minimum standards with which all existing parks must be in compliance within one (1) year from the effective date of this chapter; and

2- Establish standards for which all existing parks must be in compliance within five (5) years from the effective date of this chapter.

- (b) Parks may be expanded provided that all other applicable codes, including the requirements of the City of Huntsville Development Code, and ordinances are met for the entire park.

**Sec. 30-39. -One-year standards for manufactured home parks.**

All parks must comply with the following standards within one year from the adoption of this ordinance:

(a) All streets shall have standard street signs erected at appropriate locations.

(b) All lots or spaces shall be sequentially numbered and the numbers shall be displayed in a manner that is clearly visible from the adjacent street.

(c) Adequate security lighting shall be provided to illuminate streets and park exits.

(d) All electrical distributions and connections must comply with applicable city and state codes.

(e) All water and sewer lines and connections must comply with city and state codes.

(f) All manufactured homes must comply with the tie-down, placement, and skirting requirement set forth in ~~Article II~~ this article.

(g) Consistent with the adopted fire code for fire safety during construction, approved vehicle access capable of supporting vehicle loading under all weather conditions shall be provided to all lots or spaces.

**Sec. 30-40. -Three-year standards for manufactured home parks.**

All parks must comply with the following standards ~~in this section~~ within three (3) years from the adoption of this ordinance:

(a) Parks must have a storm drainage system approved by the city engineer, unless the current storm drainage system has previously been approved and is on file with the City.

(b) The following street requirements must be provided:

(1) Be constructed of an all-weather surface.

(2) Be at least twenty (20) feet in width with no street parking allowed.

(3) Provide ~~designated~~ fire lane designation on each side.

(c) Street lights shall be provided along all internal streets at a minimum spacing of three hundred (300) feet between lights and at all street intersections.

(d) A fence shall be installed around the outer perimeter of the park to visually screen the park from other properties or public rights-of-way. The fence shall be a minimum of six (6) feet high, and must be maintained in good repair as long as the park remains in operation. The fence must be constructed of wood, brick, split-face block, or any combination of these or similar materials that create an effective visual screen.

(e) Fire hydrants shall be provided and shall be so spaced that no portion of any manufactured home space is more than five hundred (500) feet from the nearest fire hydrant. All fire hydrants and water supply to the hydrants shall comply with current city standards and specifications

(f) Sewer line must be installed and maintained in accordance with the currently adopted plumbing code.

(g) Water line must be installed and maintained in accordance with the currently adopted plumbing code.

(h) Garbage dumpster(s) shall be provided by the park in the size and numbers appropriate for the number of lots. The pad location(s) and fencing for the dumpster area(s) shall meet the current City of Huntsville Solid Waste Department standards.

(i) Natural gas piping systems shall be installed and maintained in accordance with all applicable codes.

### **Sec. 30-41. -Operation of manufactured home parks.**

All grounds and improvements shall be maintained in accordance with this ordinance. Electrical systems, water systems, sanitary sewer systems, streets, parking areas, buildings and structures shall comply with applicable codes and be maintained in safe and sanitary conditions. Refuse collection sites shall be kept clean and sanitary; grass and shrubbery shall be mowed and trimmed; fences, skirting and screening shall be kept in a sound state of repair; grading and drainage shall be well maintained; common facilities shall be operated in compliance with applicable ordinances; and the park shall be maintained reasonably free of litter and debris.

The owner or operator of the manufactured home park shall be responsible for the operation and maintenance of the park, including:

(a) Keeping the park in good repair and in a clean and sanitary condition.

- (b) Maintaining an as-built site plan showing space locations, space and numbers, and utility line locations.
- (c) Requiring that licensed installers be used in the placement of units.
- (e) Notifying occupants of their responsibilities to:
  - (1) Maintain their homes, lots, facilities, and equipment in good repair and in clean and sanitary conditions;
  - (2) Ensure proper placement of the manufactured home and the installation of all utility connections; and
  - (3) Install proper skirting and manufactured home stands and tie-downs.
- (f) Abide by all other regulations, requirements, and laws of the city and state.

**Sec. 30-42. -Placement standards.**

(a) Tie-downs and placement standards. Each manufactured home space shall be provided with an adequate foundation for placement and tie-down of manufactured homes to secure them against uplift, sliding, rotation, and overturning, in compliance with the regulations of the state department of housing and community affairs.

(b) Skirting. Within thirty (30) days of placement, all units shall have permanently affixed skirting around the lower outer perimeters and attached structure or additions. Manufactured homes already in place on the effective date of this chapter shall be required to comply with this requirement within ninety (90) days following notice to the owner(s) of the manufactured home park.

**Sec. 30-43. -Inspection of manufactured home parks.**

The building official is hereby authorized to make inspections as necessary or desirable to determine satisfactory compliance with this chapter and all other applicable ordinances and laws. The park owner or the owner's representative shall be responsible for ensuring that all manufactured home utility connections, tie-downs, skirting, and all park common facilities and grounds comply with this chapter.

**Sec. 30-44. -Appeals.**

(a) Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the provisions of this article will result in a legal hardship or the inability to reasonably amortize improvements within a manufactured home park, a park owner may request a hearing to address such hardship or schedule for compliance with this article.

(b) A request for such hearing must be made in writing and received by the building official at least thirty (30) days prior to the applicable deadline for compliance

with this article. If a park owner timely requests a hearing, the ~~City Council~~ Planning Commission shall conduct such hearing within thirty (30) days from the date the request is received. The park owner shall have the burden of showing that a legal hardship exists or that the standards set forth in this article do not allow for the reasonable amortization of specific improvements located within the manufactured home park.

(c) If the Planning Commission finds that compliance with this article would prevent a park owner from reasonably amortizing his investment in specific improvements located in such park, then the Planning Commission shall extend the deadline for compliance with this article as necessary to allow full amortization of the investment.

(d) An applicant for legal hardship who is dissatisfied with the action of the Planning Commission relating to the granting or denial of legal hardship, has the right to appeal to the City Council within 30 days after receipt of notification of such action. The City Council must hold a public hearing and make its decision on the matter within 45 days of receiving the appeal notice.

**Secs. 30-45---30-60.- Reserved.**

**EXCERPT FROM THE MINUTES OF THE MEETING OF THE PLANNING COMMISSION  
HELD IN THE COUNCIL CHAMBERS, AT CITY HALL, 1212 AVENUE M, HUNTSVILLE,  
TEXAS ON THE 7TH DAY OF APRIL, 2016 AT 6:00 PM.**

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Members present: Woods; Barry; Johnston; Durda; Cummings

Members absent: Hiton; Anderson

City staff present: Kulhavy; Ridley; Moss; Woodham

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**CONSIDER** recommending adoption of an ordinance amending Chapter 30 MANUFACTURED HOMES AND RECREATIONAL VEHICLES of the Code of Ordinances of the City of Huntsville.

**Aron Kulhavy** pointed out that this ordinance will be part of the Municipal Code of Ordinances of the City of Huntsville and not the Development Code. The ordinance does not require Commission review and approval, however due to it covering the same subject matter as the previous Development Code discussion, review by the Planning Commission is appropriate. Kulhavy noted that this is not a public hearing agenda item, however the Chairman may take public comments at his discretion. Due to the subject matter, Staff recommends that public comments are allowed. Kulhavy then gave an overview of the provision of the ordinance per the discussion form making note of the 1 year and 5 year time frame for the required time frame.

The **Commissioners** discussed the provisions of the proposed ordinance at length with accessibility for residents and emergency vehicles being the main topic of conversation. The Commission would like to have the requirement of some level of improvement of the streets/driveways within the existing parks within 1 year. The Commission also feels that 5 years is too long to allow for the total required upgrade of existing parks, preferring a 3 year time frame.

**Chairman Johnston** opened the floor for public comments.

**Charles Smither, Jr.** stated that the goal of safety for the existing parks is fine. He has a problem with the proposed Municipal Ordinance and the Development Code both covering basically the same subject with different requirements and gave the example of the Municipal Code sight triangle definition and the Development Code sight triangle being entirely different.

**Keith Olson** expressed his appreciation and thanked the Commission for their work.

In reply to Mr. Smither's concern, the **Commission** indicated that there is sufficient definition of existing mobile/manufactured homes and parks and new manufactured homes and parks/subdivision in the proposed ordinance and in the Development Code for there not to be any interpretation issues.

**Aron Kulhavy** proposed that the proposed ordinance be revised to use a Building Code definition for fire fighting access during construction for the 1 year upgrade street/accessibility requirement. He also indicated that the ordinance will be revised for 3 year completed upgrade in lieu of 5 year. Kulhavy noted that upon adoption of the ordinance by City Council, there will be a period of time to allow for staff notification of park owners of the required upgrades. The clock will be ticking for the upgrades from the date of official notification to existing park owners.

*Commissioner Cummings moved to recommend adoption of the ordinance with the discussed 1 year accessibility and 3 year upgrade completion revisions to City Council. Second was by Commissioner Barry. The vote was unanimous.*



MINUTES FROM THE HUNTSVILLE CITY COUNCIL REGULAR MEETING HELD ON THE 5th DAY OF APRIL 2016, IN THE CITY HALL, LOCATED AT 1212 AVENUE M, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 4:00 P.M.

The Council met in a regular session with the following:

**COUNCILMEMBERS PRESENT:** Andy Brauning, Joe Emmett, Lydia Montgomery, Don H. Johnson, Keith Olson, Ronald Allen, Joe P. Rodriguez, Tish Humphrey

**COUNCILMEMBERS ABSENT:** None

**OFFICERS PRESENT:** Matt Benoit, City Manager; Leonard Schneider, City Attorney; Lee Woodward, City Secretary

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**WORK SESSION [4:00 P.M.]** – The City Council will receive presentations and discuss eligible debt capacities, scenarios for a possible November 2016 election and potential quality of life projects. [Joseph Wiggs, Director of Parks and Leisure]

The City Council heard the results of the recent parks amenities surveys and discussed potential quality of life projects. The City Manager presented fund by fund discussions on debt service amounts and potential city project in the coming years.

**MAIN SESSION [6:00 P.M.]**

1. **CALL TO ORDER** - Mayor Brauning called the meeting to order at 6:00 p.m.
2. **INVOCATION AND PLEDGES** – Councilmember Johnson gave an invocation and Raven Davalos of Huntsville Home School Organization led the pledges.
3. **PRESENTATIONS AND PROCLAMATIONS**
  - Fair Housing Month
  - Magda Castaneda Day
  - National Public Safety Telecommunicator Week
4. **CONSENT AGENDA**

Public Comments will be called for by the presiding officer before action is taken on these items. *(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)*

  - a. **Approve the minutes of the City Council meeting held on March 15, 2016 and March 29, 2016.** [Lee Woodward, City Secretary]  
The minutes were adopted without correction.
5. **STATUTORY AGENDA**
  - a. **Presentation, public comment, discussion, and possible action** to consider awarding the construction contract for the 30-Inch Water Transmission Main Surge Protection (Air/Vacuum Release Valves) Project (Project No. 14-11-11). [Y. S. "Ram" Ramachandra, City Engineer]  
Councilmember Johnson moved to award the construction contract to 5-T Utilities, Inc., for the construction of the 30-Inch Water Transmission Main Surge Protection Project (Air/Vacuum Release Valves), in the amount of \$188,863.62.; the motion was seconded by Councilmember Humphrey. The motion was adopted, 8-0.
  - b. **FIRST READING - Presentation, public comment, discussion, and possible action** to authorize the City Manager to sign a construction services agreement with Garney Companies, Inc. for construction services to complete the Town Creek drainage project, first reading. [Matt Benoit, City Manager; Dr. Sherry McKibben, Director of Neighborhood Resources; Y. S. Ram Ramachandra, City Engineer]  
*First reading, no action was taken. George Russell gave public comment.*
  - c. **Presentation, public comment, discussion, and possible action** to consider authorizing the City Manager to sign a proposal with Burditt Consultants, LLC for Parks Master Plan Services. [Matt Benoit, City Manager; Joseph Wiggs, Director of Parks and Leisure]  
George Russell and Keith Jenkins gave public comment. Councilmember Humphrey moved to authorize the City Manager to sign a proposal with Burditt Consultants, LLC for Parks Master Plan Services; the motion was seconded by Councilmember Olson. The motion was adopted, 8-0.
  - d. **Presentation, public comment, discussion, and possible action** to authorize the City Manager to apply for two (2) Transportation Investment Generating Economic Recovery (TIGER) Grants and adopt Resolution 2016-23 and Resolution 2016-24 in support of same. [Dr. Sherry McKibben, Director of Neighborhood Resources and Ram Ramachandra, City Engineer]  
Councilmember Montgomery moved to authorize the City Manager to apply for two (2) Transportation Investment Generating Economic Recovery (TIGER) Grants and adopt Resolution 2016-23 and Resolution 2016-24 in support of same; the motion was seconded by Councilmember Humphrey. The motion was adopted, 7-1, Councilmember Allen voting against.
  - e. **Presentation, public comment, discussion, and possible action** to consider a resolution accepting a bid for the sale of a City-owned 0.615 acre tract of land located north of 20th Street, south of 19<sup>th</sup> Street, west of Sam Houston

Avenue, and east of Avenue L ½, located at 1930 A Sam Houston Avenue, and authorizing the City Manager, City Secretary, and City Attorney to execute all documents for the sale of said property. [Aron Kulhavy, Director of Community and Economic Development]

Charles Smither Jr., Tarek Maalouf, George Russell gave public comment. The Council adjourned into executive session at 7:06 p.m. under Texas Government Code Section 551.071 – legal advice. The Council reconvened at 7:35 p.m. Councilmember Olson moved to reject all bids and revisit the item at a later date. The motion was seconded by Councilmember Humphrey. The motion was adopted 8-0.

## 6. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY

**Presentation, public comment, discussion, and possible action to approve the Mayor's nominations to the County Uniform Truancy Policy Committee, required per Education Code 25.0916. [Mayor Brauninger and Leonard Schneider, City Attorney]**

1. County Court at Law Judge Sorenson (appointed by both Judge Danny Pierce and Mayor Brauninger)
2. Municipal Judge John Gaines (appointed by both Judge Danny Pierce and Mayor Brauninger)
3. Justice of the Peace Janie Farris
4. Superintendent of HISD's designee, Dr. Mina Schnitta, HISD Director of Secondary Teaching and Learning
5. Open-enrollment charter school, Kevin Nichols, Principal, Premier High School, or his designee
6. Municipal Court Prosecutor David Moorman
7. General public representative Marjetta Spriggs

Mayor Brauninger moved to approve his nominations to the County Uniform Truancy Policy Committee. The motion was unanimously adopted, 8-0.

- b. **Presentation, public comment, discussion, and possible action to move Board of Adjustments-Zoning Alternate A, John Cromer, to an open position on the board, to move Alternate B, David Zuniga, to the Alternate A position, per the request of the Board, and to nominate Anthony Watkins to then-opened Alternate B position. [Mayor Brauninger]**

Mayor Brauninger moved to approve his nominations to move Board of Adjustments-Zoning Alternate A, John Cromer, to an open position on the board, to move Alternate B, David Zuniga, to the Alternate A position, per the request of the Board, and to nominate Anthony Watkins to then-opened Alternate B position. The motion was adopted 7-1, Councilmember Emmett voting against.

- c. **FIRST READING - Presentation, public comment, discussion, and possible action to hear the report of the Board and Commissions Review Ad Hoc Committee and to adopt Ordinance 2016-14 amending Ordinance 2002-18, Section 1 (d) Duties of Board. [Committee Chair Councilmember Montgomery]**

*First reading, no action was taken.*

- d. **Presentation, public comment, discussion, and possible action on reappointment of Dennis Reed to the Cemetery Advisory Board. [Mayor Brauninger]**

Mayor Brauninger moved to approve his nomination. The motion was unanimously adopted, 8-0.

- e. **Presentation, public comment, discussion, and possible action on a request by Councilmember Allen to discuss changes to the City policy for payments to construction companies, to ensure that the contractors provide written proof of payment to their subcontractors/vendors who worked or provided materials/equipment on the project (the written proof being provided before the contractors are paid by the City, to protect owners granting easements to the City from being threatened with a lien against their property by subcontractors/vendors who are not paid by the contractor). [Councilmember Allen]**

Councilmember Allen moved that the City Attorney issue an updated letter to Reverend Haynes, saying that the City would be responsible for all legal fees regarding letter from Trench Plate Rental Company. The motion failed, 1-7 Councilmember Allen voting in favor.

## 7. REQUESTS FOR CITIZEN PARTICIPATION

*An opportunity for citizens to be heard on any topic and for the City Council to participate in the discussion. No action will be taken.*

*No requests were received by noon on March 29, 2016.*

## 8. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA

There were no media inquiries.

## 9. ITEMS OF COMMUNITY INTEREST

- Mayor Pro Tem Olson shared an *HISD Minute!* He offered congratulations to HISD Athletic Director Coach Marcus Evans and Principals Delanise Taylor and Beth Burt on their well-earned retirements. All three have had long and successful careers in education and with the District, and we thank them and wish them well! Huntsville High School Military Marching Band members and Choir members are working hard right now as they will be competing at State UIL Solo & Ensemble

Contests in May. HHS students earned over 200 1st Division ratings at the February competitions, allowing a number of students to advance. We wish all these talented musicians and vocalists the best of luck!

- The Main Street Music Festival will be returning in April. Watch the Main Street Facebook page for dates and performers.
- The Good Shepherd Mission, the City of Huntsville, Texas Veterans Affairs Advisory Board, and the Military Veteran Peer Network will be participating in a local Day of Service on April 16 from 1-5. Please call 936-521-6142 to join in.
- Please mark your calendars for the *Little Stinger Book Drive* to make sure every local child has a book to take home this summer! Bring new or gently worn books for PreK-4<sup>th</sup> grade to the Huntsville Public Library on April 12 from 10-4. Call the Chamber of Commerce for more details and additional drop-off sites.
- Please help us welcome our new Deputy City Secretary, Megan Kaltenbach! Ms. Kaltenbach is a recent Bearkat graduate who joined us at the beginning of March. She is doing a great job and we are very happy to have her!
- The 2<sup>nd</sup> annual Veteran's Expo will be April 26 at the Lone Star Convention and Expo Center in Conroe. Call Ashley at 936-521-6132 for more info.
- Please take a look at the screen, there is a great new video available on the City's social media platforms encouraging everyone to be sure to register to vote by April 7<sup>th</sup> for our special election in May. Megan created this fun short video so please take a look!
- Councilmember Humphrey reminded all of the ongoing Walker County Fair & Rodeo events and of SHSU's student government All Paws In annual service day on Saturday.

#### 10. EXECUTIVE SESSION

- a. **City Council will meet in Executive Session pursuant to Texas Government Code Section 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, concerning City Secretary Lee Woodward.**

The Council adjourned into Executive Session at 8:07 p.m.

#### 11. RECONVENE

**Take action, if necessary, on items addressed during Executive Session.**

The Council reconvened at 8:44 p.m. Councilmember Rodriguez moved to renew the City Secretary's contract with an increase of 2.5%; the motion was seconded by Councilmember Montgomery. Councilmember Olson moved to amend by adding four days of personal discretionary time to the contract; the motion was seconded by Councilmember Humphrey. The amendment failed 3-5, Councilmembers Montgomery, Rodriguez, Allen, Emmett, and Mayor Brauningger voting against. The main motion was unanimously adopted, 8-0.

#### 12. ADJOURNMENT

Mayor Brauningger adjourned the meeting at 8:46 p.m.

