

# CITY OF HUNTSVILLE, TEXAS

Andy Brauning, Mayor

Keith D. Olson, Mayor Pro Tem, Position 4  
Paul Davidhizar, Position 1 At-Large  
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

## HUNTSVILLE CITY COUNCIL AGENDA

TUESDAY, MAY 17, 2016

3:00 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.

**WORK SESSION [3:00 P.M.]** The City Council will receive presentations from PGAL on condition assessments of Public Safety facilities.

**RECEPTION [5:15-6:00 P.M.]** – Newly-elected Councilmember-at-Large Position 1 Paul Davidhizar and employee scholarship graduates will be honored.

### 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

- Employee Scholarship Graduates
- Public Works Week
- Motorcycle Safety and Awareness Month

#### 4. ELECTION MATTERS

- a. *Presentation, public comment, discussion, and possible action* to adopt Ordinance 2016-25 to canvass the returns of the Special Election held on the 7<sup>th</sup> day of May 2016, for the purpose of electing a Councilmember-at-Large Position 1; roll-call vote. [Lee Woodward, City Secretary]
- b. Administer the Oath of Office to the newly-elected City Councilmember-at-Large Position 1 Paul Davidhizar. [Walker County Judge Danny Pierce]

#### 5. 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 May 3, 2016. [Lee Woodward, City Secretary]
- b. Adopt Resolution 2016-28 in support of the 2016 Homeland Security grant and appoint the City Manager as the authorized representative. [Dr. Sherry McKibben, Director of Neighborhood Resources]

#### 6. EXECUTIVE SESSION

- a. City Council will meet in Executive Session pursuant to Texas Government Code Section 551.071 (consultation with counsel on legal matters) to receive legal advice on water supply agreements with Tenaska Roan's Prairie, and to receive legal advice on discussing possible amendments to the Tenaska Frontier water supply contract. [Carol Reed, Public Works Director]

#### 7. RECONVENE

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

- a. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to enter into five agreements related to the supply of water and wastewater services to the Tenaska Roan's Prairie electric power plant: (1) an Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC for the Purchase and Delivery of Treated Water; (2) a Raw Water Supply Contract between the City of Huntsville, Texas and the Trinity River Authority of Texas; (3) a Financing and Construction Agreement between the City of Huntsville and the Trinity River Authority of Texas; (4) a Second Amendment to the Agreement between the City of Huntsville and Tenaska Frontier Partners, Ltd.; and (5) a Wastewater Disposal Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC.

[Carol Reed, Public Works Director]

**8. STATUTORY AGENDA**

- a. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to authorize the City Manager to sign Addendum #A, in the amount of \$1,383,054.20, to the Construction Manager at Risk Agreement with Garney Construction for Town Creek Drainage Improvement Project, first reading. [Sherry McKibben, Director of Neighborhood Resources; Y.S. Ramachandra, City Engineer]
- b. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to sign an Interlocal Agreement between the City of Huntsville and the Texas Department of Criminal Justice for water service at the Ellis and Estelle Units. [Matt Benoit, City Manager; Steve Ritter, Director of Finance]
- c. *Presentation, public comment, discussion, and possible action* to award the fiber installation project to Network Cabling Services, Inc. (NCS) for the installation of conduit and fiber from the City of Huntsville Service Center to the Solid Waste facility in the amount of \$149,912.84. [Y.S. Ramachandra, City Engineer; Bill Wavra, Interim IT Director]

**9. 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 May 10, 2016.*

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

**11. 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.)*

**12. 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 May 17, 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



**DIANA L. MCRAE**  
**TAX ASSESSOR-COLLECTOR**  
**COUNTY ELECTION OFFICER**

**Voter Registration/Elections Department**  
**Julie Cooper, Elections Manager**  
 1301 Sam Houston Avenue, Suite 114  
 Huntsville, Texas 77340  
 (936) 436-4957 Office / 436-4961 Fax

**REPORT ON ELECTION RETURNS**  
 May 7, 2016 Special Election

Pursuant to Section 67 of the Texas Election Code, I, Diana McRae, Tax Assessor-Collector/ County Election Officer, certify the election returns to the City of Huntsville, the Local Canvassing Authority, for the purpose of canvassing the election below:

**Special Election: City of Huntsville Council Member At Large, Position 1**

Registered Voters in the District: 14,952 Total Ballots Cast: 1,253

**Early Voting Report**

Ballots Cast – Total: 968  
 City Council Member At Large, Position 1  
 JOHN S. LITTLE 438  
 PAUL DAVIDHIZAR 530

**Election Day Report**

Ballots Cast – Total: 285  
 City Council Member At Large, Position 1  
 JOHN S. LITTLE 104  
 PAUL DAVIDHIZAR 181

**ELECTION TOTALS:**

City Council Member At Large, Position 1  
 JOHN S. LITTLE 542  
 PAUL DAVIDHIZAR 711

I, Diana McRae, Tax Assessor-Collector of Walker County, do hereby certify that the above election return is true and correct election results for the City of Huntsville's Special Election held on the 7<sup>th</sup> day of May 2016.