Lee Woodward, City Secretary



**MINUTES FROM THE HUNTSVILLE CITY COUNCIL REGULAR MEETING HELD ON THE 7<sup>th</sup> DAY OF APRIL 2016, IN THE CITY HALL, LOCATED AT 1212 AVENUE M, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 5:30 P.M.**

The Council met in a regular session with the following:

**COUNCILMEMBERS PRESENT:** Andy Brauninger, Lydia Montgomery, Don H. Johnson, Keith Olson, Joe P. Rodriguez, Tish Humphrey

**COUNCILMEMBERS ABSENT:** Joe Emmett, Ronald Allen

**OFFICERS PRESENT:** Matt Benoit, City Manager; Lee Woodward, City Secretary

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1. **CALL TO ORDER** - Mayor Brauninger called the meeting to order at 5:32 p.m.
2. **WORK SESSION [5:30 P.M.]** – The City Council will meet with the Planning Commission to review major subdivision preliminary plat for Texas Grand Ranch, Section 3B located in the ETJ of the City of Huntsville.

The City Council heard an update from Aron Kulhavy, Director of Community and Economic Development, on the Section 3B plat and overall progress at the development.

3. **ADJOURNMENT** - Mayor Brauninger adjourned the meeting at 5:45 p.m.

Lee Woodward, City Secretary





CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 6b

**Item/Subject:** Consider authorizing the City Manager to submit an application to the Department of Justice Bulletproof Vest Program for \$6,300.00.

**Initiating Department/Presenter:** Neighborhood Resources

**Presenter:** Sherry McKibben, Director

**Recommended Motion:** Move to authorize the City Manager to submit an application to the Department of Justice Bulletproof Vest Program for \$6,300.00.

**Strategic Initiative:** Goal #8 - Public Safety - Provide safety and security for all citizens.

**Discussion:** Each year, the Department of Justice (DOJ) allows Police Departments to apply for funding to help pay for bulletproof vests for their officers. The City has participated in this program since 2001. The program will reimburse the City 50% of the cost of the vests.

The recommended useable life for a bulletproof vest is five years. The City has a replacement schedule for officers that follows this schedule. The vest grant program will allow replacement of the vests based on this schedule. The City currently tries to replace at least ten vests per year and/or use these funds to provide vests for new hires. Vests are estimated to cost about \$700.00 each. The City has nine vests on the schedule to expire during the two-year grant period (2017-2019).

The Police Department budgets the cost of the vests in their budget each year and the DOJ reimburses the City for half of the expenses up to the amount of the grant.

Once the City's request for funding is approved, the DOJ will automatically make the funds available by "banking" them in their grant account system for invoice reimbursements.

**Previous Council Action:** There has been no previous Council action on this item.

**Financial Implications:**

- There is no financial impact associated with this item.
- Item is budgeted: In the amount of
- Item is not budgeted: This will be budgeted for in Fiscal Year 16 - 17 when it is expected the grant funds will be received
- Item is estimated to generate additional revenue:

**Approvals:**     City Attorney             Director of Finance             City Manager

**Associated Information:**

- None





**CITY COUNCIL AGENDA**

4/19/2016

Agenda Item: 7a

**Item/Subject:** **FIRST READING** - Consider adoption of Ordinance 2016-24 amending the City's Code of Ordinances, Chapter 44 "Traffic and Motor Vehicles" to establish paid parking, first reading.

**Initiating Department/Presenter:** Finance

**Presenter:** Steve Ritter, Finance Director

**Recommended Motion:** **FIRST READING** – No action required.

**Strategic Initiative:** Strategic Initiative #4 - Huntsville is a well-managed, sustainable community that values its natural resources and provides exceptional public services.

**Discussion:** Per the City Council's directive, staff inquired into the feasibility of charging for parking on two City-owned streets, Bearkat Boulevard (16<sup>th</sup> Street) and Bobby K. Marks Drive, that are within and adjacent to Sam Houston State University (SHSU).

The amendments to the City's Code of Ordinances is needed to establish paid parking spaces, the process to paint, designate, set fees, set times and provide remedies for enforcement for violators who park in the spaces without paying. This ordinance requires two readings. This is the first reading.

The subject of establishing paid parking has been discussed in numerous Finance Committee meetings.

*The City staff has developed plans to make the parking spaces along Bearkat Boulevard and Bobby K. Marks paid parking which is accomplished through the adoption of agenda item 7b. The plan to manage paid parking spaces (to collect fees and enforce parking restrictions) is being presented as separate agenda items 7a and 7c for the Council's consideration and approval.*

**Previous Council Action:** No previous Council action

**Financial Implications:**

There is no financial impact associated with this item.

**Approvals:**     City Attorney             Director of Finance             City Manager

**Associated Information:**

- Ordinance 2016-24 (pages 2 – 3)
- Exhibit A (pages 4 – 6)

**ORDINANCE NO. 2016-24**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 44, "TRAFFIC AND MOTOR VEHICLES", OF THE CITY CODE OF ORDINANCES OF THE CITY OF HUNTSVILLE, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.**

**WHEREAS**, the Huntsville Code of Ordinances ("Code"), Chapter 44 governs traffic and motor vehicles; and

**WHEREAS**, the City of Huntsville, a home rule municipality, is authorized by Charter to adopt and implement necessary and reasonable ordinances in the best interests of its citizenry; and

**WHEREAS**, the City council of the City of Huntsville finds the provisions of this ordinance set forth below are necessary to protect the health, safety, and welfare of its citizens and the public, and said rules and regulations are reasonable;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Huntsville, Texas that from and after the Effective Date of this Ordinance:

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2:** That Chapter 44, "Traffic and Motor Vehicles", Article VI, is amended by adding new Sections 44-138 thru 44-144 as shown on the attached Exhibit "A and incorporated herein for all purposes.

**Section 3.** That Chapter 44, "Traffic and Motor Vehicles", Article VIII, Section 44-192, is amended by adding a Schedule XVI "Paid Parking Space and Zones" as shown on the attached Exhibit "A and incorporated herein for all purposes.

**Section 4:** All ordinances or parts of Ordinances that are in conflict or inconsistent with the provisions of this Ordinance shall be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section 5:** Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**Section 6:** This Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Article 4.14 of the Charter of the City of Huntsville, Texas.

**PASSED AND APPROVED** on this the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

**THE CITY OF HUNTSVILLE**

\_\_\_\_\_  
**Andy Brauning, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Lee Woodward, City Secretary**

\_\_\_\_\_  
**Leonard Schneider, City Attorney**

## EXHIBIT A

### CHAPTER 44- TRAFFIC AND MOTOR VEHICLES

#### ARTICLE VI.- STOPPING, STANDING AND PARKING

##### **Sec. 44-138. – Paid Parking**

*Paid Parking Space* means a space that is delineated on a public right-of-way for which payment is required to park a vehicle.

*Paid Parking Zone* means a group of parking spaces, on a public right-of-way or on City property, that are delineated by a posted sign and for which payment is required to park a vehicle.

*Paid parking systems* utilize various methods of facilitating parking payment in assigned locations throughout the city. Paid parking systems may include use of telephone, smartphone application, website, or any other technology as deemed appropriate by the city manager to pay for parking. Paid parking systems may utilize parking space numbers, license plates, golf cart registration sticker numbers, or any other means designated by the specific paid parking system to process parking payment.

##### **Sec. -44-139. – Paid Parking Spaces and Paid Parking Zones.**

(a) In addition to Section 44-28, and subject to Council Approval, the city engineer shall establish the location of paid parking spaces and paid parking zones on the streets and in City-owned or controlled parking lots or facilities where the city engineer determines that the strict enforcement of parking time limits is appropriate.

(b)The city engineer may paint or mark each individual paid parking space to prevent encroachment into adjacent paid parking spaces.

(c)A person must park a vehicle completely within the delineated parking space.

(d)A person may not park a vehicle in a paid parking space that is legally occupied by another vehicle.

(e)A vehicle may not be moved and reparked in the same paid parking space or paid parking zone to avoid violating the maximum parking time limit for each parking occasion.

(f)When paid parking time limits are in effect, a person may not allow a vehicle to remain parked in a paid parking space or a paid parking zone when the authorized parking time has expired.

##### **Sec. -44-140. – When use of paid parking system required.**

The hours during which the use of paid parking systems are required are: Monday through Friday from 7:00 AM through 5:00 PM and shall be designated in the paid parking system area by signage. The hours for the use of paid parking systems may be amended time from time by council by separate ordinance.

##### **Sec. 44-141 -Fee for use of paid parking spaces and paid parking zones.**

## EXHIBIT A

### CHAPTER 44- TRAFFIC AND MOTOR VEHICLES

#### ARTICLE VI.- STOPPING, STANDING AND PARKING

##### **Sec. 44-138. – Paid Parking**

*Paid Parking Space* means a space that is delineated on a public right-of-way for which payment is required to park a vehicle.

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##### **Sec. -44-140. – When use of paid parking system required.**

The hours during which the use of paid parking systems are required are: Monday through Friday from 7:00 AM through 5:00 PM and shall be designated in the paid parking system area by signage. The hours for the use of paid parking systems may be amended time from time by council by separate ordinance.

##### **Sec. 44-141 -Fee for use of paid parking spaces and paid parking zones.**

The fee for use of paid parking spaces and paid parking zones is set by separate ordinance. A person parking a vehicle in a paid parking space or paid parking zone shall immediately pay the parking fee for due. The signage required by section 44-140 shall indicate the amount of the fee for parking a vehicle.

**Sec. 44-142. -Parking Exemptions.**

(a) In addition to parking fee exemptions provided by state law, a vehicle owner is exempt from parking time limits and the payment of parking fees when the owner is either operating or occupying a vehicle with a special state license plate or placard documenting the owner's status as:

- a former prisoner of war;
- a Pearl Harbor survivor; or
- a Purple Heart recipient.

(b) Fee Due for Parking Vehicle) do not apply on the following holidays:

- January 1;
- the last Monday in May;
- July 4;
- the first Monday in September;
- the last Thursday in November; and
- December 25.

**Sec. 44-143. – Paid Parking revenue.**

(a) Except as otherwise provided by the Code, the director of the Financial and Administrative Services Department shall coordinate the periodic collection of money.

(b) The City may use revenue collected under this section for any lawful purpose.

**Sec. 44-144. Offenses and Penalties.**

(a) A person may not:

- (1) park a vehicle in a paid parking space or in a paid parking zone in violation of any posted sign or notice;
- (2) perform an act prohibited by this chapter; or
- (3) fail to perform a duty that is required by this chapter.

(b) A person commits an offense if that person parks in a manner as to violate sections 44-139 thru 44-141.

**Secs. 44-145-157. - Reserved**

**ARTICLE VIII. - SCHEDULES OF DESIGNATED STREETS AND ZONES REFERRED TO IN THIS CHAPTER**

**Sec. 44-192. - Purpose of setting forth listed schedules.**

The primary purpose of setting forth the following listed schedules is to enable the city to publish and issue the major text of the motor vehicles and traffic ordinance (this chapter) as an entity and issue separately the schedules which commonly are revised or added to with great frequency. Technically, the schedules are a part of the ordinances. The official record of all schedules is on file with the city secretary, city engineer, municipal court and police department.

Schedule	Designation
I	One-way streets
II	Through streets
III	No parking zones
IV	Parking limit zones
V	Speed limit zones
V-A	School speed limit zone
VI	Load limit areas
VII	Truck routes
VIII	Stop intersections
IX	Yield intersections
X	Signalized intersections
XI	Restrictive turn movements
XII	No trucks allowed
XIII	No passing zone
XIV	Bike lanes
XV	Bike routes
XVI	<u>Paid Parking Space and Zones</u>





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 7b

---

**Item/Subject:** **FIRST READING** - Consider adopting Ordinance 2016-16, converting the traffic movement along Bearkat Boulevard and Bobby K. Marks Drive from the existing two-way movement to a one-way movement and Ordinance 2016-17 creating paid parking spaces along Bearkat Boulevard and Bobby K. Marks Drive, first reading.

**Initiating Department/Presenter:** Engineering

**Presenter:** Y. S. "Ram" Ramachandra, City Engineer

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**Recommended Motion:** **FIRST READING – No action required.** Move to adopt Ordinance 2016-16, converting the traffic movement along Bearkat Boulevard and Bobby K. Marks Drive from the existing two-way movement to a one-way movement and Ordinance 2016-17 creating paid parking spaces along Bearkat Boulevard and Bobby K. Marks Drive.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Executive Summary:** The City and the Sam Houston State University ("the University") have jointly developed a plan to improve pedestrian safety while crossing Bearkat Boulevard (16<sup>th</sup> Street) and Bobby K. Marks Drive. The plan requires changing these two streets to one-way traffic and creating parking spaces on the public streets. These changes will be implemented during the University's summer break (May – Aug 2016).

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**Discussion:** In January 2015, the City Council approved an Interlocal Agreement with Sam Houston State University ("the University") to study and design pedestrian safety measures to facilitate safer crossings on Bobby K. Marks Drive. Shortly thereafter, Bearkat Boulevard (16<sup>th</sup> Street) was added to the scope of study. City staff completed the procurement process and selected a traffic engineer to perform the necessary studies and make recommendations.

The University and City have jointly agreed on a plan that will change the direction of traffic along the two segments that were reviewed. Bearkat Boulevard (16<sup>th</sup> Street) from University Avenue to Bobby K. Marks Drive will transition from bidirectional traffic to one-way going east. Bobby K. Marks Drive will transition from bidirectional to one-way going south. By establishing these streets as one-way, diagonal and parallel parking spaces will be created on both streets. The importance of one-way traffic and additional on-street parking is as follows:

- Slower and one-way traffic allows for a safer and more manageable environment for bike movement (shared lane arrangements). With the City receiving TxDOT's Transportation Alternatives Program (TAP) Grant, there may be a greater desire to move to and from SHSU with a bicycle. Shared lane arrangements will improve that experience on campus.
- Pedestrians only have one direction of traffic to contend with when crossing a street.
- On-street parking slows traffic in two ways: First, the act of cars pulling in and out and searching for spaces naturally slows traffic (particularly in a one-way setting). Second, the vehicle traffic roadway will be narrowed to simulate the feel of oncoming traffic when there is on-street

parking in a residential area. Slowed traffic enhances and improves pedestrian safety at designated crossings.

The staff has completed project detail design for converting Bearkat Boulevard (from University Avenue to Bobby K. Marks Drive) and Bobby K. Marks Drive (from Bearkat Boulevard to Bowers Boulevard) and striping parking spaces along these streets. Parking spaces will be provided along north side on Bearkat Boulevard and along eastside on Bobby K. Marks Drive. As designed, a total of 201 parking spaces will be created along the project segments. The project has been bid and a recommendation for awarding the contract (for installing signage and striping to convert to one-way movement and create parking spaces) will be presented in the May 3<sup>rd</sup> Council meeting.

***The City staff has developed plans to make the parking spaces along Bearkat Boulevard and Bobby K. Marks paid parking which is accomplished through the adoption of agenda item 7b. The plan to manage paid parking spaces (to collect fees and enforce parking restrictions) is being presented as separate agenda items 7a and 7c for the Council's consideration and approval.***

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**Previous Council Action:** The City Council funded \$60,000 during FY 2013-2014 for Bobby K. Marks Drive Pedestrian Safety Improvements.

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**Financial Implications:**

**Item is budgeted:** Current balance in a/c 814-81418 = \$17,600.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Location Map (page 3)
- Proposed Ordinance 2016-16 - for converting Bearkat Boulevard and Bobby K. Marks Drive to one-way movement only (pages 4 - 6)
- Proposed Ordinance 2016-17 – for providing paid parking along Bearkat Boulevard and Bobby K. Marks Drive (page 7-9)



**ORDINANCE NO. 2016-16**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 44, TRAFFIC AND MOTOR VEHICLES, OF THE CITY OF HUNTSVILLE CODE OF ORDINANCES BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; SETTING A PENALTY; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.**

**WHEREAS**, the Huntsville Code of Ordinances (“Code”), Chapter 44 governs traffic and motor vehicles; and

**WHEREAS**, the City of Huntsville, a home rule municipality, is authorized by Charter to adopt and implement necessary and reasonable ordinances in the best interests of its citizenry; and

**WHEREAS**, the City council of the City of Huntsville finds the provisions of this ordinance set forth below are necessary to protect the health, safety, and welfare of its citizens and the public, and said rules and regulations are reasonable;

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

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2.** That Chapter 44, “Traffic and Motor Vehicles”, Article VIII, Section 44-192, Schedule I, is amended as set out in Exhibit “A” attached hereto and incorporated by for all purposes by changing the direction of traffic for two streets:

<u>Street</u>	<u>Restriction</u>
<i>Bearkat Boulevard (from University Avenue to Bobby K. Marks Drive )</i>	<i>Eastbound only</i>
<i>Bobby K. Marks Drive (from Bearkat Boulevard to Bowers Boulevard)</i>	<i>Southbound only</i>

**Section 3:** All appropriate amendments to traffic signs and striping, meeting Texas Manual on Uniform Traffic Control Devices (TxMUTCD) requirements, will be placed to provide only 1-Way traffic movements for the two streets identified in Section 2.

**Section 4:** The City Manager is authorized and directed to cause the placement of proper signs along the above described streets.

**Section 5:** After completion and installation of all necessary signage and pavement striping, it shall be unlawful and an offense for a driver of a vehicle to disobey the instruction of the signs placed in accordance with the provisions of this ordinance, and said offense shall be punishable as set out in Chapter 44, Article I, Section 44, unless at the time otherwise directed by a Police Officer.

**Section 6:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect any of the remaining provisions of this ordinance.

**Section 7.** All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 8:** The City Secretary shall publish the caption of this ordinance in the official City newspaper at least twice before the ordinance becomes effective.

**PASSED AND APPROVED THIS 3<sup>RD</sup> DAY OF MAY 2016.**

**THE CITY OF HUNTSVILLE**

\_\_\_\_\_  
Andy Brauning, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**EXHIBIT "A"**

That Chapter 44, "Traffic Code", Article VIII, Section 44-192 ,of the Code of Ordinances of the City of Huntsville, Texas, is hereby amended by amending Schedule I "One-Way Streets" "by adding the following streets with one-way traffic designation:

<u>Street</u>	<u>Restriction</u>
<i>Bearkat Boulevard (from University Avenue to Bobby K. Marks Drive)</i>	<i>Eastbound only</i>
<i>Bobby K. Marks Drive (from Bearkat Boulevard to Bowers Boulevard)</i>	<i>Southbound only</i>

## ORDINANCE NO. 2016-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 44, TRAFFIC AND MOTOR VEHICLES, OF THE CITY OF HUNTSVILLE CODE OF ORDINANCES BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; SETTING A PENALTY; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.

WHEREAS, the Huntsville Code of Ordinances (“Code”), Chapter 44 governs traffic and motor vehicles; and

WHEREAS, the City of Huntsville, a home rule municipality, is authorized by Charter to adopt and implement necessary and reasonable ordinances in the best interests of its citizenry; and

WHEREAS, the City council of the City of Huntsville finds the provisions of this ordinance set forth below are necessary to protect the health, safety, and welfare of its citizens and the public, and said rules and regulations are reasonable;

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

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2:** That Chapter 44, “Traffic and Motor Vehicles”, Article VIII, Section 44-192, Schedule XVI, is amended as set out in Exhibit “A” attached hereto and incorporated by for all purposes by providing for paid parking spaces and zones for two streets identified below:

<u>Street</u>	<u>Location</u>
<i>Bearkat Boulevard (from University Avenue to Bobby K. Marks Drive)</i>	<i>Along Northside</i>
<i>Bobby K. Marks Drive (from Bearkat Boulevard to Bowers Boulevard)</i>	<i>Along Eastside</i>

**Section 3.** All appropriate amendments to traffic signs and striping, meeting Texas Manual on Uniform Traffic Control Devices (TxMUTCD) requirements, will be placed to provide for Paid Parking for the two streets identified in Section 2.

**Section 4:** The City Manager is authorized and directed to cause the placement of proper signs along the above described streets.

**Section 5:** After completion, installation and amendments of all necessary signage and pavement striping, it shall be unlawful and an offense for a driver of a vehicle to disobey the instruction of the signs for paid parking placed in accordance with the provisions of this ordinance, and said offense shall be punishable as set out in Chapter 44, Article I, Section 44, unless at the time otherwise directed by a Police Officer.

**Section 6:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect any of the remaining provisions of this ordinance.

**Section 7:** All ordinances and parts of ordinances in conflict with the provisions of this ordinance

are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 8:** The City Secretary shall publish the caption of this ordinance in the official City newspaper at least twice before the ordinance becomes effective.

**PASSED AND APPROVED THIS 3<sup>RD</sup> DAY OF MAY 2016.**

**THE CITY OF HUNTSVILLE**

\_\_\_\_\_  
Andy Brauning, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**EXHIBIT "A"**

That Chapter 44, "Traffic Code", Article VIII, Section 44-192 of the Code of Ordinances of the City of Huntsville, Texas, is hereby amended by amending Schedule XVI "Paid Parking Space and Zones" by adding the following streets with designated paid parking.

Street

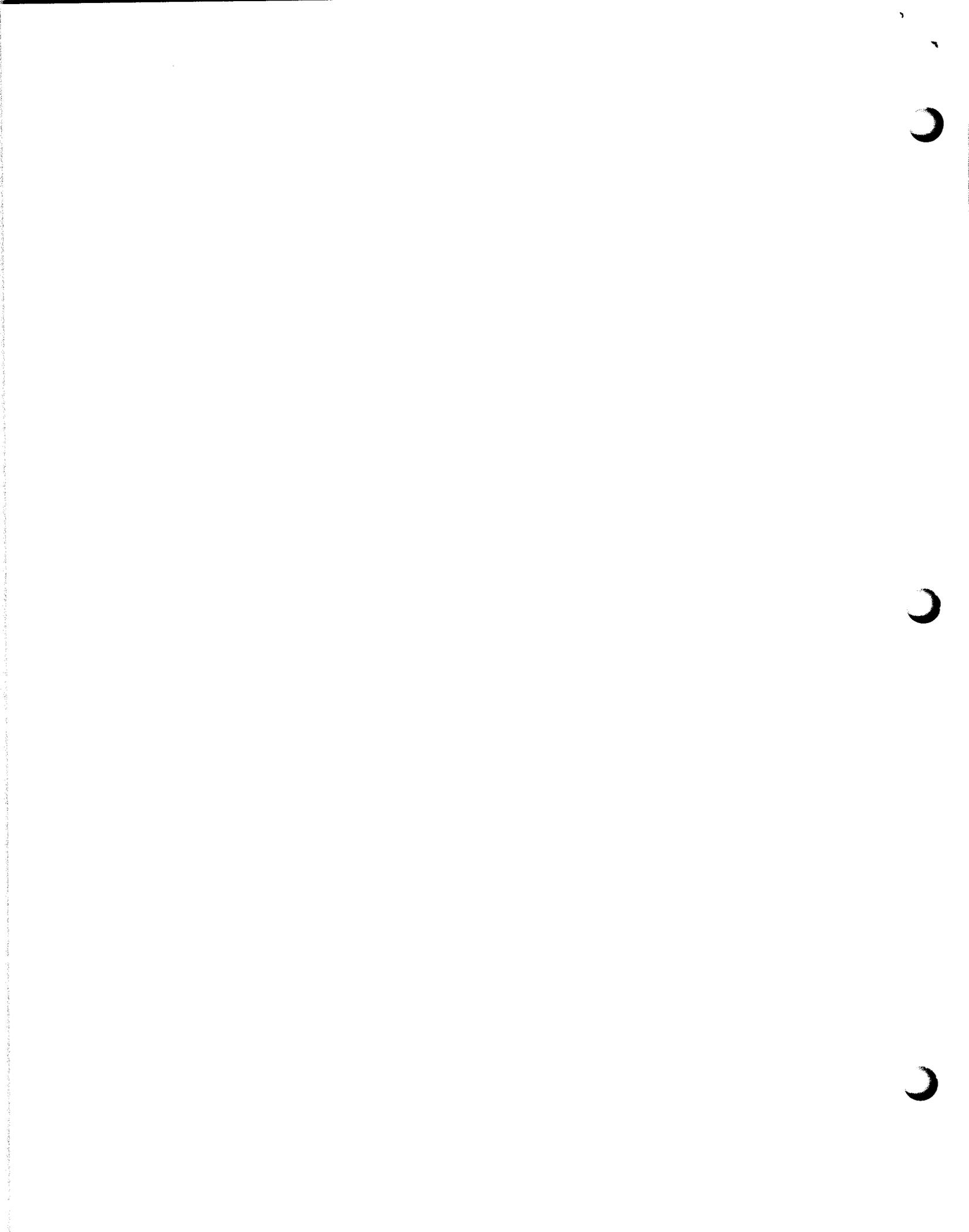
Location

*Bearkat Boulevard (from University Avenue to Bobby K. Marks Drive)*

*Along Northside*

*Bobby K. Marks Drive (from Bearkat Boulevard to Bowers Boulevard)*

*Along Eastside*





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 7c

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**Item/Subject: FIRST READING** - Consider adoption of Ordinance 2016-15 amending the Fiscal Year 2015-2016 Annual Budget, Ordinance 2015-43, to amend the "Schedules of Fees and Charges" to establish paid parking fees, and declaring an effective date, first reading.

**Initiating Department/Presenter:** Finance

**Presenter:** Steve Ritter, Finance Director

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**Recommended Motion: FIRST READING** - Move to adopt Ordinance 2016-15 amending the Fiscal Year 2015-2016 Annual Budget, Ordinance 2015-43, to amend Exhibit "C" "Schedule of Fees and Charges" to establish paid parking fees, and declaring an effective date.

---

**Strategic Initiative:** Goal #6 – Finance – Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** This issue has been reviewed and comes with the recommendation of the Council Finance Committee.

Per the City Council's directive, staff inquired into the feasibility of charging for parking on two city-owned streets, Bearkat Blvd (16<sup>th</sup> Street) and Bobby K. Marks Drive, that are within and adjacent to Sam Houston State University (SHSU). The city let a formal bid for paid parking solutions in November of 2015. The City received numerous solutions and options with pricing for consideration. Staff reviewed the bids and made recommendations to the Finance Committee. The basis of the recommendation from staff was to invest in as little of capital as possible to allow flexibility in to/out of paid parking without having relic capital meters left behind. The Finance committee approved staff's suggestion of going with a vendor that required very little capital outlay on behalf of the City.

The recommended vendor is an exclusively Application-based system (scheduled for award at the May 3 meeting to coincide with second reading of various parking Ordinances). The spaces will be numbered and signs will be placed in the area explaining how to use the application. The "end-user" can either call the phone number listed on the sign to pay for parking or can access the paid parking web site via a smart phone. The recommended vendor accepts numerous payment types (Credit Cards, Debit cards, Paypal, Pre-paid cards). The cost to park is broken down as follows: City charges \$1.25 per hr. (this nets the City \$0.977 per hr. after paying a transaction fee and a credit card processing fee). The individual parking will also will be charged a \$.25 transaction fee that goes directly to the vendor providing the parking fee process and administration for the City. Therefore there will be a total charge of \$1.50. for the first hour and then \$1.25 for any additional hours that someone parking purchases in the first single transaction. Enforcement will be done by space. The parking enforcement officer will reference a mobile application and verify if anyone is occupying the unpaid space. Vehicles parked in the spaces will receive reminders that their time is about to expire and they can use their smartphone to pay for and increase the parking time if they so choose without having to return to the actual parking spot.

Enforcement of the paid parking will be done by the City Police department without having to hire additional staff. The enforcement application is web-based and the City is not limited to the number of

users that can access the software. Access to the software is by permission only.

**The City staff has developed plans to make the parking spaces along Bearkat Boulevard and Bobby K. Marks paid parking which is accomplished through the adoption of agenda item 7b. The plan to manage paid parking spaces (to collect fees and enforce parking restrictions) is being presented as separate agenda items 7a and 7c for the Council's consideration and approval.**

**Possible future annual revenue:**

Parking Fees	311,850
Transaction costs – paid to mobile app vendor	-44,283
Sales Tax to State	-23,764
<b>Net "Hourly Parking Fees" Revenue to City</b>	<b>243,803</b>
Enforcement (parking tickets)	65,489
Sales Tax Receipts	<u>4,678</u>
<b>Total Estimated Revenues -</b>	<b>313,970</b>

---

**Previous Council Action:** No previous Council action.

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**Financial Implications:**

**Item is estimated to generate additional revenue:** \$300,000 annually. If Council approves this ordinance then it is estimated the City will receive \$35,000 net revenue from the paid parking in the current 2015–16 fiscal year.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Ordinance 2016-15 (page 3)

**ORDINANCE NO. 2016-15**

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING THE FISCAL YEAR 2015 – 2016 ANNUAL BUDGET, ORDINANCE 2015-43 TO AMEND EXHIBIT “C” ATTACHED TO THE ANNUAL BUDGET; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the 2015 - 2016 Annual Budget was adopted by Ordinance 2015-43 on September 15, 2015;

**WHEREAS**, Exhibit “C”, “Schedule of Fees and Charges” to the Annual Budget contained approved fees, rates, and charges for services.

**WHEREAS**, the City Council considered the circumstances for the implementation of a new fee for paid parking, deliberating appropriately on and the overall impact on the general financial status of the City;

**WHEREAS**, pursuant to the laws of the State of Texas and the City Charter of the City of Huntsville, Texas, the City Council has determined that it will be beneficial and advantageous to the citizens of the City of Huntsville to amend the 2015 – 2016 budget as set forth herein; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:**

**Section 1.** The findings set forth above are incorporated into the body of this ordinance.

**Section 2.** The annual budget for fiscal year 2015 – 2016 is hereby amended by adding the new fee for Paid Parking, of \$1.25 per hour; to the “Schedule of Fees and Charges” adopted with the Fiscal Year 2015 – 2016 Budget.

**Section 3.** All ordinances of the City in conflict with the provisions of this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 4.** Should any section, portion, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the force or effect of any other section or portion of this ordinance.

**Section 5.** The necessity for amending the budget for the fiscal year, as required by the laws of the State of Texas, requires that this ordinance shall take effect immediately from and after its passage, as the law in such cases provides.

**Section 6.** The amendment to the “Schedule of Fees and Charges” adding a Paid Parking fee of \$1.25 per hour shall take effect immediately after the passage of this ordinance. The City Secretary is instructed to attach a copy of this Ordinance to Ordinance 2015-43

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**THE CITY OF HUNTSVILLE, TEXAS**

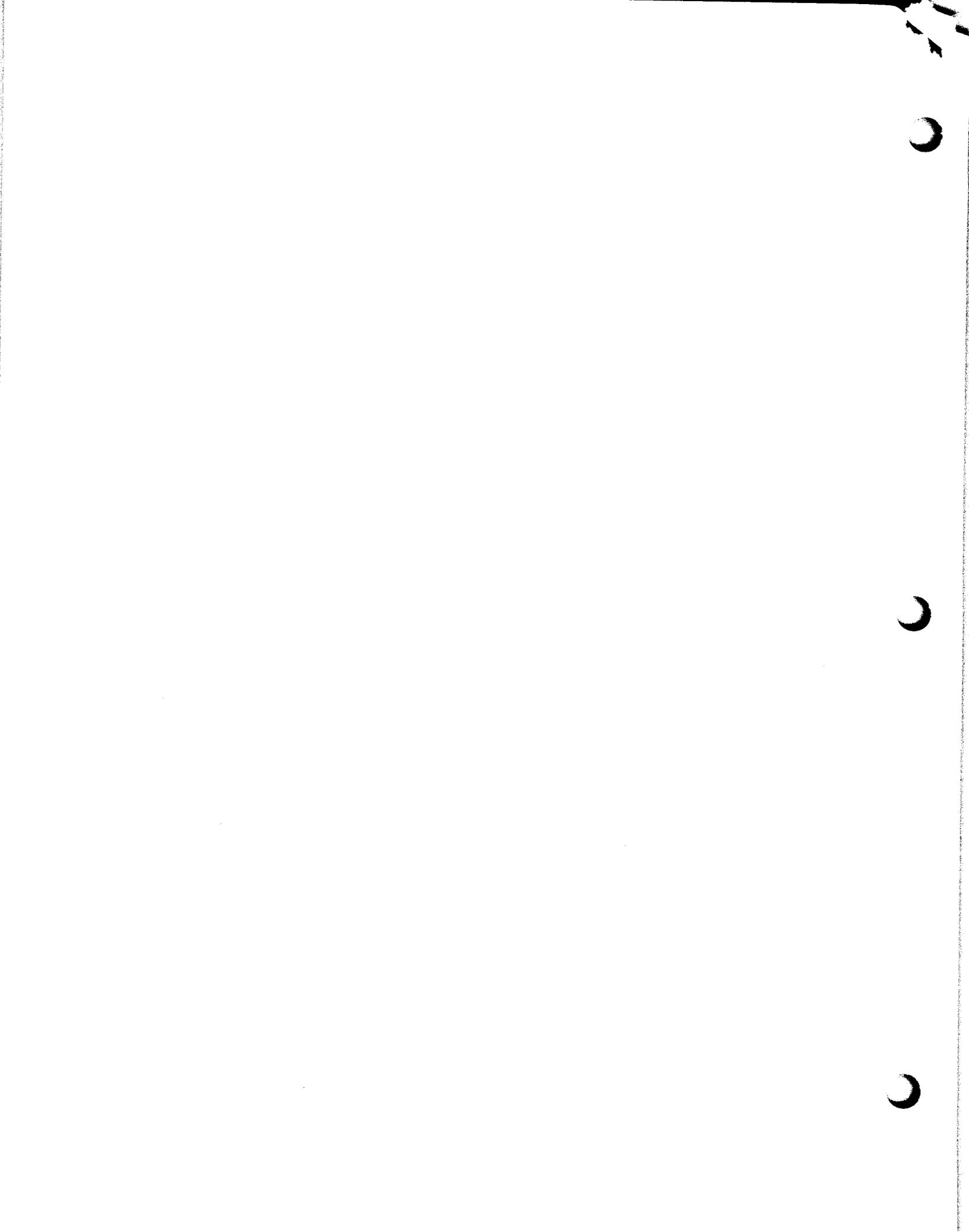
\_\_\_\_\_  
Andy Brauning, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 7d

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**Item/Subject: FIRST READING** - Consider Ordinance 2016-19 abandoning street rights-of-way for certain streets within the City of Huntsville, Texas and conveying the same by special warranty deed to Sam Houston State University; providing the maintenance of said streets shall be the responsibility of Sam Houston State University; reserving easements for the right of the City of Huntsville to maintain its utilities; providing access for emergency vehicles; declaring an effective date and containing other provisions incident thereto, first reading.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager

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**Recommended Motion: FIRST READING** – No action needed.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Discussion:** Over the last several months, the City Council has been briefed on the Town Creek project several times. This ordinance facilitates a partnership with Sam Houston State University (SHSU) to accomplish several items, most notably:

1. Ordinance 2016-19 proposes abandoning three streets (Bowers Boulevard from Sam Houston Avenue extending east to Avenue I; Avenue J from 21<sup>st</sup> Street to Bowers Boulevard; and Avenue I from Bowers Boulevard to a point 650 feet south). SHSU owns both sides of the property on each of these three street segments and by law would own them once they are abandoned by the City of Huntsville.
2. Reserves easements for any water or sanitary sewer lines (and the right to ingress and egress) for the repair of those lines located underneath the three street segments to be abandoned.
3. Requires SHSU to relocate any water or sewer lines should SHSU require construction over the lines.
4. Requires access for emergency vehicles through the streets to be abandoned as well as vehicle traffic. Vehicle traffic may be restricted to one-way at the University's discretion, but must be left open.
5. Includes an Interlocal Agreement between the City of Huntsville and SHSU that allows for the provision of drainage easements on and around the intermural athletic fields. This area will provide a crucial drainage easement for Town Creek and will serve as detention for the project.

The City has obtained commercial appraisals for the value of these three streets. The commercial value of the streets, when applied to the estimated value of drainage easements, makes the exchange very equitable for both parties. Included as an attachments and exhibit to Ordinance 2016-19 is a Utility Easement Agreement that is perpetual, thereby ensuring the drainage easements on and around the intermural athletic fields without restriction to the City.

**Previous Council Action:** The City Council was briefed on this issue in Executive Session at their special session on March 29.

---

**Financial Implications:**

**There is no financial impact associated with this item.** There is no exchange of money contemplated with Ordinance 2016-19. The fair market value of the streets to be abandoned by the City and the easements received in exchange are estimated to be very close in value.

---

**Approvals:**     City Attorney             Director of Finance             City Manager

---

**Associated Information:**

- Proposed Ordinance 2016-19 and attachments (pages 3-19)

## ORDINANCE NO. 2016-19

**AN ORDINANCE ABANDONING STREET RIGHTS-OF-WAY FOR CERTAIN STREETS WITHIN THE CITY OF HUNTSVILLE, TEXAS, AND CONVEYING THE SAME BY QUITCLAIM DEED OR DEED WITHOUT WARRANTY TO SAM HOUSTON STATE UNIVERSITY; PROVIDING THAT THE MAINTENANCE OF SAID STREETS SHALL BE THE RESPONSIBILITY OF SAM HOUSTON STATE UNIVERSITY; RESERVING EASEMENTS FOR THE RIGHT OF THE CITY OF HUNTSVILLE TO MAINTAIN ITS UTILITIES; PROVIDING ACCESS FOR EMERGENCY VEHICLES; DECLARING AN EFFECTIVE DATE AND CONTAINING OTHER PROVISIONS INCIDENT THERETO.**

**WHEREAS**, Sam Houston State University (hereinafter "University") has adopted a master plan for development that includes cooperation with the City of Huntsville, Texas ("City") for infrastructure; and

**WHEREAS**, the University has experienced significant growth in the last decade; and

**WHEREAS**, the growth experienced by the University necessitates additional buildings and infrastructure; and

**WHEREAS**, the City owns certain streets within the University campus that are or will obstruct the planned development by the University of the additional buildings and infrastructure; and

**WHEREAS**, the University owns the property on both sides of the rights-of-way and desires to acquire the entire rights -of-way from the City and has requested that the City do so; and

**WHEREAS**, Chapter 272 of the Texas Local Government Code authorizes the City to abandon the right-of-way and sell it to adjoining landowners; and

**WHEREAS**, both Section 3.03 of the City Charter and Texas Transportation Code Section 311.007 provide the City shall have the power to abandon or vacate each public street within the corporate limits of the City; and

**WHEREAS**, both Section 3.03 of the City Charter and Texas Transportation Code Section 311.001 provide the authority that the City controls and regulates the use of public streets; and

**WHEREAS**, the City of Huntsville has an interest in maintaining its infrastructure located within the existing rights-of-way and ensuring access for emergency vehicles; and

**WHEREAS**, the City wishes to deed to the University certain city streets to allow and encourage the planned development by the University of the additional buildings and infrastructure;

**WHEREAS**, the City Council of the City of Huntsville has the authority to interpret the provisions of the City Charter; and

**WHEREAS**, the City Council of the City of Huntsville finds: (i) it is reasonable to determine that the intent of Charter Section 14.13(b) was and is to apply to real estate that does not include public roads; (ii) that the authority to control and regulate the use of public streets is given to a home rule city by the Texas Transportation Code Chapter 311.001; (iii) section 3.03 of the City Charter also provides the authority for the City to control and regulate the use of public streets,

the abandonment and vacation of public streets; and (iv) Charter Section 14.13(b) was not intended to and does not govern public streets; and

**WHEREAS**, as an attachment to this Ordinance is an Interlocal Agreement (“Agreement”) between the City and the University outlining that the University will give certain easements to the City in exchange for the City deeding ownership of the certain street segments; and

**WHEREAS**, the City Council of the City of Huntsville, acting pursuant to law, deems it advisable to abandon, vacate and close the hereinafter described street segments and is of the opinion that said land is not needed and therefore constitutes a public charge without corresponding benefit, and that same should be abandoned, vacated and closed as hereinafter provided; and

**WHEREAS**, the City Council of the City of Huntsville is of the opinion that the best interest and welfare of the public will be served by abandoning and vacating and closing same resulting in the vesting of title in the abutting property owner Sam Houston State University, subject to the conditions, requirements and restrictions contained herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:**

1. The interest of the general public at large is hereby terminated for travel purposes over and across three (3) certain street segments as presently used and traveled within the City Limits of the City of Huntsville, Texas and jurisdiction for the maintenance, repair, and upkeep of said street segments, described below, shall be, hereafter, vested with the Sam Houston State University subject to the rights of as set forth hereafter.