*Diana L. McRae* 5/9/2016  
 Diana L. McRae, Date  
 County Election Officer  
 Tax Assessor-Collector

SUMMARY REPT-GROUP DETAIL

City of Huntsville, Texas  
Special Election  
May 7, 2016

UNOFFICIAL RESULTS

Report EL45A

Page 001

Run Date:05/09/16 12:58 PM

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
PRECINCTS COUNTED (OF 7)	7	100.00			
REGISTERED VOTERS - TOTAL	0				
BALLOTS CAST - TOTAL	1,253		854	114	285
City Council Member At Large, Position 1					
VOTE FOR 1					
John S. Little	542	43.26	388	50	104
Paul Davidhizar	711	56.74	466	64	181

**UNOFFICIAL  
RETURNS**

Run Date:05/07/16 07:56 PM

Report EL30A Page 0001-01

0001 Precinct 101

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	16		11	4	1
City Council Member At Large, Position 1					
VOTE FOR 1					
John S. Little. . . . .	11	68.75	8	2	1
Paul Davidhizar . . . . .	5	31.25	3	2	0

**UNOFFICIAL  
RETURNS**

PREC REPORT-GROUP DETAIL

City of Huntsville, Texas  
Special Election  
May 7, 2016

UNOFFICIAL RESULTS

Report EL30A Page 0002-01

Run Date:05/07/16 07:56 PM

0002 Precinct 102	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	330		228	25	77
City Council Member At Large, Position 1					
VOTE FOR 1					
John S. Little. . . . .	157	47.58	114	12	31
Paul Davidhizar . . . . .	173	52.42	114	13	46

**UNOFFICIAL  
RETURNS**

Date:05/07/16 07:56 PM

0003 Precinct 201

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	143		94	29	20

City Council Member At Large, Position 1

VOTE FOR 1

John S. Little. . . . .	54	37.76	37	13	4
Paul Davidhizar . . . . .	89	62.24	57	16	16

**UNOFFICIAL  
RETURNS**

PREC REPORT-GROUP DETAIL

City of Huntsville, Texas  
Special Election  
May 7, 2016

UNOFFICIAL RESULTS

Report EL30A Page 0004-0

Run Date:05/07/16 07:56 PM

0004 Precinct 205

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	498		344	21	133

City Council Member At Large, Position 1

VOTE FOR 1	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
John S. Little. . . . .	178	35.74	129	7	42
Paul Davidhizar . . . . .	320	64.26	215	14	91

**UNOFFICIAL  
RETURNS**

Date:05/07/16 07:56 PM

0005 Precinct 206

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	81		59	11	11

City Council Member At Large, Position 1

VOTE FOR 1

John S. Little. . . . .	31	38.27	24	5	2
Paul Davidhizar . . . . .	50	61.73	35	6	9

**UNOFFICIAL  
RETURNS**

PREC REPORT-GROUP DETAIL

City of Huntsville, Texas  
Special Election  
May 7, 2016

UNOFFICIAL RESULTS

Run Date:05/07/16 07:56 PM

Report EL30A Page 0006-01

0006 Precinct 301

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	97		65	15	17

City Council Member At Large, Position 1

VOTE FOR 1

John S. Little. . . . .	71	73.20	51	9	11
Paul Davidhizar . . . . .	26	26.80	14	6	6

**UNOFFICIAL  
RETURNS**

Date:05/07/16 07:56 PM

Report EL30A Page 0007-01

0007 Precinct 401

	TOTAL VOTES	%	EARLY VOTING	EV MAIL/PROV	ELECTION DAY
REGISTERED VOTERS - TOTAL . . . . .	0				
BALLOTS CAST - TOTAL. . . . .	88		53	9	26

City Council Member At Large, Position 1

VOTE FOR 1

John S. Little. . . . .	40	45.45	25	2	13
Paul Davidhizar . . . . .	48	54.55	28	7	13

**UNOFFICIAL  
RETURNS**



**MINUTES FROM THE HUNTSVILLE CITY COUNCIL REGULAR MEETING HELD ON THE 3<sup>rd</sup> DAY OF MAY 2016, IN THE CITY HALL, LOCATED AT 1212 AVENUE M, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 2:00 P.M.**

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The Council met in a regular session with the following:

**COUNCILMEMBERS PRESENT:** Andy Brauninger, Joe Emmett, Lydia Montgomery, Don H. Johnson, Keith Olson, Ronald Allen (*arrived at 2:28 p.m.*), 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 [2:00 P.M.]** The City Council will receive a presentation from Freese & Nichols on the Condition Assessment of the A. J. Brown and N. B. Davidson Wastewater Treatment Plants; a review of Planning Commission recommendations on Manufactured Housing and Recreational Vehicles.

The Council received and discussed the three presentations and the recommendations for the wastewater treatment plants.

**RECEPTION [5:30-6:00 P.M.]** - Youth Leadership Institute participants will be honored.

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

1. **CALL TO ORDER** - Mayor Brauninger called the meeting to order at 6:00 p.m.
2. **INVOCATION AND PLEDGES** – Mayor Brauninger gave an invocation and the Youth Leadership Institute participants led the pledges.
3. **PRESENTATIONS AND PROCLAMATIONS**
  - National Tourism Week
  - Municipal Clerks Week
  - Recognition of runner Brad Ertl by Councilmember Tish Humphrey
  - Youth Leadership Institute recognition
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 April 19, 2016. [Lee Woodward, City Secretary]
  - b. Authorize the City Manager to apply for a Pre-Disaster Mitigation (PDM) Planning Grant and a Hazard Mitigation Grant Program (HMGP) grant each for \$60,000.00 in grant funds with \$20,000.00 matching funds, and adopt Resolutions 2016-26 and 2016-27, respectively, in support of same. [Dr. Sherry McKibben, Director of Neighborhood Resources]
  - c. Authorize the purchase of office supplies and related items from Office Depot. [Steve Ritter, Director of Finance]

Councilmember Montgomery moved to adopt the consent agenda; the motion was seconded by Councilmembers Johnson and Olson. The motion was unanimously adopted, 8-0.