-Bowers Boulevard Segment: Being a strip of land, approximately 50 feet in width, beginning in the west right-of-way line of Sam Houston Avenue, extending easterly approximately 960 feet to the east right-of-way line of Avenue I, containing approximately 48,000 square feet of land and shown on a map attached hereto as Exhibit “A”.

-Avenue J Segment: Being a strip of land, approximately 50 feet in width, beginning in the north right-of-way line of 21st Street, extending northerly approximately 645 feet to the south right-of-way line of Bowers Boulevard, containing approximately 32,250 square feet of land and shown on a map attached hereto as Exhibit “B”.

-Avenue I Segment: Being a strip of land, approximately 50 feet in width, beginning in the south right-of-way line of Bowers Boulevard, extending southerly or southeasterly 650 feet, containing approximately 32,500 square feet of land and shown on a map attached hereto as Exhibit “C”.

2. There is reserved and excepted from any transfer or abandonment of street segments identified in sections 2 through 5, the right and title of the City of Huntsville in and to any water or sanitary sewer lines or mains and the right of ingress and egress for the purposes of maintenance and repair or replacement of said lines and mains. A 20 foot wide utility easement, centered upon and extending 10 feet on both sides, of any water or sanitary sewer lines or mains, within any portion of the street segments described above, shall be reserved unto the City of Huntsville.

3. Be it further ordained by the City Council that should expansion of Sam Houston State University require construction over or upon any water or sanitary sewer line, title to which is retained by this Ordinance in the City of Huntsville, so as to require relocation of such lines, such relocation shall not be at the expense of the City of Huntsville.

4. That the abandonment, vacation and closure provided for herein is made and accepted subject to all present zoning and deed restrictions if the latter exist and shall extend only to the public right, title, easement and interest and shall by construed to extend only to that interest which the governing body for the City of Huntsville, may legally and lawfully abandon, vacate and close.

5. Access to areas served by any streets affected by this Ordinance, shall always be maintained for emergency vehicles.

6. The street rights-of-way segments as described above and shown on Exhibits "A, B, and C", attached hereto, are hereby abandoned as street right-of-way, and said property may be sold by quitclaim deed or deed without warranty to Sam Houston State University (SHSU), an adjoining property owner, for the exchange of certain easements from the University as provided for in the attached agreement. The City Manager of the City of Huntsville, Texas, is hereby authorized to execute a quit claim deed or deed without warranty on behalf of the City conveying said right-of-way to Sam Houston State University.

7. That SHSU shall pay all costs associated with procedures necessitated by the request to abandon these four street segments, plus compensation for the market value of the abandoned property.

8. The abandonment, vacation and closure shall be effective upon the abutting property owner University satisfying all conditions and requirements set forth in this Ordinance.

9. That the City Manager and City Attorney of the City are authorized to execute the necessary documents to transfer the title of the street segments to the University with the necessary easements and provide for recording of the documents.

10. This Ordinance shall take effect immediately from and after the date of its passage.

PASSED AND APPROVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauning, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**Exhibit "A" – Bowers Boulevard Segment**

Being a strip of land, approximately 50 feet in width, beginning in the west right-of-way line of Sam Houston Avenue, extending easterly approximately 960 feet to the east right-of-way line of Avenue I, containing approximately 48,000 square feet of land and shown on a map attached hereto.



Exhibit "B" – Avenue J Segment

Being a strip of land, approximately 50 feet in width, beginning in the north right-of-way line of 21<sup>st</sup> Street, extending northerly approximately 645 feet to the south right-of-way line of Bowers Boulevard, containing approximately 32,250 square feet of land and shown on a map attached hereto.



Exhibit "C" - Avenue I segment

Being a strip of land, approximately 50 feet in width, beginning in the south right-of-way line of Bowers Boulevard, extending southerly or southeasterly 650 feet, containing approximately 32,500 square feet of land and shown on a map attached hereto.

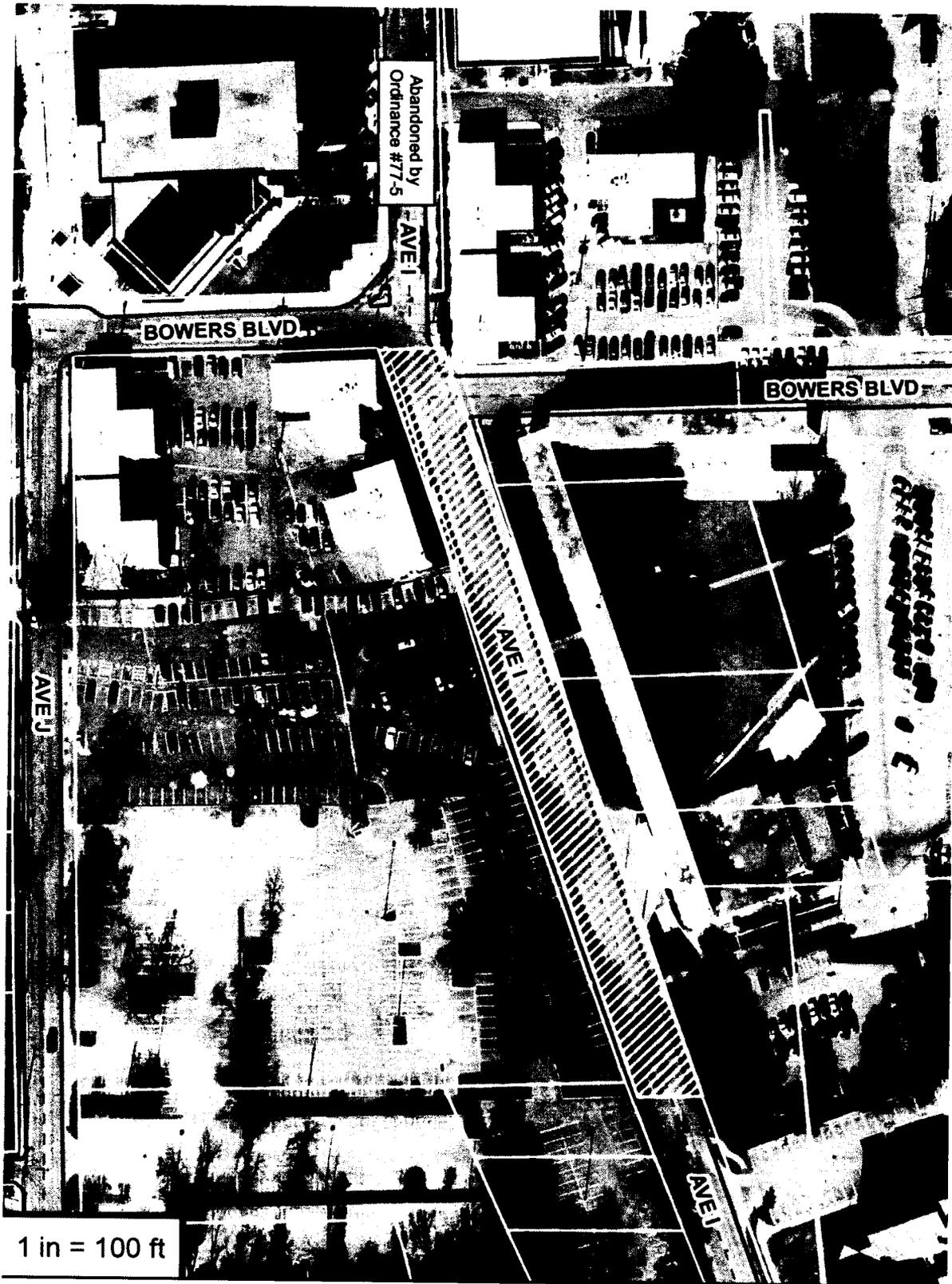


Exhibit "D"

**INTERLOCAL AGREEMENT  
BETWEEN CITY OF HUNTSVILLE AND SAM HOUSTON STATE UNIVERSITY  
FOR THE DEED OF CERTAIN CITY-OWNED STREETS TO SAM HOUSTON STATE UNIVERSITY IN  
EXCHANGE FOR DRAINAGE EASEMENTS FOR STORMWATER DETENTION REQUIREMENTS ON SAM  
HOUSTON STATE UNIVERSITY PROPERTY**

This Agreement is entered into by the City of Huntsville (City) and Sam Houston State University (University) pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791.

WHEREAS, Ordinance 2016-19 approves deeding certain city-owned streets to Sam Houston State University; and

WHEREAS, The City of Huntsville wishes to encourage orderly and effective stormwater drainage from Sam Houston State University through the Town Creek watershed; and

WHEREAS, the Sam Houston State University Masterplan calls for ensuring 47-acre feet of stormwater detention in and around the recreational fields on the Sam Houston State University Campus; and

WHEREAS, a critical component of the City's Town Creek improvements includes ensuring the availability of 47-acre feet of stormwater detention in and around the recreational fields on the Sam Houston State University Campus; and

WHEREAS, the City has conducted fair market value appraisals and determined the value of the streets to be deeded to Sam Houston State University to be valued at \$1.50/square foot; and

WHEREAS, the City and Sam Houston State University wish to exchange the value of streets for drainage easements for stormwater detention.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, City and University agree as follows:

I.

Sam Houston State shall receive certain City-owned streets as more fully described in Exhibits "A," "B," and "C" of Ordinance # \_\_\_\_\_.

In exchange for the value of those streets, Sam Houston State University will grant drainage easements as described in Attachment A to this Interlocal Agreement. The terms and conditions for future use of the drainage easements are contained in Attachments B thru D to this Interlocal Agreement.

The City of Huntsville further agrees to warranty the work performed on the existing 72" drainage structure that is located under the property described more fully in Attachment A - Legal Description for Drainage Easements. The warranty is limited and conditioned as follows:

- a. Repairs will only be made to the surface of the property, never to the subsurface or, under any conditions, to repair or replacement of the 72" pipe.

- b. The repair is only eligible for reimbursement subject to section "c" below if the need for repair arises within 20 feet in either direction of the centerline of the pipe.
- c. Sam Houston State University will perform the repairs and invoice the City of Huntsville. If repairs are performed by employees of Sam Houston State University, labor costs are not eligible for reimbursement.
- d. The warranty coverage explained in sections "a" through "d" above will continue for a period of 1 (one) year from the date of substantial completion of the Town Creek drainage project.

II.

Any notice given hereunder by one party to the other party shall be in writing and may be effected by personal delivery, by registered or certified mail, return receipt requested, when mailed to the proper party, in care of the official signing this Agreement or by fax transmission as agreed to by the Parties and as evidenced by a confirming return fax transmission.

If to City of Huntsville:

Matt Benoit  
City Manager  
1212 Avenue M  
Huntsville, Texas 77340  
Phone: (936) 291-5400 Fax: (936) 291-5409  
Copy to:  
Lee Woodward, City Secretary  
1212 Avenue M  
Huntsville, Texas 77340  
Phone: (936) 291-5400 Fax: (936) 291-5409

If Sam Houston State University:

J. Carlos Hernandez, EdD, CPA  
Vice President for Finance and Operations  
Box 2027, Sam Houston State University  
Huntsville, Texas 77341  
Phone: (936) 294-2686, Fax: (936) 294-1963

III.

This is the complete and entire Agreement between the Parties with respect to the matters herein and supersedes all prior negotiations, agreements, representations, and understandings, if any. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. No official, representative, agent or employee of Sam Houston State University, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Board of Regents of Texas State University System. No official, representative, agent or employee of the City of Huntsville, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the City Council of Huntsville, Texas

IV.

The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to carry out the purposes of this Agreement.

V.

This Agreement shall be construed under the laws of the State of Texas.

VI.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.

VII.

Hold Harmless

To the extent permitted by State law, each party does hereby agree to waive all claims against, release, and hold harmless the other and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, or cause of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.

In the event of joint or concurrent negligence of the parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to any party individually under Texas law. Each party shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

#### ARTICLE XIII

##### Immunity

It is expressly understood and agreed that, in the execution of this Agreement, no party waives, nor shall be deemed to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

IX.

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument.

X.

**Nondiscrimination:** By executing this agreement, the City, all City contractors, City subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. Any breach of this covenant may result in termination of this agreement.

XI.

This contract is subject to the review and approval of the Texas State University System Board of Regents.

Approved on the date or dates indicated.

CITY OF HUNTSVILLE

\_\_\_\_\_  
Matt Benoit  
City Manager  
City of Huntsville, Texas

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Leonard Schneider, City Attorney

Examined and Recommended:

\_\_\_\_\_  
President, Dr. Dana G. Hoyt

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chancellor, Dr. Brian McCall

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Vice Chancellor and General Counsel,  
Dr. Fernando C. Gomez

\_\_\_\_\_  
Date

APPROVED by the Board of Regents on \_\_\_\_\_ at \_\_\_\_\_,

\_\_\_\_\_  
The Honorable Dr. Jaime R. Garza  
Chairman of the Board

CITY OF HUNTSVILLE, TEXAS  
Engineering - Mapping  
448 State Hwy. 75 North  
Huntsville, Texas 77320

THE STATE OF TEXAS §

COUNTY OF WALKER §

I, Leonard E. Woods, Registered Professional Land Surveyor No. 2524, do hereby certify that the following field notes represent a survey made on the ground of the following described tract or parcel of land located in Walker County, Texas. Coordinates and bearings herein are referred to the Texas Coordinate System of 1983, Central Zone and are based on the position of National Geodetic Survey (formerly known as the U. S. Coast & Geodetic Survey) Primary Airport Control Station (PACS) monument designated "T39 A" having published NAD 83 (1993) coordinates of N= 3,128,437.762 meters and E= 1,154,289.433 meters. Distances herein are U. S. Survey feet in "Grid" units and may be converted to "Geodetic Horizontal" by dividing by a combined scale factor of 0.999803.

Being parcel of land containing 11.10 acres of land, more or less, situated in the PLEASANT GRAY LEAGUE, Abstract No. 24, Walker County, Texas, being out of and a portions of the following tracts of land:

- (1) A called 13.9109 acre tract described in a Deed from Don A. Sanders, et al to Sam Houston State University, dated June 13, 1978 and recorded in Volume 321, page 438, Deed Records of Walker County, Texas.
- (2) A called 2.385 acre tract described in a Deed from Dryle Stacey Corporation to Sam Houston State University, dated December 21, 1982 and recorded in Volume 406, page 334, Deed Records of Walker County, Texas.
- (3) A called 2.386 acre tract described in a Deed from William Ellsworth Lee, et al to Sam Houston State University, dated December 31, 1985 and recorded in Volume 454, page 552, Deed Records of Walker County, Texas.
- (4) A called 6.6116 acre tract described in a Deed from Gibbs Brothers & Company to Sam Houston Foundation, dated October 30, 1981 and recorded in Volume 386, page 408, Deed Records of Walker County, Texas.
- (5) A called 0.29 acre tract described in a Deed from Alberta Harrison Rector to Sam Houston State Teachers College Trust of December 5, 1963, dated November 1, 1971 and recorded in Volume 240, page 254, Deed Records of Walker County, Texas.
- (6) A called 0.25 acre tract described, as Tract One, in a Deed from Joel Gaedry to Sam Houston State Teachers College Trust of December 5, 1963, dated March 28, 1972 and recorded in Volume 243, page 369, Deed Records of Walker County, Texas.
- (7) A called 0.36 acre tract described in a Deed from Prince Johnson to Sam Houston State Teachers College Trust of December 5, 1963, dated July 26, 1971 and recorded in Volume 237, page 640, Deed Records of Walker County, Texas.
- (8) A called 0.28 acre tract described in a Deed from Prince Johnson Rector to Sam Houston State Teachers College Trust of December 5, 1963, dated November 1, 1971 and recorded in Volume 237, page 646, Deed Records of Walker County, Texas.
- (9) Other small parcels in possession of Sam Houston State University.

said 11.10 acres being described by metes and bounds as follows:

COMMENCING, for reference only, at the northeast corner of said Sam Houston State University (SHSU) 2.385 acre tract, found a 3-1/2" diameter concrete monument (broken top) in the south right-of-way line of a City-maintained roadway, known locally as Bearcat Boulevard and formerly 16<sup>th</sup> Street, having coordinates of N= 10,296,544.63 feet and E= 3,801,705.20 feet, said commencing corner being also the most northerly northwest corner of a called 27.675 acre tract described in a Deed from Gibbs Brothers & Company to Sam Houston State University, dated February 4, 1984 and recorded in Volume 425, page 419, Deed Records of Walker County, Texas;

THENCE N 69°23'19" W, with the north line of said SHSU 2.385 acre and 13.9109 acre tracts and the south right-of-way line of said Bearcat Boulevard, a distance of 411.02 feet to the POINT OF BEGINNING, found a X cut in a concrete curb for an angle corner in the north line of said SHSU 13.9109 acre tract;

TRIBUTANCE: S 07°26'31" E, within said SIBSU tracts, a distance of 207.94 feet to a point for corner;

TRIBUTANCE: S 11°25'19" W, continuing within said SIBSU tracts, a distance of 3062.52 feet to a point for corner;

TRIBUTANCE: N 77°17'44" W, continuing within said SIBSU tracts, a distance of 111.30 feet to a point for corner;

TRIBUTANCE: N 01°45'52" W, continuing within said SIBSU tracts, a distance of 411.42 feet to a point for corner;

TRIBUTANCE: N 17°48'25" E, continuing within said SIBSU tracts, at 483.92 feet and 11.77 feet right, found a 1-1/4" diameter iron pipe (buried 5 inches) for the southeast corner of said SIBSU 2.308 acre tract, continuing for a total distance of 648.11 feet to a point for corner;

TRIBUTANCE: N 49°07'18" E, continuing within said SIBSU tracts, a distance of 168.54 feet to a point for corner;

TRIBUTANCE: N 77°24'10" E, across said SIBSU tracts, a distance of 106.99 feet to a point on the south side of a City-maintained roadway known locally as 17<sup>th</sup> Street for an angle corner in the north line of said SIBSU 13.9109 acre tract and from which a 1-1/4" diameter iron pipe found for the southwest corner of said SIBSU 13.9109 acre tract and the northeast corner of said SIBSU 2.308 acre tract bears S 87°55'27" W 173.02 feet;

TRIBUTANCE: N 75°27'14" E, with the north line of said SIBSU 13.9109 acre tract, along the south side of 17<sup>th</sup> Street, a distance of 75.58 feet to a point for an angle corner in the north line of said SIBSU 13.9109 acre tract situated on the southwest side of said Hearbat Boulevard;

TRIBUTANCE: S 61°52'11" E, continuing with the north line of said SIBSU 13.9109 acre tract, a distance of 60.48 feet to the POINT OF BEGINNING.

NOTE:

1. For further information, see Plat of Survey labeled Exhibit "II" prepared concurrently with the legal description herein.