**5. STATUTORY AGENDA**

- a. **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, second reading. [Aron Kulhavy, Director of Community and Economic Development]

Councilmember Humphrey signed a Conflict of Interest form and did not participate in the discussion or vote. Linda Thompson, Randall Brooks, Mike Clouds, Leroy Hilton, and Debra Durda offered public comment. Mayor Pro Tem Olson moved to adopt 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; the motion was seconded by Councilmember Rodriguez. Mayor Pro Tem Olson moved the Previous Question and was seconded by the Mayor.

Councilmember Montgomery moved amend by removing 4.203.H from the proposed Development Code updates, the requirement for a storage unit, in new developments, and was seconded by Mayor Pro Tem Olson. The motion was adopted, 6-1, Councilmember Allen voting against. The main motion as amended was adopted, 6-1, Councilmember Allen voting against.

- b. **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, second reading. [Aron Kulhavy, Director of Community and Economic Development]  
Councilmember Johnson moved to adopt Ordinance 2016-21 amending Chapter 30 Manufactured Homes and Recreational Vehicles of the Code of Ordinances of the City of Huntsville. The motion was seconded by Councilmember Rodriguez and Mayor Pro Tem Olson. Councilmember Rodriguez moved to amend by removing the requirement for fencing/screening in Section 30-39(h); the motion was seconded by Mayor Pro Tem Olson. The motion was adopted, 6-1, Councilmember Allen voting against. The amended main motion was adopted, 6-1, Councilmember Allen voting against.

- c. **Presentation, public comment, discussion, and possible action to authorize the City Manager to sign a contract with "Mobile NOW" for the use of a mobile payment platform to be used in a paid parking application along Bobby K. Marks Drive and Bearkat Boulevard.**[Steve Ritter, Director of Finance]

Councilmember Montgomery moved authorize the City Manager to enter into a contract with "Mobile NOW" for the use of a mobile payment platform to be used in a paid parking application along Bobby K. Marks Drive and Bearkat Boulevard. The motion was seconded by Councilmember Johnson. The motion was unanimously adopted, 8-0

- d. **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, second reading.** [Steve Ritter, Finance Director]

Councilmember Montgomery moved to adopt Ordinance 2016-24 amending the City's Code of Ordinances, Chapter 44 "Traffic and Motor Vehicles" to establish paid parking. The motion was seconded by Councilmember Rodriguez. The motion was adopted, 7-1, Councilmember Humphrey voting against.

- e. **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, second reading.** [Y. S. "Ram" Ramachandra, City Engineer]

Councilmember Rodriguez moved 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. The motion was seconded by Mayor Pro Tem Olson. The motion was unanimously adopted, 8-0

- f. **Presentation, public comment, discussion, and possible action to consider adopting Ordinance 2016-17 creating paid parking spaces along Bearkat Boulevard and Bobby K. Marks Drive, second reading.** [Y. S. "Ram" Ramachandra, City Engineer]

Councilmember Johnson moved to adopt Ordinance 2016-17, creating paid parking spaces along Bearkat Boulevard and Bobby K. Marks Drive. The motion was seconded by Mayor Pro Tem Olson. The motion was adopted, 7-1, Councilmember Humphrey voting against.

- g. **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, second reading.** [Steve Ritter, Finance Director]

Mayor Pro Tem Olson moved 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. The motion was seconded by Councilmember Johnson. The motion was unanimously adopted, 8-0.

- h. **Presentation, public comment, discussion, and possible action to consider awarding the construction contract for the One-Way Conversion and Parking along Bearkat Boulevard (16th Street) and Bobby K. Marks Drive Project (Project No. 13-12-05).** [Y. S. "Ram" Ramachandra, City Engineer]

Councilmember Humphrey moved to award the construction contract to Batterson, LLP, for the construction of One-Way Conversion and Parking along Bearkat Boulevard (16th Street) and Bobby K. Marks Drive Project in the amount of \$60,594.50. The motion was seconded by Councilmember Montgomery and Mayor Pro Tem Olson. The motion was unanimously adopted, 8-0.

- i. **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, second reading.** [Matt Benoit, City Manager]

Councilmember Humphrey moved to adopt 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 or quitclaim deed or deed without warranty 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. The motion was seconded by Mayor Pro Tem Olson and Councilmember Montgomery. The motion was unanimously adopted, 8-0.

- j. **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, second reading.** [Steve Ritter, Director of Finance]

Councilmember Humphrey moved 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. The motion was seconded by Mayor Pro Tem Olson. The motion was unanimously adopted, 8-0.

**6. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY**

- a. *Presentation, public comment, discussion, and possible action to consider nomination of Pattillo, Brown, and Hill, LLC, CPAs as the Certified Public Accountant for the City for FY 15-16 auditing and reporting. [Steve Ritter, Finance Director]*

Mayor Brauning moved the nomination of Pattillo, Brown, and Hill, LLC, CPAs as the Certified Public Accountant for the City for FY 15-16 auditing and reporting. The motion was unanimously adopted, 8-0.

- b. *Presentation, public comment, discussion, and possible action on nomination of Dr. Richard Watkins to the City of Huntsville, Texas Veterans Affairs Advisory Board. [Mayor Brauning]*

Mayor Brauning moved his nomination of Dr. Richard Watkins. The motion was unanimously adopted, 8-0.

**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 for the May 3, 2016, meeting.

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

There were no media inquiries.

**9. ITEMS OF COMMUNITY INTEREST**

Mayor Brauning announced the City election would be held Saturday, May 7, from 7-7, and that City Hall would open at 7 p.m. for returns. Councilmember Humphrey urged all to share information about the *Sam Houston Folk Festival* with others. Mayor Brauning reminded all present of the railway historic marker being placed Saturday morning at 10:30. Mayor Pro Tem Olson suggested everyone thank a teacher during Teacher Appreciation Week.

**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 Judge John Gaines. [Mayor Brauning]*

The Council adjourned into Executive Session at 7:31 p.m.

**11. RECONVENE**

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

The Council reconvened at 7:54 p.m. No action was taken.

**12. ADJOURNMENT**

Mayor Brauning adjourned the meeting at 7:55 p.m.

Lee Woodward, City Secretary





## CITY COUNCIL AGENDA

5/17/2016

Agenda Item: 5b

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**Item/Subject:** Consider adopting Resolution 2016-28 in support of the 2016 Homeland Security grant and to appoint the City Manager as the authorized representative.

**Initiating Department/Presenter:** Neighborhood Resources

**Presenter:** Dr. Sherry McKibben, Director of Neighborhood Resources

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**Recommended Motion:** Move to adopt Resolution 2016-28 in support of the 2016 Homeland Security grant and appoint the City Manager as the authorized representative.

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**Strategic Initiative:** Goal #7 - Public Safety - Provide safety and security for all citizens.

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**Discussion:** On February 16, 2016, the City Council authorized the City Manager to submit a grant application to the Texas Department of Criminal Justice (TDCJ) at the Governor's Office. The application was submitted on March 29, 2016. The process for approval includes the recommendation from the Houston-Galveston Area Council (H-GAC). H-GAC did recommend to the State the funding of the City's application.

This request is for 21 radios housed under the Police Department and 10 radios for the Fire Department. Programming of the radios will be included in the request for funding. Additionally, the City requested four (4) in-car radios to be installed in fire trucks that currently have no radios.

This grant has no match requirement. Total amount of the request is for \$99,936.00.

Upon preliminary review of the application by the State, they have requested the City submit the attached resolution to indicate Council support of the project and to designate the City Manager as the Authorized Representative.

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**Previous Council Action:** On February 16, 2016, Council authorized the submission of the grant application.

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**Financial Implications:**

- There is no financial impact associated with this item.  
 Item is budgeted: In the amount of \$  
 Item is not budgeted: Further Council action will be required once the grant is awarded.  
 Item is estimated to generate additional revenue:

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

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**Associated Information:**

- Resolution 2016-28 (page 2)

**RESOLUTION NO. 2016-28**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF THE APPLICATION FOR THE 2016 HOMELAND SECURITY GRANT TO THE DEPARTMENT OF JUSTICE FOR EQUIPMENT; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE 2016 GRANT.**

WHEREAS The City desires to ensure the safety of all its citizens and; The City of Huntsville requires the Police be charged with this task; and

WHEREAS the City Council finds it in the best interest of the City of Huntsville to apply for funding under the 2016 Homeland Security Grant.

**NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, Texas, that:**

SECTION 1: A Homeland Security Grant application is hereby authorized to be filed on behalf of the City and be placed in competition for funding to the Office of the Governor.

SECTION 2: The application will be for \$99,936.00 to furnish radios for the Huntsville Police and Fire Departments.

SECTION 3: The City Council agrees that in the event of loss or misuse of the Office of the Governor funds, City Council assures that the funds will be returned to the Office of the Governor in full.

SECTION 4: The Mayor and City Council strongly support this application to address the safety needs of the Community.

SECTION 5: The City Council directs and designates the City Manager as the City's Authorized Representative to act in all matters in connection with this application and the City's participation in the 2016 Homeland Security Grant represented by Grant #3080601.

**PASSED AND APPROVED this 17<sup>th</sup> day of May, 2016.**

THE CITY OF HUNTSVILLE

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

APPROVED AS TO FORM:

ATTEST:

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

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



## CITY COUNCIL AGENDA

5/17/2016

Agenda Item: 6a 97

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**Item/Subject:** Consider authorizing the City Manager to enter into five agreements related to the supply of water and wastewater services to the Tenaska Roan's Prairie electric power plant: (1) an Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC for the Purchase and Delivery of Treated Water; (2) a Raw Water Supply Contract between the City of Huntsville, Texas and the Trinity River Authority of Texas; (3) a Financing and Construction Agreement between the City of Huntsville and the Trinity River Authority of Texas; (4) a Second Amendment to the Agreement between the City of Huntsville and Tenaska Frontier Partners, Ltd.; and (5) a Wastewater Disposal Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC.