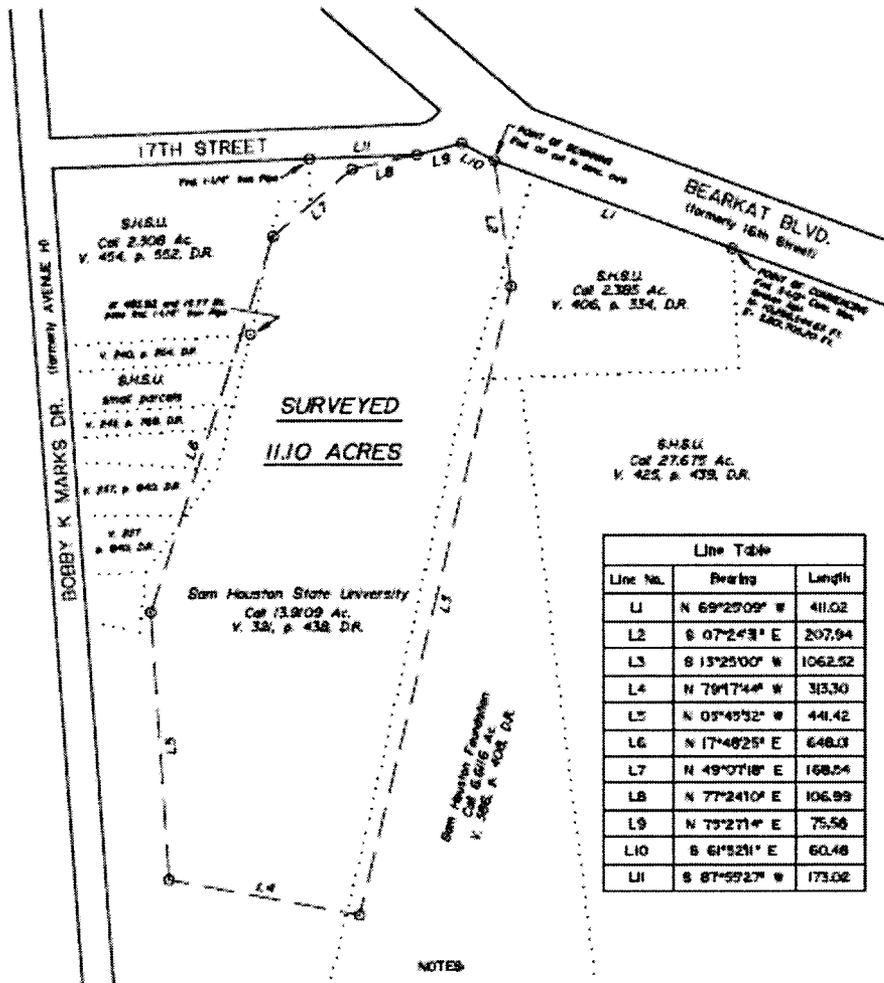
Surveyed: March 2016.

Signed



Leeward E. Woods

Reg. Prof. Land Surveyor No. 2524



**SURVEYED**  
**11.10 ACRES**

Line Table		
Line No.	Bearing	Length
L1	N 69°25'09" W	411.02
L2	S 07°24'31" E	207.94
L3	S 13°25'00" W	1062.52
L4	N 70°17'44" W	313.30
L5	N 03°45'52" W	441.42
L6	N 17°48'25" E	648.13
L7	N 49°07'18" E	168.24
L8	N 77°24'10" E	106.99
L9	N 73°27'14" E	75.56
L10	S 61°52'11" E	60.48
L11	S 87°55'27" W	173.02

**NOTES**

1. Unless otherwise noted corners of the surveyed 11.10 acre parcel are not monumented.
2. See Notes and Bounds description labeled 'EX108BT A' prepared concurrently herewith.

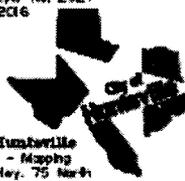
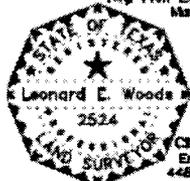
**Coordinate System, Basis of Bearings and Linear Units**

Coordinates and bearings herein are referred to the Texas Coordinate System of 1983, Central Zone, and based on the position of National Geodetic Survey (formerly known as the U. S. Coast & Geodetic Survey) Primary Airport Control Station (PACS) monument designated "T39 A" having published NAD 83 (1993) coordinates of N= 3128,471.762 Meters and E= 119,4209.433 Meters. Distances shown herein are U. S. Survey Feet to "GSDP" units and may be converted to "Geodetic Meters" units by dividing by a constant scale factor of 0.99996.

I, Leonard E. Woods, certify that this plat represents a survey made on the ground under my direct supervision and that all corners, found or set, are monumented as shown herein.

*Leonard E. Woods*

Leonard E. Woods  
Reg. Prof. Land Surveyor No. 2524  
March 28, 2016



CITY of Huntsville  
Engineering - Mapping  
448 State Hwy. 75 North  
Huntsville, Texas 77320  
Project No. 09-09-03  
T:\surveyors\PROJECTS\Archived Survey Projects\COH09\1E1090303\PARCEL  
SURVEYS\SHSU FIELD DE\1090303\_SHSU DE.dwg



PLAT OF SURVEY OF

11.10 ACRE PARCEL

OUT OF

SAM HOUSTON STATE UNIVERSITY PROPERTY

CITY OF HUNTSVILLE  
PLEASANT GRAY LEAGUE, A-24  
WALKER COUNTY, TEXAS

MARCH 2016

SCALE 1" = 200 FEET

**Attachment B – Utility Easement Agreement**

**Easement Agreement**

**Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Grantor: \_\_\_\_\_

Grantor's mailing address: \_\_\_\_\_  
\_\_\_\_\_

Grantee: The City of Huntsville, Texas  
Grantee's mailing address: 1212 Avenue M  
Huntsville, Texas, 77340

**Easement Property:**

An easement across as depicted and described in the metes and bounds attached as Exhibit "1" hereto and made a part hereof.

**Easement Purpose:**

This drainage easement with its rights and privileges shall be used for the purpose of public use and dedicated use of the public forever. The City of Huntsville, shall have the right always of ingress, egress to and from upon this easement for construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its utility lines and systems, including, but not limited to, water, sewer and drainage, without necessity at any time of getting permission of the property owner. The City of Huntsville shall have the right to move and keep moved all or any part of any building, fences, trees, shrubs, other growth or improvements that in any way endangers or interferes with the easement shown and described above. The City of Huntsville shall not be responsible for replacing or reimbursing the property owner due to removal or relocation of any obstruction in the public easement.

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None

Exceptions to Warranty: None

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose and for the benefit of the Dominant Estate Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and

assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this document:

1. The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of City and City's heirs, successors, and permitted assigns.

2. The duration of the Easement is perpetual.

3. City's right to use the Easement Property is nonexclusive, and The University reserves for The University and The University's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with City as long as such use by The University and The University's heirs, successors, and assigns does not interfere with the use of the Easement Property by City for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with City, as long as such further conveyance is subject to the terms of this Easement and does not restrict or limit rights hereby granted. However, should expansion of Sam Houston State University require construction over or upon the Easement, so as to require relocation of any utility lines, including, but not limited to, water, sewer and drainage, such relocation shall not be at the expense of the City of Huntsville.

4. This easement, and City's rights hereunder, are subject to all prior easements, reservations, grants of other rights, restrictions and other encumbrances and matters now of record and/or evident on said lands or otherwise made known by The University to City.

5. City's use of said Easement Property shall not unreasonably interfere with The University's use of the land herein described or adjacent lands, however, The University shall not construct, nor permit to be constructed or erected, any house, building, or other structure, within the Easement Property without the express prior written consent of City, and City shall have the right to remove or prevent the construction of any structure without reimbursement to The University, The University's successors, tenants, assigns, or licensees.

9. For erosion control purposes, the easement rights granted herein to City shall also include the right at any time in the future to add, construct, maintain, repair, or replace concrete, rock rip rap or other improvements to protect the Facilities within or adjacent to creeks, gullies, and other natural or man-made water drainage courses, whether located within the Easement Property or upon The University's' adjacent lands.

10. This Easement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *Binding Effect.* This Easement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.



and \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

**Return to City's address:**  
City of Huntsville, Texas  
1212 Avenue M  
Huntsville, Texas 77340





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 7e

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**Item/Subject:** **FIRST READING** - Consider adoption of Ordinance 2016-23, amending Ordinance 2015-43 for the Fiscal Year 2015-2016 Annual Budget, to amend Exhibit "C" "Schedule of Fees and Charges" to establish credit card usage fees, and declaring an effective date, first reading.

**Initiating Department/Presenter:** Finance

**Presenter:** Steve Ritter, Finance Director

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**Recommended Motion:** **FIRST READING** – No action needed. Move to adopt Ordinance 2016-23, amending Ordinance 2015-43 for the Fiscal Year 2015-2016 Annual Budget, to amend Exhibit "C" "Schedule of Fees and Charges" to establish credit card usage fees, and declaring an effective date.

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**Strategic Initiative:** Goal #6 – Finance – Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** This issue has been reviewed and comes with the recommendation of the Council Finance Committee.

The City has seen an increased cost associated with processing card payments over the last several years. In 2014 the costs increased 30% from the previous year and in 2015 increased 59% from 2014. For March 2016 the fees have already increased 47% over what we paid through March 2015. To reduce the expense to the City, staff began researching ways in which these costs could be reduced.

In the summer of 2015, the City enrolled in a "VISA Utility Interchange Program" recommended by our credit card processor in which a reduced processing fee was to be applied to residents who paid their utility payments with a credit card. One of the criteria for enrolling in this program was the City was not allowed to charge residents any fees. The amount budgeted for bank card processing fees for FY 15-16 was reduced with the anticipated cost savings with our enrollment in the "Utilities Program."

A few months after enrollment, staff did not see a significant reduction in fees. We contacted VISA and were told that commercial credit cards used for utility payments did not qualify for the "Utilities Program." This information was not disclosed to us at the time of enrollment. Commercial credit card payments account for about 60% of the fees we are paying. Staff reported this to the Finance Committee on March 29, 2016, and was directed to research the possibility of charging a "convenience fee" to help offset the costs associated with credit card payments.

Staff analyzed fees the City paid for December 2015 through February 2016 and determined that we are paying approximately 2.5% to the credit card companies for credit card transactions. Staff presented this information to the Finance Committee on April 5, 2016, and they recommended assessing a 2.5% charge to customers paying with credit cards. The 2.5% "convenience fee" would apply to customers using either a credit or debit card because fees are assessed on both cards.

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**Previous Council Action:** None

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**Financial Implications:**

**Item is budgeted:** The cost to the City was budgeted in FY 15-16 in the amount of \$40,000. The expenditure account is currently \$21,000 over budget. Other accounts in the same classification are “covering” the overage. If this Agenda Item is approved a budget amendment will be brought to Council at its May 3, 2016, meeting to request the use of the revenue from the 2.5% recommended charge to cover additional credit card processing costs expected through the end of the 2015–2016 fiscal year.

**Item is estimated to generate additional revenue:** Based on five months YTD expenses, staff anticipates an additional \$122,000 is needed to cover expenses for the remaining fiscal year. \$162,000 is an amount estimated to allow for any probable increases in utility bill payments with the higher usage that occurs during the summer months.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Ordinance 2016-23 (page 3)

**ORDINANCE NO. 2016-23**

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING THE FISCAL YEAR 2015-2016 ANNUAL BUDGET, ORDINANCE 2015-43 TO AMEND EXHIBIT "C" "SCHEDULE OF FEES AND CHARGES" ATTACHED TO THE ANNUAL BUDGET; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the 2015-2016 Annual Budget was adopted by Ordinance 2015-43 on September 15, 2015;

**WHEREAS**, Exhibit "C" "Schedule of Fees and Charges" to the Annual Budget contained approved fees, rates, and charges for various services, permits, licenses, etc.;

**WHEREAS**, the City Council considered the circumstances for the implementation of a new fee for customers paying any City fee, charge, bill or fine using a credit or debit card; deliberating appropriately on and the overall impact on the general financial status of the City;

**WHEREAS**, pursuant to the laws of the State of Texas and the City Charter of the City of Huntsville, Texas, the City Council has determined that it will be beneficial and advantageous to the citizens of the City of Huntsville to amend the 2015 – 2016 budget Exhibit "C" "Schedule of Fees and Charges" as set forth herein;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:**

**Section 1.** The findings set forth above are incorporated into the body of this ordinance.

**Section 2.** The annual budget for fiscal year 2015 – 2016 is hereby amended by adding to the "Schedule of Fees and Charges" adopted with the Fiscal Year 2015 – 2016 Budget, a new fee of 2.50% of the fee, charge, bill, or fine being paid with a credit or debit card.

**Section 3.** All ordinances of the City in conflict with the provisions of this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 4.** Should any section, portion, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the force or effect of any other section or portion of this ordinance.

**Section 5.** The necessity for amending the budget for the fiscal year 2015 – 2016, as required by the laws of the State of Texas, requires that this ordinance shall take effect immediately from and after its passage, as the law in such cases provides.

**Section 6.** The amendment to the "Schedule of Fees and Charges" adding a 2.50% convenience fee for customers using a credit or debit card for payment shall be effective immediately or if passed/approved before May 1, 2016, it shall be effective May 1, 2016. The City Secretary is instructed to attach a copy of this Ordinance to Ordinance 2015-43

PASSED AND APPROVED on this the 3<sup>rd</sup> day of May 2016.

**THE CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
Andy Brauning, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney





## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 7f

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**Item/Subject:** Authorize the City Manager to sign a construction services agreement with Garney Companies, Inc. for construction services to complete the Town Creek drainage project, second reading.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager; Dr. Sherry McKibben, Director of Neighborhood Resources; Ram Ramachandra, City Engineer

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**Recommended Motion:** Move to authorize the City Manager to sign a construction services agreement with Garney Companies, Inc. for construction services to complete the Town Creek Drainage Project.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Executive Summary:** In November 2015, the City Council approved a Construction Manager at-Risk contract with Garney Construction to assist with the elements such as design review, cost-estimating and project reviews with property owners along the Town Creek drainage project. Garney's involvement with the project has been most helpful and their staff has worked well with the team and engineering design consultants. The project has reached the 95% design level. With that, it is appropriate to consider the next phase of services from Garney to complete construction of the project. This contract will secure their services to construct the project a monthly amount of \$87,405 and not to exceed \$1,048,860. These amounts are reasonable and customary for the work and complexity of this project.

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**Discussion:** On November 17, 2015, the City Council authorized the City Manager to sign an agreement for Construction Manager At-Risk (CMAR) services with Garney Companies, Inc. (Garney). The services to be provided by Garney included only those services associated with design (such as design reviews, cost estimating and working with land-owners). At present, the project design is 95% complete. With that, this item recommends a new contract with Garney to complete the construction phase of Town Creek.

This contract contains five primary services to be provided by Garney. They include:

1. Solicit interest of subcontractors to perform the various trades needed to complete this project. It is estimated that 15 separate trades and 10 material suppliers will be needed to complete this project. It is to the City's and Garney's benefit to create as much interest as possible for each of these trades.
2. Once subcontractor proposals are received, Garney is to interview and make a recommendation to the City of the subcontractor they wish to employ for this project.
3. After the Council's approval of the total project, coordinate every phase of the work, including regular and routine updates to landowners on project progress, as well as to the City. This includes completing pay estimates and ensuring the project schedule is managed properly.
4. Although it is not anticipated, if a subcontractor does not perform the necessary services, it is Garney's responsibility to either find another qualified party to complete the work or complete the work themselves (at no additional cost).
5. Closeout the project, including complying with all grant conditions.

The fee for Garney's services is \$87,405/month. This fee includes all of the General Conditions, overhead and profit (i.e., items required by the general conditions of the construction plans). General Conditions include providing a Superintendent, a job trailer, utilities, and all of the back-office services necessary to pay employees and subcontractors and comply with grant requirements and audit requirements. The only expense not covered in that fee is the cost of performance and payment bonds and insurance (which is likely in the neighborhood of 2% to 2.5% of the total project cost).

A few other important notes about the fee. First, it is capped at \$1,048,860 (or 12 months of work). This is important because several phases of work will be highly dependent on and subject to the weather. If it requires 18 months to complete the project, the City will only pay for 12. Second, the fee is reasonable and appropriate given the scope of work and complexity of the project. Although the grant does not allow basing the fee as a percentage of project cost, that method is still a good way to review the reasonableness of the fee. With an estimated construction budget of \$9,000,000, Garney's fee is approximately 11.6% (less bonds and insurance). For smaller projects (without the economies of scale), the City has paid between 10% and 15% for approximately the same services.

Finally, this phase of the work does not proceed forward unless or until the City provides a written notice to proceed. Therefore, the fee does not commence until the cost estimates meet the construction budget. There is no financial risk until there is reasonable certainty that the project is ready to proceed to the proposal (bidding) phase.

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**Previous Council Action:** A Council workshop was held on May 5, 2015, to give Council an update on the project. On May 5, 2015, the City Council approved amending Klotz's contract to include Phase II engineering in the amount of \$360,351. In July 2015, the Council accepted Phase II funding from FEMA/TDEM and amended the budget for the matching funds required. On November 17, 2015, the City Council authorized the City Manager to sign an agreement for design services review Construction Manager At-Risk (CMAR) services with Garney Companies, Inc. (Garney). On March 1, 2016, a Council workshop was held to give the Council an update on the progress of the project. First reading of this item on April 5, 2016.

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**Financial Implications:**

**Item is budgeted:** The budget for the Town Creek Drainage Project was most recently updated and approved by the City Council on July 7, 2015, when the Council accepted the grant and the total cash budget for the project was approved at \$11,454,877 (with \$8,591,157 being grant funds and \$2,863,720 being City cash match).

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**Approvals:**     City Attorney                       Director of Finance                       City Manager

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**Associated Information:**

- Proposed Construction Services Contract with Garney (pages 3-29)

\*Note, the section numbering on this document needs to be revised, and will occur before City Manager's signature.

## AGREEMENT FOR CONSTRUCTION MANAGER-AT-RISK SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGER-AT-RISK SERVICES (the "Contract") is made this \_\_\_\_\_ (the "Contract Date"), between **THE CITY OF HUNTSVILLE, TEXAS** (hereinafter the "Owner") and Garney **COMPANIES, INC.** (hereinafter "Construction Manager")

WHEREAS, the Owner requires the performance of certain construction management services, as hereinafter described, for construction of the **Town Creek** (the "Project"); and

WHEREAS, Construction Manager is prepared and able to perform the construction manager-at-risk services required by the Owner;

THEREFORE, in consideration of the mutual promises hereinafter set out, the Owner and Construction Manager agree as follows:

### **1. GENERAL PROVISIONS**

1.1 The Contract Documents. The Contract Documents consist of this Contract, Exhibits, drawings, specifications, addenda issued prior to the execution of this Contract, other documents listed in this Contract, and modifications issued after execution of this Contract, all of which form the Contract and are as fully a part of the Contract as if attached hereto or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.4.1.3 and identified in the Executed Guaranteed Maximum Price Proposal. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.2 Relationship of the Parties. The Construction Manager accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to furnish the construction management services set forth herein; to provide efficient administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of this Contract.

### **2.3 Construction Phase Services**

2.3.1 The Construction Phase of this project may occur in phases. Any phase will commence upon the Owner's issuance of a written Notice to Proceed.

2.3.2 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons

from whom, or entities from which, the Construction Manager shall obtain proposals. The Construction Manager shall prepare and review with the Owner Requests for Proposal ("RFP") for major elements of the Work. Upon the Owner's approval of the RFPs, the Construction Manager shall issue the RFPs and obtain proposals from Subcontractors and from suppliers of materials or equipment and shall deliver such proposals to the Owner. The Owner shall then determine, with the advice of the Construction Manager, which proposals will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

- 2.3.3 If the Guaranteed Maximum Price has been established and when a specific proposal submitter (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price be adjusted by the difference between the proposal of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- 2.3.4 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 2.4.13.
- 2.3.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner.
- 2.3.6 Upon the execution of an Executed Guaranteed Maximum Price Proposal as provided in Section 2.4.1, the Construction Manager shall prepare and submit to the Owner a final construction schedule for the Work and submittal schedule.
- 2.3.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of

equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

2.3.8 The Construction Manager shall develop a system of cost control for the Work, to include a forecast of anticipated costs and regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and shall provide this information in its monthly reports to the Owner.