**Initiating Department/Presenter:** Public Works

**Presenter:** Carol Reed, Public Works Director

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**Recommended Motion:** Move to authorize the City Manager to enter into five agreements related to the supply of water and wastewater service to the Tenaska Roan's Prairie electric power plant: (1) an Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC for the Purchase and Delivery of Treated Water; (2) a Raw Water Supply Contract between the City of Huntsville, Texas and the Trinity River Authority of Texas; (3) a Financing and Construction Agreement between the City of Huntsville and the Trinity River Authority of Texas; (4) a Second Amendment to the Agreement between the City of Huntsville and Tenaska Frontier Partners, Ltd.; (5) and a Wastewater Disposal Agreement between the City of Huntsville and Tenaska Roan's Prairie Partners, LLC.

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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:** Since 1998, the City of Huntsville has provided clarified (non-potable) water to the Tenaska Frontier Power Plant in Grimes County. In 2013, Tenaska Roan's Prairie approached the City about providing water to a natural gas-fired peaking plant to be located directly to the west of the Tenaska Frontier plant. This peaking plant will be owned by a special purpose affiliate of Tenaska, separate and apart from the Frontier project, and will require a fraction of the water used by the Frontier plant.

In addition to the revenue the City would receive for water sales and option fees, Tenaska Roan's Prairie would pay for the construction of a new 4.2 million gallon clarifier at the Trinity River Authority Regional Water Plant (at an estimated value of \$1.6 million) which would directly benefit the City's potable water system. In order to finalize this project, five separate agreements, described below, are required. Emily Rogers, an attorney who specializes in water law with the Austin firm of Bickerstaff, Delgado, Heath and Acosta, has represented the City in this matter since the outset of the project and has negotiated these

agreements.

**Discussion:** Tenaska Roan's Prairie Partners, LLC is proposing to construct a 650-megawatt natural gas-fired electric power plant on property next to the Tenaska Frontier Partners, Ltd. power plant. The Tenaska Roan's Prairie power plant would only operate during peak electricity demands. At most, it would operate about 122 days per year.

Tenaska Roan's Prairie has requested that the City provide Tenaska Roan's Prairie with 320,000 gallons of clarified water per day using the existing 8.4 million gallon per day pipeline that the City uses to provide clarified water from the Trinity River Authority's (TRA) water treatment plant to the Tenaska Frontier power plant. This pipeline has excess capacity to serve additional customers. To provide the clarified water to Tenaska, the City must also enter into a water supply agreement with TRA and an agreement for TRA to construct certain improvements that are needed to serve Tenaska Roan's Prairie. The City must also amend its 1998 agreement with Tenaska Frontier to allocate certain costs between Tenaska Roan's Prairie and Tenaska Frontier.

Tenaska Roan's Prairie has obtained a Texas Commission on Environmental Quality (TCEQ) wastewater discharge permit and will operate a wastewater treatment plant at their facility for this purpose. They have requested a "back-up" agreement with the City of Huntsville for redundancy and would finance the improvements necessary at the Robinson Creek WWTP to receive their minimal amount of hauled wastewater.

There are five proposed contracts associated with this project:

- (1) Agreement between the City and Tenaska Roan's Prairie for the Purchase and Delivery of Treated Water;
- (2) Raw Water Supply Contract between the City and the Trinity River Authority;
- (3) Financing and Construction Agreement between the City of Huntsville and the Trinity River Authority of Texas
- (4) Second Amendment to the Agreement between the City and Tenaska Frontier Partners, Ltd.;
- (5) Wastewater Disposal Agreement between the City and Tenaska Roan's Prairie.

Key terms of the Agreement between the City and Tenaska Roan's Prairie ("Roan's Prairie") for the Purchase and Delivery of Treated Water:

- City would provide 0.32 MGD of clarified water through existing 8.4 MGD pipeline to Roan's Prairie for a term of 38 years, with 2 ten-year extensions;
- Roan's Prairie would pay for the following improvements:
  - Pipeline extension off the 8.4 MGD existing pipeline. The extension would be constructed, owned, operated, and maintained by Roan's Prairie;
  - 4.2 MGD clarifier at the TRA plant;
  - Tenaska pump station improvements (which is located at the TRA plant);
  - Meters and SCADA systems;
- In exchange for providing water service to Roan's Prairie, the City would receive the following

payments:

- Option Fee - \$25,000 (fee for initial option and each time the option is extended);
- Pro rata Operation and Maintenance costs for 8.4 MGD existing pipeline;
- Raw water charges (pass-through to TRA);
- Predelivery Service Fee in the amount of 5% of the total costs of the improvements;
- Pro rata debt service on the existing 8.4 MGD pipeline and clarifiers constructed for Tenaska Frontier;
- Readiness to Service Fee - \$95,000 per year;
- Pro rata Treated Water Costs (pass-through to TRA).

Key Terms of the Raw Water Supply Contract between the City and the Trinity River Authority:

- TRA would provide the City with 65 acre feet per year of raw water for industrial purposes to serve Tenaska Roan's Prairie;
- The cost of the water is a pass-through to Tenaska Roan's Prairie.

Key Terms of the Financing and Construction Agreement between the City and the Trinity River Authority:

- TRA would design and construct the 4.2 MGD clarifier valued at an estimated \$1.6 million. There are five existing clarifiers at the TRA Plant, three of which are 35 years old and two which are 18 years old. A new clarifier would provide the City with the improved treatment technology of a modern clarifier, additional capacity, redundancy and added years of clarifier service.
- Design and construction will not begin until Tenaska Roan's Prairie gives the City the notice to proceed.
- The cost of the facilities is a pass-through to Tenaska Roan's Prairie. All proceeds are collected before costs are incurred.
- The City will be a third-party beneficiary to any TRA construction contract and will be able to enforce liquidated damage provisions.

Key Terms of the Second Amendment to the Agreement between the City and Tenaska Frontier Partners, Ltd.:

- The agreement is a conforming agreement that
  - Allocates costs to operate and maintain the 8.4 MGD pipeline between the two Tenaska entities;
  - Allocates treated water costs between the two Tenaska entities;
  - Allocates certain improvement costs between the two Tenaska entities costs.

Key Terms of the Wastewater Disposal Agreement between the City and Tenaska Roan's Prairie:

- The City would provide wastewater disposal services to Roan's Prairie at its Robinson Creek plant in an amount not to exceed 102,000 gallons per day.
- Roan's Prairie would be required to pay for improvements to the plant so that the City could accommodate the tanker trucks from Roan's Prairie.

- The rate for the wastewater would be 1.5 times the City's commercial sewer rate.
- This agreement is only effective if Roan's Prairie is unable to discharge its wastewater pursuant to its TCEQ issued wastewater permit.

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**Previous Council Action:** No previous action has been taken on this item. Council was briefed about the agreements by the City's legal counsel on January 20, 2015.

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**Financial Implications:**

**Item is estimated to generate additional revenue:**

- Option Fee - \$25,000 (initial fee and any extensions) (paid upon execution of agreement)
- Proportionate share of operation and maintenance costs for 8.4 MGD existing pipeline (paid once option is exercised)
- Predelivery Service Fee - 5% of the total costs of the improvements (paid once option is exercised)
- Readiness to Service Fee - \$95,000 per year (paid once option is exercised)
- Treated Water Costs (standby fee paid during option period; full water charge paid once the option is exercised)
- 1.5 times the commercial wastewater rate (if Tenaska uses the City's facilities)(paid if Tenaska elects to use city facilities)

**No expenditures are anticipated in the current 2015 – 16 Fiscal Year. Budget Amendments related to Expenditures resulting from these agreements would be brought to Council in the future upon Tenaska Roan's Prairie's decision to move forward with the project.**

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

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**Associated Information:**

- Item #1 (pages 5-39) - Agreement between the City and Tenaska Roan's Prairie for the Purchase and Delivery of Treated Water;
- Item #2 (pages 40-50) – Financing and Construction Agreement between the City of Huntsville Texas and the Trinity River Authority
- Item #3 (pages 51-60) - Raw Water Supply Contract between the City and the Trinity River Authority
- Item #4 (pages 61-69) – Second Amendment to the Agreement between the City and Tenaska Frontier Partners, Ltd.
- Item #5 (pages 70-81) - Wastewater Disposal Agreement between the City and Tenaska Roan's Prairie

Item # 1

**AGREEMENT FOR PURCHASE AND DELIVERY  
OF TREATED WATER**

This Agreement for Purchase and Delivery of Treated Water ("Agreement") is entered into the \_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between the City of Huntsville, Texas, a home rule municipal corporation in Walker County, Texas ("City"), and Tenaska Roan's Prairie Partners, LLC, a Delaware limited liability company, ("Tenaska"). Whenever used in this Agreement, the term "Party" shall mean City or Tenaska, individually, and the term "Parties" shall mean City and Tenaska, collectively.

RECITALS:

WHEREAS, Tenaska intends to construct, own, and operate a 650 megawatt natural gas-fired peaking plant together with related equipment and other improvements ("Generating Station") at a location near Shiro, Grimes County, Texas ("Generating Station Site"); and

WHEREAS, the Generating Station, being a peaking plant, will operate intermittently and when demand is required, and its use could range from several hours in a single day, to several 24-hour days in a row, and its water demand will fluctuate throughout the year based on ambient air temperature and dispatch;

WHEREAS, the Generating Station will require water to operate evaporative coolers and other uses; and

WHEREAS, the Trinity River Authority ("Authority") owns and operates a water treatment facility ("Water Plant") and the City contracts with the Authority for water and water treatment in connection with City's operation of the City's own water production and water transmission facilities for service to the public, and City has the ability to deliver to Tenaska the volume and quality of water required by Tenaska for its operation of the Generating Station; and

WHEREAS, pursuant to its June 1, 1998 Agreement for Purchase and Delivery of Treated Water ("1998 Agreement"), City contracts with Tenaska Frontier Partners, Ltd. ("Tenaska Frontier") for the provision of water to its electric generating plant located near Shiro, Grimes County, Texas, and the City serves Tenaska Frontier through a pipeline constructed by Tenaska Frontier and owned and operated by City ("Pipeline"); and

WHEREAS, the Pipeline serving Tenaska Frontier is sized to supply up to 8.4 million gallons per day ("MGD"), and Tenaska Frontier has reserved up to 7.0 MGD capacity in the Pipeline; and

WHEREAS, the 1998 Agreement contemplates additional users will be served by the pipeline and Tenaska Frontier and City will enter into agreements as necessary to meter water usage by other customers, and to provide for proportionate allocation of expenses of, and responsibility for the repair, replacement, and maintenance of the Pipeline; and