## 2.4 Compensation for Construction Phase Services

### 2.4.1 Guaranteed Maximum Price Proposal

2.4.1.1 Following review and approval by Owner of Subcontractor proposals, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including all costs and contingencies described in this Section, and shall also include a determination of the Construction Manager's Fee according to Section 2.4.2.

2.4.1.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.4.1.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.4.1.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work

organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the Owner must accept the Guaranteed Maximum Price.

2.4.1.5 The Construction Manager shall meet with the Owner to review the Guaranteed Maximum Price proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.4.1.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective. Promptly thereafter, Owner and Construction Manager shall both sign the Guaranteed Maximum Price proposal (hereinafter, the "Executed Guaranteed Maximum Price Proposal"). The Executed Guaranteed Maximum Price Proposal shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

2.4.1.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

2.4.1.8 The Owner shall authorize the Construction Manager to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Executed Guaranteed Maximum Price Proposal. The Construction Manager shall notify the Owner of any inconsistencies between the Executed Guaranteed Maximum Price Proposal and the revised Drawings and Specifications.

2.4.2 Construction Manager's Fee. For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in this Section plus the Construction Manager's Fee as defined in this Section. The Construction Manager's Fee shall be calculated as follows:

2.4.2.1 The Construction Manager's Fee shall be \$87,405 monthly.

2.4.2.1 The Construction Manager's Fee shall include the following:

1. Gross Margin and/or Profit
2. Taxes on Income
3. Principal Office Overhead
4. Insurance (Workers Compensation, General Liability, Completed Operations, and Builder's Risk)
5. Other "General Condition" items that are standard practice for similar projects, as described in Section 2.4.11.

2.4.2.2 The monthly fee, in Section 2.4.2.1, shall not exceed \$1,048,860 no matter the duration of the project.

2.4.2.3 The monthly fee, in Section 2.4.2.1, does not include the cost for performance and payment bonds.

#### 2.4.3 Guaranteed Maximum Price

2.4.3.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Executed Guaranteed Maximum Price Proposal, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. To the extent the Cost of the Work is less than the Guaranteed Maximum Price, 100% of the savings shall be retained by the Owner.

2.4.3.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.4.4 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

2.4.5 Accounting Records. The Construction Manager shall keep full and detailed records and accounts related to the project and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### 3. OWNER'S RESPONSIBILITIES

#### 3.3 Owner's Responsibilities During Construction Phase

3.3.1 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services

3.3.2 The Owner shall at once report to the Construction Manager any errors, inconsistencies or omissions that the Owner discovers in the Construction Documents. Failure by the Owner to report to the Construction Manager any such errors, inconsistencies or omissions shall not relieve the Construction Manager of any of its responsibilities with respect to such errors, inconsistencies or omissions.

3.4 Owner's Designated Representative. The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager

3.5 Legal Requirements. The Owner shall furnish all legal and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

## 4. CONTRACTOR'S RESPONSIBILITIES

### 4.1 Conduct of Services

4.1.1 Construction Manager represents and warrants to the Owner that Construction Manager is competent to perform and provide the services required by this Contract, and the Construction Manager has the necessary permits, licenses and qualifications to perform such services. When applicable law requires that services be performed by licensed professionals, the Construction Manager shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions, including but not limited to, lawfully licensed architects, engineers or other design professionals. Construction Manager shall exercise skill, care and diligence in the performance and provision of the Work required by this Contract. Construction Manager shall perform the services promptly and in full conformity with all requirements of this Contract, and shall carry out its obligations under this Contract in accordance with customarily accepted practices. In the event that Construction Manager should fail to comply with any of the foregoing requirements or standards, Construction Manager shall perform at its own costs and without reimbursement from the Owner, the services necessary to correct deficiencies in the services or work which are so caused.

4.1.2 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, architects, contractors, subcontractors, engineers, design professionals, and their agents and employees, and other persons or entities, including the architect, engineer and other design professionals, performing any portion of the Construction Manager's obligations under the Contract Documents.

4.1.3 The Construction Manager shall obtain from each of the Construction Manager's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Contract Documents and the Design Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable industry and professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

### 4.2 Construction Schedule

4.2.1 Construction Manager shall prepare and maintain a detailed schedule (the "Construction Schedule") to construct the Project. The Construction Schedule shall accurately represent and reflect, to the best of Construction Manager's knowledge, experience and ability, the total time

required to complete each task and the progress of the Work relative to the Substantial Completion Date (as hereinafter defined). The Construction Manager shall promptly revise the Construction Schedule as the scope of the Project changes and report any revisions in the Construction Schedule to "Owner's Representative" (hereinafter defined).

4.2.2 Time is of the essence of this Contract. In the event that the Construction Schedule as regularly revised indicates that the Substantial Completion Date will not be met, Construction Manager shall, at its sole cost and expense, implement remedial actions that are reasonably necessary to achieve Contract compliance. In addition, in the event the Owner determines that the Work to achieve the Substantial Completion Date has not progressed or reached the level of completion required by this Contract, the Owner shall have the right to order the Construction Manager to take corrective measures necessary to expedite the progress of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (collectively, the "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the Construction Schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager's compliance with the Construction Schedule. The Construction Manager shall not be entitled to an adjustment in the Contract Price or Construction Schedule in connection with Extraordinary Measures required by the Owner under or pursuant to this paragraph unless this Contract otherwise expressly permits the same and Owner may exercise the rights furnished the Owner under or pursuant to this paragraph as frequently as the Owner deems necessary to ensure that the Construction Manager's performance of the Work will comply with any completion date set forth in the Construction Schedule.

4.2.3 Substantial Completion. As used in this Contract, the term "Substantial Completion" or "Substantially Completed" shall mean the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents and verified by both Owner and Construction Manager, in order that the Owner can occupy or utilize the Project for its intended use.

#### 4.2.4 Certificate of Substantial Completion

4.2.4.1 When the Construction Manager considers the Work to be substantially complete, the Construction Manager shall provide written notice to Owner. Promptly following Owner's receipt of such notice, Construction Manager and Owner's Representative shall meet at the Site, inspect the Work and review test results if any, in order for the Owner to determine whether the Work is substantially complete. Construction Manager and Owner's Representative shall also complete a comprehensive list of all items to be completed or corrected (the "Punchlist") by the Construction Manager. Failure to

include an item on the Punchlist shall not alter the Construction Manager's responsibility to complete all Work in accordance with this Contract. Construction Manager shall commence with the correction and/or completion of any item on the Punchlist immediately thereafter. If the items set forth on the Punchlist are not corrected within the agreed upon timeframe, Owner shall have the right to hire an independent contractor to complete the work on Construction Manager's behalf and shall have the right to deduct the costs of such work from the Final Payment, or bill Construction Manager for such costs, including the cost of any supervision. If an item cannot reasonably be corrected within a fourteen (14) day timeframe, the reasons therefore shall be explained in writing on the Punchlist to Owner's satisfaction. The Punchlist shall in no way waive or alter any other rights of Owner under this Contract pertaining to warranties, latent defects, or otherwise.

4.2.4.2 When the Owner approves the Work as substantially complete, the Owner shall prepare a Certificate of Substantial Completion to be executed by Construction Manager and Owner establishing the date of Substantial Completion, and the time within which Construction Manager shall finish the Punchlist items accompanying the Certificate. The Punchlist shall be attached to the Certificate of Substantial Completion. Warranties required by this Contract shall commence on the date of Substantial Completion unless otherwise provided in the Certificate of Substantial Completion.

#### 4.2.5 Certificate of Substantial Completion

4.2.5.1 Promptly following issuance of the Certificate of Substantial Completion, Construction Manager shall commence and complete all remaining Punchlist items as provided in the Certificate of Substantial Completion.

4.2.5.2 Upon completion of the Punchlist, the Construction Manager shall provide written notice to Owner and request an inspection by the Owner to determine whether the Project is "Complete." When the Owner determines that all Punchlist items are complete, it shall deem the Project "Complete". When the Project is Complete, Owner shall release the Retainage to Construction Manager as provided in Section 7.3.

#### 4.3 Materials and Engineering, etc.

4.3.1 Construction Manager warrants to Owner that materials and equipment furnished under this Contract are of good quality and new, except as otherwise expressly required or permitted by this Contract, that the Work will be free from material defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the

Contract. Work not conforming to these requirements, including substitutions not properly approved or authorized by the Owner, shall be considered defective. Cure of such defect shall be by correction or replacement of the Work, at the Construction Manager's sole cost. If required by Owner, Construction Manager shall supply satisfactory evidence as to the kind and quality of materials and equipment.

- 4.3.2 The Construction Manager agrees that all materials incorporated by it during the Work and all materials delivered by it for incorporation in the Project shall be free of any and all liens, claims, chattel mortgages, security interests, and conditional sales agreements of third parties, that any monies it shall receive in payment for Work performed under this Contract shall be received in trust and used to discharge its financial obligations with respect to the Work, that it will not file or cause to be filed any mechanic's lien for materials furnished or to be furnished and/or for labor performed or to be performed. If any subcontractor or any materialman or anyone claiming by or through such subcontractor or materialman shall file or cause to be filed any lien, Construction Manager will upon notice from Owner, cause such lien to be canceled and discharged (by payment, bonding or otherwise) within ten (10) days from such notice; and in the event of Construction Manager's failure to observe any of the foregoing, Owner shall have the right to cause such lien to be canceled and the cost thereof, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys fees and disbursements, shall be paid by Construction Manager or at the option of Owner shall be deducted from any payment then due or thereafter becoming due from Owner to Construction Manager. Nothing contained in the preceding sentence or otherwise in this Contract shall be deemed to create a relationship between Owner and Construction Manager other than that of Owner and independent contractor. Said right shall be cumulative and shall be in addition to any and all other rights and remedies herein or otherwise by law given to Owner. Upon receipt of evidence of Construction Manager's default hereunder with respect to its obligations to make payments to its subcontractors and suppliers, Owner reserves the right (but not the obligation) to, after three (3) business days prior written notice, retain any money due Construction Manager and pay directly for labor, materials, equipment, tools, plant, facilities, services and all other obligations of Construction Manager and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to Construction Manager.

#### 4.5 Supervision of the Work

- 4.5.1 Construction Manager's Representative: Prior to the commencement of the Work, Construction Manager shall provide to Owner Construction Manager's address, office and mobile telephone numbers, and other contact information for Construction Manager's Representative. Any changes to such information shall be provided in advance to Owner. Construction Manager's Representative shall be in attendance at the

Project site during the performance of the Work, accessible to the Owner at all times, and shall at all times maintain good discipline and order with its employees, subcontractors, suppliers, materialmen, and laborers. Construction Manager's Representative shall not be replaced or reassigned to any other project prior to the Substantial Completion Date without Owner's prior written consent. Construction Manager shall supplement its staff with whatever additional supervisory personnel are required to assure that the Work shall be finished by the Substantial Completion Date.

4.5.2 Changes to Supervisory Authority: Neither Construction Manager's Representative nor Owner's Representative shall be changed without five (5) business days' written notice to the other party.

#### 4.6 Compliance with Laws

4.6.1 Construction Manager shall comply with all laws, ordinances, rules, regulations and lawful orders of public authority as bearing on the performance of the Work. The Construction Manager shall confirm that any information received from the Owner and any information in the Contract Documents complies with applicable laws, regulations and codes and the Construction Manager shall immediately notify Owner in writing if the Contract Documents are observed to be at variance with such laws, ordinances, rules, regulations and lawful orders of any public authority. In the event that a specific requirement of the Contract Documents conflicts with applicable laws, regulations and codes, the Construction Manager shall furnish Work which complies with such laws, regulations and codes.

#### 4.7 Permits and Licenses

4.7.1 Upon the Owner's approval of the Design Documents, the Construction Manager shall make application for such permits and licenses as have been identified by Construction Manager as necessary for the design and/or construction of the Project.

#### 4.8 Job Site Safety/Hazardous Materials

4.8.1 Job-Site Safety/Control of Work: Construction Manager shall use best efforts to maintain and protect the Work from damage and the elements and shall protect and take all reasonable precautions to protect Owner, the Project, any third party and the property of any third party from injury or loss during the course of the Work.

4.8.2 Construction Manager shall comply with all applicable rules and regulations of any public authority having jurisdiction for the safety of persons or property. Construction Manager shall erect and maintain as required by existing conditions and progress of the Work all reasonable safeguards for safety and protection, including posting danger signs, promoting safety regulations and notifying Owner and users of adjacent

utilities and properties. The Construction Manager shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner's Representative.

4.8.3 If the severity of the elements makes it impossible to continue operations in a safe manner in spite of all reasonable precautions, Construction Manager shall cease work and immediately notify Owner. Anything damaged due to Construction Manager's negligence shall be promptly removed and replaced with new work at Construction Manager's cost and expense.

4.8.4 Construction Manager shall keep the Project and surrounding area free from accumulation of debris or rubbish. At the completion of the Work, Construction Manager shall remove all waste materials, rubbish, tools, construction equipment, machinery and surplus materials from the Project.

4.8.5 Disposal of Hazardous Samples/Materials and Contaminated Equipment: All samples and materials produced in the course of Construction Manager's work pursuant to this Contract containing or potentially containing hazardous constituents are the property and responsibility of Construction Manager and shall be handled and disposed of properly and lawfully by Construction Manager at its cost and expense. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall be the property and responsibility of Construction Manager and shall be properly and lawfully disposed of at Construction Manager's expense. Alternate arrangements to turn such equipment, materials and/or samples directly over to a licensed hazardous waste disposal facility may be made at Construction Manager's direction and expense. Construction Manager shall indemnify and hold Owner harmless from any liability, loss, expense, claim or damage caused by or resulting from Construction Manager's creation, maintenance, removal and disposal of any such hazardous materials.

4.8.6 Notification of Hazardous Materials: Owner hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed Construction Manager. Owner shall furnish to Construction Manager all documents and information known to Owner that relate to the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials, on or under the site.

## 5. SUBCONTRACTORS

5.1 Definitions. A subcontractor is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work at the Site. A sub-

subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site.

## 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

- 5.2.1 As soon as practicable after acceptance of the Construction Manager's Guaranteed Maximum Price, the Construction Manager shall furnish in writing to the Owner the names of subcontractors (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within five (5) days to the Construction Manager in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the five (5) day period shall constitute acceptance by the Owner of the subcontractors.
- 5.2.2 The Construction Manager shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection.
- 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another to whom the Owner has no reasonable objection.
- 5.2.4 The Construction Manager shall not substitute a person or entity previously selected if the Owner makes reasonable objection to such substitution.
- 5.2.5 If the proposed but rejected subcontractor was reasonably capable of performing the Work, the Contract Price may be increased or decreased by the difference, if any, occasioned by such change with an appropriate Change Order to be issued before commencement of work by the subcontractor.
- 5.2.6 The Owner has preferred relationships with specific vendors (the "Preferred Vendors") and reserves the right to require that the Construction Manager use the Preferred Vendors for certain portions of the Work. If the Owner chooses to exercise this right, it shall identify the name and contact information for any Preferred Vendors and a description of the scope of the Work that such Preferred Vendors will perform in Exhibit A hereto (the Scope of Work). After execution of this Contract, the Construction Manager shall promptly execute written subcontracts with any Preferred Vendors for such work identified in Exhibit A.

- 5.3 Subcontractual Relations. By appropriate written agreement, the Construction Manager shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by terms of this Contract, and to assume toward the Construction Manager all the

obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Construction Manager, by this Contract, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under this Contract with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by this Contract, has against the Owner. The Construction Manager shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with this Contract. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

#### 5.4 Contingent Assignment of Subcontracts

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Construction Manager to the Owner, provided that:

1. assignment is effective only after termination of this Contract by the Owner for cause pursuant to Section 9.3 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Construction Manager in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager's rights and obligations under the subcontract.

5.4.2 Upon such assignment to the Owner under this Section, the Owner may further assign the subcontract to a successor contractor or other entity.

### 6. CHANGES

6.1 Changes to Work by Owner. Owner shall have the right to make changes to the Work, without invalidating this Contract. All such changes shall be performed under the conditions of this Contract, except that no extra work or modification shall be done without prior written authorization from Owner's Representative, and shall not be paid for without a written Change Order from Owner's Representative in accordance with this Section ("Change Order"). In order for the Owner to manage and track Change Orders and their impact on the total cost of the Work, Construction Manager must provide to the Owner prior to the issuance of a Change Order a cost breakdown for the item of extra work. Any

Change Order which decreases the Work shall inure to the benefit of Owner and the Contract Price shall be reduced by the actual cost savings to Construction Manager. If a Change Order which increases the cost of the Work then the Contract Sum and Guaranteed Maximum Price shall be increased accordingly. Notwithstanding anything to the contrary in this Contract, if the Owner decides to increase or decrease the Work or otherwise alter the Work by deductions or additions, including without limitation the elimination of any one or more of the items as provided in the Contract, Construction Manager shall perform the Work as so altered. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Construction Schedule.

- 6.2 Change Order Required. Any extension of time for the completion of the Work as a result of a Change Order shall be agreed to by the parties and set forth within such Change Order. If a Change Order does not expressly provide for an extension of time, no time extension shall be given for such Change Order. No order, statement or conduct of Owner or its representatives shall be treated as a Change Order, or entitle Construction Manager to an equitable adjustment in the Contract Price or extension of the Contract Period, unless pre-approved in writing by Owner or Owner's Representative. Change Orders are intended to be all inclusive and exhaustive as to primary and foreseeable collateral conditions, situations and effect. Unless documented by a Change Order or written authorizations of Owner or Owner's Representative, any claims for additional work performed by Construction Manager shall be deemed waived. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under this Contract or a change in any time period provided for in this Contract.
- 6.4 Differing Site Conditions. If the Construction Manager encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, the Construction Manager shall promptly provide written notice to the Owner before conditions are disturbed. The Owner will promptly investigate such conditions and, if the Owner determines that the conditions differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will issue a Change Order adjusting the Contract Price and/or the Contract Period. If the Owner determines that the conditions at the site are not materially different and that no change in the terms of the Contract is justified, the Owner will notify the Construction Manager in writing. If Construction Manager disputes the Owner's determination, it may proceed as provided in Section 9.1.

## 7. METHOD OF PAYMENT

### 7.1 Invoicing

7.1.1 Throughout the course of this Contract, Construction Manager shall invoice Owner pursuant to a format agreed to by Owner.

7.1.2 Any invoices from Construction Manager's contractors, subcontractor(s) or other third parties will not be paid directly by the Owner, and Construction Manager shall be responsible for and reimburse Owner for any charges associated with the transmittal and rejection of such invoices. Construction Manager shall be responsible for and indemnify and hold Owner harmless from any losses with respect to its contractors, agents, or subcontractor(s) utilized in the performance of the Work.

### 7.2 Progress Payments

7.2.1 Upon satisfactory progress of the Work and receipt by Owner, or its representative, if any, of an approved Invoice including all supporting documentation described below, Owner will make progress payments on this Contract as set forth in Section 7.2.2, except when in Owner's opinion it is necessary to withhold an amount to protect Owner from loss due to:

7.2.1.1 defective work not remedied;

7.2.1.2 claims or liens filed on the Project;

7.2.1.3 failure of Construction Manager to make payment promptly to subcontractors or material suppliers for labor, materials or equipment;

7.2.1.4 damage to Owner or another contractor;

7.2.1.5 reasonable evidence that the Work will not be completed in accordance with the Construction Schedule;

7.2.1.6 a persistent failure by the Construction Manager to carry out the Work in accordance with this Contract; or

7.2.1.7 reasonable evidence demonstrating that the unpaid balance of the Contract Sum is insufficient to cover the cost to complete the Work.