WHEREAS, City and Tenaska Frontier intend to execute an amendment to the 1998 Agreement to proportionately allocate water delivered by the Pipeline and expenses and responsibilities for the Pipeline; and

WHEREAS, Tenaska has an option on the property for the Generating Station currently until November 30, 2016, and desires to enter into an option agreement with the City whereby the City would agree, upon the exercise of the option, to sell treated water to Tenaska for the Generating Station using a portion of the excess capacity in the Pipeline; and

WHEREAS, subject to the terms and conditions of this Agreement and upon the exercise of the Option (hereafter defined), the City has agreed to sell to Tenaska and deliver to the Generating Station certain volumes of treated water with an average turbidity less than 5 NTU (treated water with an average turbidity less than 5 NTU is referred to in this Agreement as "Treated Water"); and

WHEREAS, in order to sell and deliver Treated Water to Tenaska, it will be necessary to modify, extend, improve, and enhance the Authority's water treatment facilities and City's water transmission system (hereinafter Authority's water treatment facilities and City's water transmission system, as any of them may currently exist or are to be modified, extended, improved, and enhanced pursuant to this Agreement, shall be referred to in this Agreement as, the "City's Water System"); and

WHEREAS, in order to sell and deliver Treated Water to Tenaska, it will be necessary to construct a new pipeline from a point of interconnection shown on Exhibit "D" from the existing Pipeline to Tenaska ("Roan's Prairie Pipeline"); and

WHEREAS, the City has authority pursuant to Texas Local Government Code § 552.001 to provide water service inside and outside its city limits; and

WHEREAS, with the improvements that will be funded by Tenaska, the City has determined that it has the raw and Treated Water available to provide Treated Water to Tenaska in the amounts, rates, and quality requested by Tenaska, and that it is in the City's best interest and the best interest of the citizens of the City of Huntsville, Texas, to enter into this Agreement to provide Treated Water to Tenaska; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. PURPOSE

The purpose of this Agreement is to define the Parties' contractual rights and obligations relative to the supply of Treated Water to the Generating Station.

2. TERM OF AGREEMENT

(a) This Agreement shall be effective upon its execution by the duly authorized representatives of each Party. Unless Tenaska fails to exercise its option set out in paragraph 3, which such failure shall terminate this Agreement, the term of this Agreement shall extend to December 31, 2054 subject to the termination rights set out in paragraph 14(o) and paragraph 16. If at the end of the Term, Tenaska is then not in material default under this Agreement beyond the cure period in Section 14(p) below, Tenaska shall have the right to extend this Agreement for two consecutive 10-year terms ("Extended Term"); provided, further, that the minimum monthly water charge described in paragraph 6(c) will be adjusted for each Extended Term as provided in paragraph 6(d). Tenaska shall exercise its right(s) to extend this Agreement under this paragraph 2(a) by delivery of written notice of such exercise to City to be given no later than one hundred eighty (180) days prior to the expiration of the then current term of this Agreement.

(b) Throughout the term of this Agreement, City shall be a party to the \_\_\_\_\_, 2016 Raw Water Agreement between City and Authority (the "Raw Water Agreement") and City agrees to not amend the Raw Water Agreement in a way that will materially affect the delivery of water to Tenaska without the prior written consent of Tenaska.

(c) Additionally, City shall be a party to the \_\_\_\_\_, 2016 Financing and Construction Agreement between City and Authority (the "Facilities Agreement"), and City agrees to not amend the Facilities Agreement without the prior written consent of Tenaska.

3. OPTION PERIOD. For consideration expressed in paragraph 6(a)(i) ("Option Fee") and other good and valuable consideration expressed in this Agreement, the City hereby grants Tenaska the option to obtain Treated Water from the City under this Agreement (the "Option"). The Option shall commence on the Effective Date of this Agreement and end on the earlier of (the "Option Period"):

(a) the date on which Tenaska provides written notice to the City that Tenaska intends to construct the Generating Station and obtain Treated Water from the City; or

(b) 5:00 p.m. Central Standard Time on November 30, 2018.

Tenaska may extend the Option Period for up to two times to end at 5:00 p.m. Central Standard Time on November 30, 2021 and then on November 29, 2024. To exercise an extension, Tenaska must notify the City in writing prior to the expiration of the then existing Option Period and thereafter pay \$25,000 to City by the day that is 15 days after the expiration of the then existing Option Period for each extension (each an "Extension Payment"). If Tenaska fails to provide notice within the Option Period in accordance with this Agreement, this Agreement shall terminate.

4. SERVICE TO BE RENDERED UPON EXERCISE OF OPTION:

Services to be rendered by the respective Parties, upon the exercise of the Option by Tenaska, shall include the following:

(a) Initial Improvements, Pump Station Improvements, and Roan's Prairie Pipeline:

(i) The facilities required to provide Treated Water to Tenaska include the following:

- (1) Authority's raw water intake structure and associated facilities;
- (2) The existing clarifiers at the Authority's water treatment plant and a new 4.2 MGD clarifier;
- (3) The City's existing pump station servicing Tenaska Frontier ("Pump Station"), which must be repaired, and that is used to pump Treated Water to Tenaska and Tenaska Frontier, the existing metering station and supervisory control and data acquisition ("SCADA") system at the Authority's water treatment plant to measure the amount of Treated Water delivered through the Pipeline to Tenaska, Tenaska Frontier, and Future Customers (defined below), which must be upgraded; a new SCADA system at the metering station at Tenaska Frontier;
- (4) The existing 8.4 MGD Pipeline from the Authority's water treatment plant to Tenaska Frontier; and
- (5) The new Roan's Prairie Pipeline, and associated metering station and SCADA system located at the connection between the Pipeline and the Roan's Prairie Pipeline ("Metering Point 2").