7.2.2 Supporting Documentation. In addition to other required items, each Invoice shall be accompanied by the following, all in form and substance reasonably satisfactory to Owner:

- 7.2.2.1 Documentation that the Work performed for which the Invoice is sent is complete and has been inspected for compliance with the Contract.
  - 7.2.2.2 A duly executed and acknowledged Construction Manager's sworn statement (an "Affidavit of Payment"), showing all subcontractors with whom Construction Manager has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Invoice and the amount to be paid to Construction Manager from such progress payment, together with similar statements from all subcontractors and, where appropriate, from sub-subcontractors and suppliers of materials;
  - 7.2.2.3 Duly executed waivers and releases of mechanics' and materialmen's liens from Construction Manager and all such subcontractors, suppliers or sub-subcontractors or suppliers who may have or claim to have valid lien rights in accordance with applicable law (and sub-subcontractors and suppliers of materials, to each tier), establishing payment or claim to have or satisfaction of the payment requested by Construction Manager in the Invoice, which at a minimum, shall comply with the requirements of the law.
- 7.2.3 Right to Full Compliance. If Owner elects to make any progress payment without receipt of all required supporting documentation, any such payment shall not be deemed a waiver of Owner's right to demand the required documentation and Owner shall have the right to insist upon full compliance with the requirements hereof as a condition to any and all future payments.
- 7.2.4 Inspection of Work in Place. Upon 24 hours written notice, Owner may from time to time inspect the progress and sufficiency of the Work in place at Construction Manager's place of business or such other locations where the Work is being manufactured or assembled.
- 7.2.5 Retainage. The Owner may withhold from each progress payment a sum representing 5% of the payment amount to be held as Retainage and payable as provided herein.
- 7.2.6 Timing of Progress Payments. Construction Manager shall submit Invoices to Owner for progress payments of Work achieved, including any Change Order. Owner shall pay the amount due within thirty (30) days after receipt of an original Invoice and the satisfaction of all other requirements set forth in this Section. Submission of an Invoice and the satisfaction of all requirements set forth in this Section are conditions precedent to payment from the Owner to the Construction Manager. Additionally, if there is a dispute as to the amount due, Owner shall pay the undisputed portion of the Invoice and the parties shall cooperate in

good faith to promptly resolve the dispute with respect to the unpaid amount.

### 7.3 Final Payment

#### 7.3.1 Timing of Final Payment

7.3.1.1 Owner shall make the final payment (the "Final Payment") to the Construction Manager, including all Retainage, within thirty (30) days after: (1) the Owner deems the Project complete as set forth in the Contract Documents, (2) receipt of a final Invoice; and (3) the satisfaction of all other requirements set forth in Section 7.3.4. Each of these three requirements are conditions precedent to Final Payment. Additionally, if there is a dispute as to the amount due, Owner shall pay the undisputed portion of the Final Payment and the parties shall cooperate in good faith to promptly resolve the dispute with respect to the unpaid amount.

7.3.1.2 In the event Construction Manager does not timely comply with any of the requirements set forth above for the Final Payment, Construction Manager agrees that Owner shall retain all of the remainder of the Contract Sum to protect Owner against any lien rights or claims, until all requirements for the Final Payment have been satisfied.

7.3.2 The Final Payment shall constitute a waiver of all claims by Construction Manager relating to the Work, but shall in no way relieve Construction Manager of liability for the obligations assumed under this Contract or for any faulty or defective work or services discovered after the Final Payment. Construction Manager shall include the terms of this Section in its agreement with all of its subcontractors and suppliers.

7.3.3 Payment by Owner to Construction Manager of any sums due pursuant to this Contract does not constitute or imply acceptance of any portion of the Work.

7.3.4 Prior to Final Payment, and as a condition precedent thereto, Construction Manager shall furnish Owner with the following:

7.3.4.1 All operating, safety and maintenance manuals;

7.3.4.2 Marked sets of the construction documents reflecting "as built" conditions; including the location of any concealed utilities, mechanical or electrical systems and components;

7.3.4.3 An assignment and/or transfer of all guaranties and warranties from subcontractors, vendors, suppliers and manufacturers;

- 7.3.4.4 A list of the names, addresses and phone numbers of all subcontractors and other persons providing guaranties or warranties;
- 7.3.4.5 An Affidavit of Payment and a duly executed Final Payment Certification, Release and Lien Waiver from all subcontractors, suppliers or sub-tier subcontractors or suppliers who may have or claim to have valid lien rights in accordance with the law;
- 7.3.4.6 All permits, including, but not limited to, municipality controlled inspections, certificates of occupancy, certificates of completion or similar certification, all licenses and permits necessary for use, occupancy or maintenance of the Project; and
- 7.3.4.7 Certification of any other item or material and any other document reasonably requested by Owner.

7.4 Taxes

7.4.1 The rates or prices stated in this Contract have been prepared by Construction Manager and make provision for an amount relating to taxes or duties payable with respect to this Contract. Accordingly, any taxes, duties or other similar amounts eligible shall be paid by Construction Manager, but may be reimbursed by Owner as a Cost provided that Construction Manager has included such taxes in its Guaranteed Maximum Price proposal and in the Contract Sum pursuant to Section 2.4.1.

8. INSURANCE AND BONDS

8.1 Construction Manager agrees at all times during this Contract to maintain in full-force and effect at least the following insurance coverages:

**Workers' Compensation**

Coverage A		Statutory
Coverage B	-	\$1,000,000 each Bodily Injury by Accident
Employers Liability		\$1,000,000 policy limit Bodily Injury by Disease
		\$1,000,000 each occurrence Bodily Injury by Disease

**Automobile Liability**

Bodily Injury/Property Damage		\$1,000,000
Combined Limit	- Single	Coverage is to apply to all owned, non-owned, hired and leased vehicles

**Commercial General Liability**

Bodily Injury/Property Damage		\$2,000,000 each occurrence
Combined Limit	- Single	\$2,000,000 general aggregate
		\$2,000,000 products/completed operations aggregate

Limit

**Excess/Umbrella**

**Liability**

Bodily Injury/Property \$10,000,000

Damage

- 8.2 Performance, Payment, Other Bonds. Construction Manager will provide Owner with payment and performance bonds or such other bonds as Owner may request in an amount equal to the Contract Price naming Construction Manager as Obligor and Owner as Obligee and containing requirements in accordance with the terms of this Contract. Such bonds shall be on a form and with a surety company approved by Owner. The cost of the premium shall be paid by Owner, however, Construction Manager warrants and represents that the premium charged to Owner is the lowest rate available to Construction Manager from such surety.

## 9. CLAIMS, DEFAULT, TERMINATION, AND SUSPENSION

- 9.1 Claims. A claim is a demand or assertion by Construction Manager seeking, as a matter of right, the payment of money, or an extension of time or other relief with respect to the terms of this Contract (hereinafter "Claim"). Written notice of a Claim for an increase in the Contract Price or for an extension of time must be given to Owner's Representative by Construction Manager within ten (10) calendar days after occurrence of the event giving rise to such Claim. Claims must be made by written notice which shall describe the claim with reasonable specificity. Failure to give notice in the manner and within the time specified in this paragraph shall constitute a waiver of the Claim by the Construction Manager. Construction Manager shall bear the burden and responsibility of substantiating Claims. Pending final resolution of a Claim, unless otherwise agreed to in writing by Owner, Construction Manager shall proceed diligently with performance of this Contract and Owner shall continue to make payments in accordance with this Contract. Claims not resolved between the parties shall be resolved by litigation as provided in Section 12.

### 9.2 Default

- 9.2.1 Default by Construction Manager. Should the Construction Manager (a) become insolvent or make an assignment for the benefit of creditors; (b) refuse or fail to supply enough properly skilled workers or proper materials; (c) refuse to diligently prosecute the Work; (d) fail to make payments to subcontractors for material or labor in accordance with the respective agreements between the Construction Manager and subcontractors; (e) disregard the law; and/or (f) breach or violate the terms, conditions, provisions or obligations of this Contract, Construction Manager shall be deemed in default of this Contract.

- 9.2.2 Remedies. If Construction Manager fails within ten (10) days after written notification of default from Owner to commence and continue satisfactory

correction of the default with diligence and promptness until completion, then Owner, without prejudice, shall have the right to exercise any and all legal and equitable remedies available including but not limited to:

- 9.2.2.1 supply workers, materials, equipment and facilities as Owner deems necessary for the completion of the Work or any part which Construction Manager has failed to complete or perform, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to Construction Manager;
- 9.2.2.2 contract with one or more additional contractors to perform such part of the Work as Owner determines will provide the most expeditious completion of the Work, and charge the cost to Construction Manager;
- 9.2.2.3 withhold any payments due or to become due Construction Manager pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of Owner; and/or
- 9.2.2.4 terminate this Contract.

9.2.3 Upon termination of this Contract, all Work in progress, including all design and engineering associated with the Work, shall become the property of Owner. Construction Manager shall immediately release all such Work in progress to Owner. Owner may also take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Construction Manager and may finish the Work by whatever reasonable method Owner deems expedient. Construction Manager shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost of fully completing the Work, such excess shall be paid to Construction Manager, less ten percent (10%) which shall be retained by Owner. If such costs exceed the unpaid balance of the Contract Price, the Construction Manager shall pay the difference to the Owner within fifteen (15) days of receipt of a written demand for payment from the Owner.

### 9.3 Termination or Suspension

9.3.1 Without Cause. Owner may, without cause, order the Construction Manager, in writing, to suspend, delay, interrupt or terminate the Work in whole or in part for such period as the Owner may determine. In the event Owner suspends or terminates the Work under this Paragraph, Construction Manager shall be entitled to recover from the Owner, as its sole remedy, payment for Work properly performed in connection with the suspended or terminated portion of the Work prior to the effective date of suspension or termination and for items properly and timely fabricated or partially fabricated off the Site including finished goods and work in

progress of subcontractors and suppliers, delivered and stored in accordance with the Owner's instructions, as well as actual costs for demobilization. The Construction Manager hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to Construction Manager for the terminated portion of the Work, (ii) claims that the Owner has against the Construction Manager under the Contract, and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Construction Manager that are part of the Contract Price.

- 9.3.2 Equipment and Subcontracts. Owner shall also pay Construction Manager fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by Construction Manager that Owner elects to retain. To the extent that Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), as provided in Section 5.4, Construction Manager shall, as a condition of receiving the payments referred to in this Contract, execute and deliver all such papers and take all such steps as Owner may require for the purpose of fully vesting in the Owner the rights and benefits of Construction Manager under such subcontracts or purchase orders.
- 9.3.3 Financial Responsibility of Construction Manager. At Owner's election, Construction Manager shall furnish Owner (within five (5) business days of Owner requests as same are made from time to time) with information deemed necessary by Owner to show that Construction Manager is financially solvent and capable of fully performing under this Contract. If, in Owner's judgment, Construction Manager is determined not to be financially responsible or capable, then Owner may, by written notice, terminate this Contract without further obligation to Construction Manager other than to pay Construction Manager only for the unpaid value of the Work completed at the time of termination.
- 9.3.4 Owner Inspections and Right to Stop the Work. Owner's Representative or his delegate shall have the right to inspect the Work, whether at the Site or at the Construction Manager's or a subcontractor's facility, at any time during the course of the Work. Owner may reject any aspect of the Work which does not conform to the Contract. If Construction Manager fails to correct defective work or fails to supply materials or equipment in accordance with this Contract, Owner may order Construction Manager to stop the Work until it is corrected and Construction Manager shall not be entitled to an extension for time. Owner also has the authority to stop the Work for the purpose of performing special inspections or testing of the Work. Should any work be found faulty as a result of special inspections or tests, Construction Manager shall repair the Work immediately and pay the fees for said inspections or tests. Should the Work be satisfactory, Owner will bear such costs, and will grant the appropriate extension of time to Construction Manager.

## 10. WARRANTIES

- 10.1 Construction Manager Warranty. Construction Manager warrants that all of the Work shall be done in a first class, workmanlike manner and in accordance with the Contract with new, quality materials and further warrants all work and materials against defects in the material or the workmanship for a period of one (1) year from the date of Substantial Completion, unless stated otherwise in this Contract. With respect to the Design Documents and any portion of the Work performed by Licensed Professionals, the Construction Manager and Licensed Professionals warrant that they shall perform their services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under similar circumstances. The Construction Manager and Licensed Professionals shall perform their services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. If a defect in design, material or workmanship or a deviation from the Contract is latent, hidden or not readily observable, Construction Manager's warranty shall be extended for one (1) year from the date of discovery of the defect or deviation. Within a reasonable time after written notice of a defect or deviation, Construction Manager shall (without expense to Owner) remedy and repair same and any damage to other work resulting there from in a manner that does not interfere with Owner's operations. Construction Manager acknowledges that Owner may be liable for liquidated damages in the event that the Project's operations are suspended or shut down. If, within the warranty period, Owner's operations are suspended or shut down as a result of a defect or deviation in material or workmanship, and Construction Manager has failed to respond to Owner's written notice of the suspension or shutdown within 24 hours of receipt of the notice, and cure the defect such that the Project returns to normal operation, then Construction Manager may be liable for Owner's lost production revenues and liquidated damages caused by the suspension or shutdown.
- 10.2 Warranty Deficiencies. Construction Manager agrees to meet with Owner at least fifteen (15), but not more than thirty (30), days prior to the expiration of one (1) year from the start date of the commencement of the warranty period for a warranty inspection of the Work. All warranty deficiencies not caused by Owner shall be noted and the list of deficiencies shall be given to Construction Manager. Construction Manager agrees to correct all such deficiencies within thirty (30) days after the date of the meeting. If the deficiencies are not timely corrected, Owner may hire an independent contractor to do the work and shall be reimbursed promptly by Construction Manager for all costs thereof. If any item cannot, with reasonable diligence, be corrected within thirty (30) days, Construction Manager agrees to set forth in writing a reasonable schedule for completion of the work. If the schedule is not met, Owner may immediately upon notice to Construction Manager, complete the work and be entitled to prompt reimbursement from Construction Manager for all costs thereof.
- 10.3 Acts or Omissions. No act or omission of Owner or Owner's Representative shall relieve Construction Manager of Construction Manager's responsibility to correct deficient workmanship and materials.

10.4 Subcontractor Warranties. Construction Manager shall cause all of the subcontractors and sub-subcontractors to execute and deliver to Owner upon completion of the Work a written warranty (reasonably satisfactory to Owner) covering all work performed by such subcontractors and sub-subcontractors. Such warranty shall be for at least the same period of time as Construction Manager's warranty to the Owner and begin at the date of Substantial Completion, unless a warranty for a longer period of time is required pursuant to this Contract. All warranties included in or as part of the Project and supplied to Construction Manager shall be assigned to Owner. Those subcontractors required to supply warranties to Owner include, but are not limited to: electricians, welders, roofers, HVAC suppliers and installers.

**11. NOTICES**

11.1 All notices to be delivered under this Contract shall be in writing, signed by the parties serving same and delivered personally or by registered or certified U.S. Mail postage prepaid, or by reputable private delivery service postage prepaid and providing a receipt to sender. Each such notice shall be deemed delivered upon actual delivery or refusal or forty-eight (48) hours after mailing whichever is earlier to the pertinent address as set forth below.

Notices shall be addressed as follows:

To Owner:                    Matt Benoit, City Manager  
   City of Huntsville, Texas  
   1212 Avenue M  
   Huntsville, Texas 77340  
   (936) 291-5401  
   mbenoit@huntsvilletx.gov

To Construction Manager: Matt Foster, Principal  
   Garney Construction  
   1333 NE Vivion Road  
   Kansas City, MO 64118  
   (816) 746-7219  
   mfoster@garney.com

**12. MISCELLANEOUS PROVISIONS**

12.1 This Contract is not assignable by Construction Manager without the prior written consent of Owner which consent shall not be unreasonably withheld, in its sole and absolute discretion, and Construction Manager shall not factor or pledge this Contract.

12.2 No right or remedy conferred upon or reserved to Owner in this Contract is intended to be exclusive of any other right or remedy herein or by law provided,

but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity.

- 12.3 In the event of any inconsistencies within or between parts of the Contract, including the Contract Documents, or between the Contract and applicable laws, the Construction Manager shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement; either or both in accordance with Owner's interpretation.
- 12.4 In the event any provision of this Contract is found to be invalid or unenforceable, the remainder of this Contract shall continue in full force and effect.
- 12.5 This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The parties irrevocably consent to the jurisdiction of the federal and state courts situated in Texas and agree that any lawsuit arising out of or related to this Contract shall be brought only in such courts. The parties hereby waive any claim that any proceedings brought in such courts have been brought in an inconvenient forum.
- 12.6 Owner and Construction Manager hereby irrevocably waive any right to a trial by jury in any legal proceedings or to have a jury participate in resolving any disputes or claims, whether any such disputes or claims relate to or arise in contract, tort or otherwise, whether in respect to the Contract or any other documents or instruments delivered in connection with the Contract.
- 12.7 Construction Manager hereby warrants, and covenants that (i) Construction Manager does not and will not during the course of the Work discriminate against any employee or applicant for employment based on race, color, sex, national origin, religion, age handicap, or other unlawful basis, and (ii) Construction Manager and all of its subcontractors, consultants and suppliers are and will be properly licensed and permitted with all governmental authorities having jurisdiction.
- 12.8 The parties expressly agree that this Contract was jointly drafted, and they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Contract shall be construed in a neutral manner.
- 12.9 Construction Manager waives claims against Owner for consequential damages arising out of or relating to this Contract, including damages for principal office expenses and the compensation of personnel stationed there; loss of financing, business and reputation; and for loss of profit.
- 12.10 Owner shall have the right to let other contracts in connection with the Work, and Construction Manager shall properly cooperate with any such other contractors in furtherance of the Work; however Construction Manager shall not be relieved hereunder by any subcontract or similar agreement.

- 12.11 Payments due and unpaid to Owner or Construction Manager under this Contract for a period of thirty (30) days after written demand shall bear interest from the date payment was due at the rate of six percent (6%) per annum.
- 12.12 The Owner represents and warrants to Construction Manager that Owner is financially solvent, able to pay its debts as they mature and is possessed of sufficient capital to perform its obligations hereunder.
- 12.13 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all prior or contemporaneous written or oral communications with regard to the Project. This Contract may be amended or modified only by an instrument in writing signed by a duly authorized representative of both Owner and Construction Manager. This Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Construction Manager. Notwithstanding any other provision herein, all subcontracts shall be in writing and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract.
- 12.14 Attorney's Fees. In the event of any controversy arising hereunder or relating to the interpretation or implementation of this Contract or any breach thereof, the prevailing party shall be entitled to payment for all costs and attorney's fees (both trial and appellate) incurred in connection therewith.
- 12.15 Severability. The invalidity, in whole or in part, of any provision of this Contract will not affect the validity of any other provision of this Contract.
- 12.16 Captions. The captions contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Contract or the intent of any provision contained in this Contract.
- 12.17 Counterparts. This Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same agreement.
- 12.18 Waiver. The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Contract shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto. Except as otherwise expressly provided herein, no waiver of any right shall be implied by any delay by a party in enforcing or acting under such right. Waivers shall be effective only if specifically set forth in writing signed by the party to be charged with such waiver.
- 12.19 This Contract is binding upon the parties, their heirs, successors and approved assignees.
- 12.20 Remedies Cumulative. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

IN WITNESS WHEREOF the parties hereto have, by and through their duly authorized officers in that regard, made and executed this Contract as of the date first written above.

SIGNED and DELIVERED

City of Huntsville, Texas  
Owner

By: \_\_\_\_\_  
Matt Benoit, City Manager

By: \_\_\_\_\_  
*Matt Foster, Vice President*





## CITY COUNCIL AGENDA

4/19/2016  
Agenda Item: 7g

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**Item/Subject:** Consider authorizing the City Manager to sign a contract with the Mike Barnes Group, Inc. for professional economic development services.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager

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**Recommended Motion:** Move to authorize the City Manager to sign a contract with Mike Barnes Group, Inc. for professional economic development services.