(ii) By no later than the Completion Deadline (hereafter defined), the City shall have or caused to have designed, engineered, constructed and put in operating condition those facilities (such as the 4.2 MGD clarifier), more particularly identified on Exhibit "A" to this Agreement, together with any related appurtenances (collectively, the "Initial Improvements"). By no later than the Completion Deadline, the City shall have or caused to have designed, engineered, constructed and put into operating condition the improvements to the Pump Station and SCADA system improvements at Metering Point 1 (hereafter defined) more particularly identified on Exhibit "B" to this Agreement, together with any related appurtenances. By no later than the Completion Deadline, the Parties anticipate that Tenaska shall have designed, engineered, constructed and put into operating condition the meter and SCADA system improvements at Metering Point 2 and the Roan's Prairie Pipeline as are more particularly identified on Exhibit "C" and Exhibit "D" to this Agreement, together with any related appurtenances; however, Tenaska will not be in default if the Roan's Prairie Pipeline or the meter or SCADA system improvements at Metering Point 2 are not installed and operational by said date. The improvements listed in Exhibit "A," Exhibit "B," and Exhibit "C" along with the Pipeline shall be collectively referred to in this Agreement as "City's Extended Water System" provided, however, any reference to "City's Water System" in this Agreement shall include City's Extended Water System. The Roan's Prairie Pipeline (Exhibit "D") is not defined as part of the City's Extended Water System, or the City's Water System. The City or the

Authority will own, operate, and maintain those facilities identified on Exhibit "A," Exhibit "B," and Exhibit "C". Tenaska will own, operate, and maintain the Roan's Prairie Pipeline facilities identified on Exhibit "D". "Completion Deadline" means 24 months after the Authority engages Alan Plummer and Associates to design the facilities to be completed by the Authority pursuant to the Facilities Agreement; however said deadline will be extended day-for-day for any Tenaska delays in furnishing its payment to fund construction of said facilities beyond the Construction Funding Deadline or for any Bid or Award Delay (as said terms are defined in the Facilities Agreement).

(iii) Tenaska shall have the right to direct the City as to the following matters pertaining to the Facilities Agreement: when and whether to submit the Notice to Proceed (as defined in the Facilities Agreement), when and whether to exercise a Bid or Award Delay (as defined in the Facilities Agreement), and whether to consent to any changes to the Approved Plans (as defined in the Facilities Agreement). Additionally, the City will (1) cooperate with Tenaska so that Tenaska has access to all books and records relating to the Fund (as defined in the Facilities Agreement) that the Authority makes available to City, (2) promptly provide copies of all notices and invoices the City receives from the Authority, (3) consult with Tenaska on and provide advance copies of notices that the City sends to the Authority, (4) invite Tenaska to any predevelopment, construction, status or other meetings with the Authority relating to the Facilities Agreement, (5) submit to the Authority any Tenaska comments to any plans and specifications, and (6) promptly update Tenaska on all material developments relating to the Facilities Agreement.

(iv) The City shall prioritize all construction work as may be necessary to provide service to the Metering Point 2 within the time period specified in paragraph 4(a). The City shall notify Tenaska in writing at least one hundred twenty (120) prior to the completion of the improvements identified in Exhibits "A" and "B" of the date the City anticipates the improvements will be in operating condition and ready to provide Treated Water to Metering Point 2. After commencement of construction, the City will provide Tenaska with a written monthly update on the status of construction of the improvements identified on Exhibits "A" and "B" under paragraph 4(a)(ii). Tenaska shall notify the City in writing at least one hundred twenty (120) prior to the completion of the improvements identified in Exhibits "C" and "D" of the date Tenaska anticipates the improvements will be in operating condition and ready to receive Treated Water at Metering Point 2. After commencement of construction, Tenaska will provide the City with a written monthly update on the status of construction of the improvements identified on Exhibits "C" and "D" under paragraph 4(a)(ii). The City shall have a right to inspect all of the facilities and improvements to be constructed by Tenaska with prior written notice to Tenaska by the City.

(v) Except for the design, engineering, and construction of the Roan's Prairie Pipeline, the City may undertake the obligations under this paragraph 4(a) at any time; however, Tenaska shall not be responsible for the cost of those improvements, as set out in paragraph 6(b), unless and until Tenaska exercises its Option under paragraph 3.

(vi) Tenaska shall have the right to review and comment upon all designs, engineering plans and specifications ("Plans and Specifications") for upgrades and improvements identified in Exhibit "A" and Exhibit "B," including all architects, engineers and contractors or other professionals utilized by the City in connection with the Plans and Specifications prior to their finalization and implementation. The City shall have the right to

review and comment upon all Plans and Specifications for the improvements identified in Exhibit "C" and Exhibit "D" including all architects, engineers and contractors or other professionals utilized by the Tenaska in connection with the Plans and Specifications prior to their finalization and implementation.

(vii) Tenaska shall be responsible for obtaining any easements or real property interests necessary for the facilities identified in Exhibit "C" on behalf of the City. The City shall not be obligated by this Agreement to exercise its power