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**Strategic Initiative:** Goal #3 - Economic Development - Promote and enhance a strong and diverse economy.

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**Discussion:** During the City Council's 2016 Strategic Planning session, and while discussing the best strategy to promote economic development in Huntsville, the City Council expressed an interest in considering contracted economic development services. City staff contacted other cities and was provided the name of Mike Barnes. Mr. Barnes offices in Blanco, Texas, and provides the same or similar services to other communities in Texas.

After meeting with and discussing the Council's interest in these services, Mr. Barnes has provided the attached proposal that includes:

- Business Retention/Expansion Visits – Mr. Barnes will provide at least four per year and provide helpful information to the City.
- Host Site Selector Visits – Mr. Barnes will host, likely in conjunction with another event, at least one site selector visit in Huntsville per year.
- Attend Target Industry Trade Conference – Proposal includes attending the Industrial Asset Management Council and/or CoreNet Global.
- Prospect Development and Negotiations – Mr. Barnes will market the City of Huntsville on its website, social media and through its business activities specifically focusing on primary (manufacturing) jobs in Huntsville.
- Presentation to the City Council – Mr. Barnes will make quarterly presentations to the City Council on his activities and progress in representing the City of Huntsville.

Mr. Barnes is willing to provide services to the City of Huntsville on a month-to-month basis with a 30-day written cancellation by either party. The proposed fee is \$75,000 annually. That fee includes all of his expenses except international travel (as needed) and conference registration fees.

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**Previous Council Action:** None

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**Financial Implications:**

**Item is budgeted:** 101-830-55070, Economic Development Purchased Services

**In the amount of:**

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**Approvals:**     City Attorney         Director of Finance         City Manager

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**Associated Information:**

- Mike Barnes Group proposal (pages 2-4)

AN ECONOMIC  
DEVELOPMENT  
PROPOSAL SUBMITTED  
TO THE CITY OF  
HUNTSVILLE, TEXAS

*Submitted by Mike  
Barnes Group, Inc.*

**Mike Barnes Group, Inc.**  
Economic Development



City of  
**Huntsville**

*Home of Sam Houston*

## About the Firm

### About the Mike Barnes Group:

Mike Barnes Group, Inc. is a consulting firm specializing in economic development, providing consulting to companies, communities, and organizations. With more than 30 years' experience in the industry, Mike Barnes leads the Mike Barnes Group, Inc. as president and CEO.

### Education & Experience

Mike earned a Master of Public Administration and a Bachelor of Science degree from Indiana State University. He is a licensed real estate broker and he has completed the Texas Attorney General's Open Meetings Training and the TEDC Sales Tax Seminar.

Prior to forming MBG, Mike Barnes provided leadership to award-winning economic development organizations over the past 30 years, including:

- Terre Haute, IN
- High Point, NC
- Plano, TX
- Florence County, SC
- Southern IN
- Waco, TX
- Clermont County, OH

### Affiliations:

#### International Economic Development Council

- Current member
- Previously served on Board of Directors

#### Industrial Asset Management Council

- Associate Member
- Mike Barnes is a Charter Member

#### Texas Economic Development Council

- Current member
- Previously served on Board of Directors

#### Texas Municipal League

- Current Member

### Kirk Clemen, CEO, Senior Associate

Kirk joined MBG in 2016. He comes to the firm with in excess of 20 years' executive level economic development experience within Texas. Kirk received his Master's Degree in Economic Development from University of Southern Mississippi and his Bachelor's Degree from Texas State. Kirk's focus is research, project management and client services.

### Sample Clients:

Bastrop, TX, EDC  
Lamesa, TX EDC  
EDC of Lee Co, NM  
LHP Partners, Plano, TX  
Development Authority of Rockdale Co, GA  
Southeast Texas Economic Development Foundation  
Orange Co, TX EDC  
Lufkin/Angeline TX Economic Development Partnership  
Everman, TX EDC  
Belch Springs, TX EDC  
Robinson, TX EDC  
Hillsboro, TX EDC  
Groesbeck, TX EDC  
Brookshire, TX EDC  
Jefferson County Commissioners Court, Beaumont, TX  
Lamar Institute of Technology Foundation Board of Directors, Port Arthur, TX  
International Economic Development Council—BP  
Oil Spill Disaster Recovery Team, Escambia Co., FL  
Royal Classic Properties, Austin, TX  
Lacy Lakeview, TX EDC  
Stafford, TX EDC  
Bowling Green, Regional Chamber of Commerce, KY  
California Workforce Solutions  
Michigan Workforce Solutions  
Southeast TX Workforce Solutions, Port Arthur, TX  
South Central Michigan Works  
Greater Beaumont Chamber of Commerce, Beaumont, TX  
Carlsbad, NM Department of Economic Development  
Hobas Bonded Fibers, Waco, TX  
Llano, TX EDC  
Triad Hospitals, Plano, TX  
Blanco, TX Streetscape Project  
Burkburnett, TX Development Corporation  
City of Fairbairn, TX  
City of Willow Park, TX  
City of Johnson City, TX  
Odessa, TX Development Corporation  
Crandall, TX, EDC  
Mathis, TX, EDC  
Jacksonville, TX, Development Corporation

Submitted by Mike Barnes Group, P.O. Box 1729, Blanco, TX 78606-1729 830.533.5300

### **Suggested Scope of Services**

MBG suggests the following Scope of Services to be performed for the City of Huntsville, Texas:

**Business Retention/Expansion Visits:** MBG will perform a minimum of four Business Retention/Expansion Visits with existing Huntsville companies annually. MBG will catalog the responses to inquiries; provide these responses to city administration for their review and possible action. Questions concerning business climate, potential expansion, concerns or issues and overall discussion relative to the firm in Huntsville will be directed to the firms.

**Host Site Selector Visits:** MBG will facilitate the visits of known site selectors/brokers engaged in commercial/industrial activities to Huntsville. It is suggested this might occur in and around an event with Sam Houston State or other community event. There will be a minimum of one per year; however, attempts will be made to bring a number of these persons into the event or familiarization tour.

**Target Industry Trade Conference:** MBG suggests Huntsville retain the firm to represent the city at Industrial Asset Management Council, identified trade shows and/or CoreNet Global at least once annually. MBG would provide attendees information relative to Huntsville's attractiveness as a business location and include these persons into a database provided to the client.

**Team Texas:** MBG suggest Huntsville join Team Texas and have MBG represent the city at any number of events. This could be possibly combined with the Target Industry Trade Conference above and/or site selector visits. Team Texas is a \$3000 expenditure and membership is currently open. This is a cost effective tool. MBG has extensive relationships within this group and with many of the entities with which Team Texas interacts.

**Greater Houston Partnership Events:** MBG will represent the City of Huntsville at selected Greater Houston Partnership events. Those involving site selectors and regional cooperation will be selected. At a minimum, MBG will attend 4 events annually.

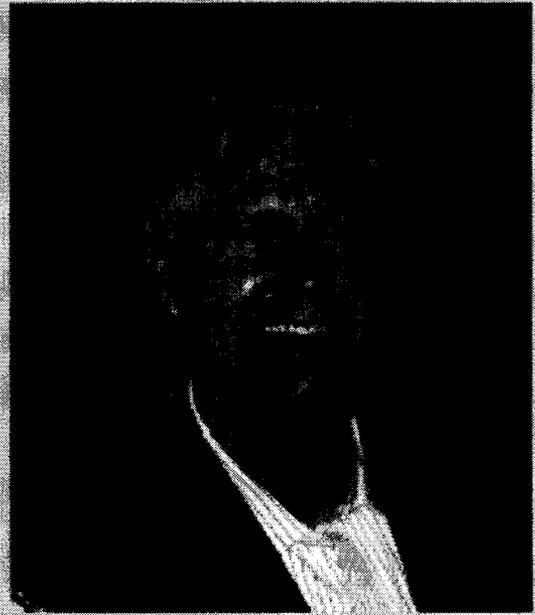
**Prospect Development and Negotiation:** MBG will market the City of Huntsville on its website, social media and through its business activities. In addition to those items identified herein, MBG will attempt to land projects containing primary jobs in Huntsville. As part of this effort, MBG will work with the administration in reviewing existing incentives from a comparison perspective with other known incentives used by similar Texas locations. It must be understood that in order to successfully attract business, Huntsville's tool kit of incentives must be competitive. Attempts will be made to bring as many projects as possible to the Huntsville City Council.

**Presentations to City Council and Administration:** MBG will make quarterly presentations to the Huntsville City Council, either in person or through written narrative. These presentations will contain information regarding types of activities MBG has showcased Huntsville, contacts developed and ongoing interaction with those contacts. In addition, MBG will work with city administrative staff to fully communicate the firm's activities and the results of those activities. In other words, MBG will treat the Huntsville City Council and administration as an economic development board in fully communicating the firm's ongoing activities conducted on the City's behalf.

Submitted by Mike Barnes Group, P.O. Box 1725, Blanco, TX 78606-1725 830.833.5300

### Fees for Services

MBG would provide those services identified in this proposal for a fee of \$75,000 annually. This would be paid in equal monthly installments of \$6250. In essence, Huntsville gets an experienced, nationally recognized economic development leader for a fraction of the cost of staff. All travel related to this project and related expenses would be paid by MBG, except any international travel that may occur. In addition, all memberships, conference entrance/registration fees would be paid for by the client. There would be no employee/employer relationship, thus saving the City of Huntsville considerably in its benefits package. MBG is willing to have a contract drawn providing for a 30 day cancellation upon notice of either party.



### Mike Barnes Group, Inc.

Economic Development Services  
Site Selection & Business Development

#### MIKE BARNES President/CEO

340 Main Street  
Suite 101  
P.O. Box 1729  
Blanco, TX 78606-1729

Tel: 830.833.5300  
Fax: 830.833.5300  
Mobile: 214.344.2889

[mibarnes@mbkgroup.com](mailto:mibarnes@mbkgroup.com)

[www.mikemarketgroup.com](http://www.mikemarketgroup.com)

Submitted by Mike Barnes Group, P.O. Box 1729, Blanco, TX 78606-1729 830.833.5300



## CITY COUNCIL AGENDA

4/19/2016

Agenda Item: 8b

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**Item/Subject:** Consider authorizing the City Manager to approve a contract with Gallagher Benefit Services, Inc. for benefits consulting services and payment in the amount of \$45,000.

**Initiating Department/Presenter:** Human Resources

**Presenter:** Julie O'Connell, Human Resources Director

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**Recommended Motion:** Move to authorize the City Manager to approve a contract with Gallagher Benefit Services, Inc. for benefits consulting services and payment in the amount of \$45,000.

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**Strategic Initiative:** Goal #6 - Finance - Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** The City has utilized Holmes-Murphy as a benefits consultant since 2012. The annual cost of this contract was \$40,000, and the contract was terminated March, 2016. In February, the City sent out a request for proposal for benefits consulting services, and we received five proposals. After interviewing the three top firms, and contacting four other Cities as references for the highest ranking firm, Gallagher Benefit Services rose to the top. This firm was also ranked as the top choice by TML. TML is accustomed to working with various consultants in the Cities and organizations they serve, so this selection of a benefits consultant has no bearing on any of the discussions we are having with TML related to future plan changes. Listed below are some of the services that would typically be performed by a benefits consultant: review and analyze claims experience; recommend cost-effective benefit programs and best options for funding; prepare and review bid specs for various insurance programs and make recommendations; keep up to date on medical trends and health care legislation; assist with open enrollment; recommend plan design changes for active employees and retirees and funding/cost implications; assist employees with complex claims issues; assist with development and implementation of wellness programs and determine return on investment; ensure compliance with the Affordable Care Act; perform actuarial studies, such as the required GASB 45 report for unfunded liabilities (this typically costs \$7,000 to \$10,000, but is a part of the annual fee); review and recommend technology upgrades for benefits management; and, perform HR practices audit related to benefits to other "best practice" models and recommend enhancements. Total annual fee is \$45,000, with a three-year rate guarantee.

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**Previous Council Action:** This was not required since the previous contract with Holmes-Murphy was under \$50,000.

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**Financial Implications:**

**Item is budgeted:** 302-1302-78984 in the amount of \$560,000, which includes other administrative fees.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Agenda item request by Councilmember Allen (page 2)

Matt,

Related to the item for hiring a new benefit consultant discussed in your Friday memo, I request the item be placed on the agenda for discussion and approval prior to the contract being signed.

James Allen

4-4-16  
Recd  
8:48  
m. j. j.

## ORDINANCE NO. 2016-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING ORDINANCE 2002-18 CREATING THE HUNTSVILLE CEMETERY ADVISORY BOARD BY AMENDING SECTION 1(d) ENTITLED *DUTIES OF BOARD* BY ADDING UPDATING DUTIES LISTED; AMENDING ORDINANCES 2002-18 AND 2010-04 BY MAKING TYPOGRAPHIC CORRECTIONS THROUGHOUT SECTION 1; MAKING VARIOUS FINDINGS RELATED TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council previously created the Cemetery Advisory Board pursuant to an agreement between the City and Oakwood Cemetery Association; and

WHEREAS, the City Council has studied the provisions of Ordinance 2002-18 and finds and determines that it is appropriate and proper to amend Ordinance 2002-18 by updating Section 1(d) *Duties of Board* and by correcting the numbering and lettering incorporated in both Ordinance 2002-18 and Ordinance 2010-04 into a new document as noted below in Section 2 ~~authorizing the Huntsville Cemetery Advisory Board to select its own Chairman from the appointed 11 members~~; now, therefore

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE:**

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

**Section 2.** ~~Ordinance 2002-18 of the City of Huntsville, Texas is hereby amended by replacing subsection "d" entitled "Duties of Board" of Section 1 with a new subsection "d" which shall provide as follows:~~

~~d) *Duties of the Board.* The Board shall:~~

- ~~1. Encourage and support raising contributions for the Oakwood Cemetery endowment fund;~~
- ~~2. Review and recommend capital improvements to Oakwood Cemetery;~~
- ~~3. Encourage and support seeking government and private grants for improvement of Oakwood Cemetery;~~
- ~~4. Review and recommend the placement of historical markers in Oakwood Cemetery;~~
- ~~5. Review and make recommendations to amend or change CHAPTER 16 CEMETERIES of the Municipal Code;~~
- ~~6. Review financial reports and project updates provided by City staff;~~
- ~~7. Recommend and apply for Hotel Occupancy Tax (HOT) Funds as determined appropriate.~~

**Section 2.** Ordinances 2002-18 and 2010-04 of the City of Huntsville, Texas are hereby amended by replacing all subsections with the text below:

- A. *Creation; number of members.* The Board provided for herein shall be comprised of eleven (11) members to be recommended by the Mayor and approved by City Council. The Board shall select from the 11 members a person to serve as Chair of the Board and a person to serve as Vice-Chair. The Director of Community Services shall serve as an ex-officio member of the Board.
- B. *Terms staggered.* Five of the members of the Board originally appointed shall be for a term of one (1) year, and the Chair and six of the members of the Board originally appointed shall be for a term of two (2) years. Thereafter, the term of each Board member shall be two (2) years.
- C. *Meetings.* Six members of the Board shall constitute a quorum for the conduct of business. The members of the Board shall regularly attend meetings and public hearings of the Board and shall serve without compensation except for reimbursement of authorized expenses attendant to the performance of their duties.

The Board shall elect the vice-chair annually from among its members. The Board shall meet regularly and shall designate the time and place of its meetings. Meetings shall be held in accordance with the

Open Meetings Act. The Board shall adopt its own rules of procedure and keep a record of its proceedings. Newly appointed members shall be installed at the first regular meeting after their appointment.

D. *Duties of the Board.* The Board shall:

1. Encourage and support raising contributions for the Oakwood Cemetery endowment fund;
2. Review and recommend capital improvements to Oakwood Cemetery;
3. Encourage and support seeking government and private grants for improvement of Oakwood Cemetery;
4. Review and recommend the placement of historical markers in Oakwood Cemetery;
5. Review and make recommendations to amend or change CHAPTER 16-CEMETERIES of the Municipal Code;
6. Review financial reports and project updates provided by City staff;
7. Recommend and apply for Hotel Occupancy Tax (HOT) Funds as determined appropriate.

E. *Sub-committees.* To accomplish these responsibilities, the Board may establish sub-committees. Each sub-committee shall be chaired by a Board member with an unspecified number of community volunteers chosen by the Board as working sub-committee members.

**Section 3.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Huntsville, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 4.** The City Secretary is directed to attach this Ordinance to Ordinances 2002-18 and 2010-04.

**Section 5.** The City Council finds that notice was posted and the ordinance was passed in accordance with the Open Meetings Act.

**PASSED AND APPROVED THIS** \_\_\_\_\_ day of \_\_\_\_\_ 2016.

**CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
Andy Brauning, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

## ORDINANCE NO. 2016-22

**ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, SUSPENDING THE RATES PROPOSED BY CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS ("CENTERPOINT" OR "COMPANY") COMPANY'S GAS RELIABILITY INFRASTRUCTURE PROGRAM ("GRIP") FILING MADE WITH THE CITY ON MARCH 31, 2016; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT, AND DECLARING AN EFFECTIVE DATE**

WHEREAS, the Company proposed an effective date of May 30, 2016, for the rate increase; and

WHEREAS, City has exclusive original jurisdiction over the rates, operations and services of a gas utility in areas in the municipality pursuant to Gas Utility Regulatory Act § 103.001; and

WHEREAS, Gas Utility Regulatory Act § 104.301 requires a streamlined process for the recovery of the costs of incremental investment by a gas utility; and

WHEREAS, the City's reasonable cost for regulatory expenses in ratemaking proceedings shall be reimbursed by the gas utility under Gas Utility Regulatory Act § 103.022; and

WHEREAS, the City will join with other municipalities in a steering committee in order to coordinate the hiring and direction of counsel and/or consultants working on behalf of the steering committee and the City; and

WHEREAS, the City finds the need to suspend the effective date of CenterPoint's proposed rate increase for 45 days beyond the Company's proposed effective date until July 14, 2016 in order to review the Company's filing for compliance with Gas Utility Regulatory Act § 104.301; and

WHEREAS, the City's review of CenterPoint's GRIP filing is limited to a ministerial review of the filing for compliance with the statute; and

WHEREAS, the reasonableness of the Company's investment will be reviewed in CenterPoint's subsequent base rate case where all costs included in CenterPoint's GRIP filing will be subject to refund.

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

Section 1. The statement and findings set out in the preamble to this ordinance are hereby in all things approved and adopted.

Section 2. The effective date of the Company's proposed GRIP rate increase, and the proposed tariffs related thereto, are hereby suspended until July 14, 2016.

Section 3. To the extent the City finds that the rates proposed by CenterPoint's filing comply with Gas Utility Regulatory Act § 104.301, then the rates will become effective by operation of law on July 14, 2016.

Section 4. The City is authorized to join with other municipalities as part of the Beaumont/East Texas Division Steering Committee with the understanding that the steering committee will provide direction and guidance to the lawyers who are representing said cities.

Section 5. The City employs The Lawton Law Firm, P.C. to represent the City with regard to the proposed rate increase of CenterPoint before local and state regulatory authorities and any court of law and authorizes counsel to employ such rate experts as are recommended by the Steering Committee.

Section 6. The Steering Committee shall review the invoices of the lawyers and/or rate experts for reasonableness before submitting the invoices to CenterPoint for reimbursement.

Section 7. CenterPoint shall reimburse the City, through the designated representative of the Steering Committee, for the reasonable costs of attorneys and consultant fees and expenses related thereto, upon the presentation of invoices reviewed by the Steering Committee.

Section 8. The meeting at which the ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 9. This Ordinance shall become effective from and after its passage.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauning, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney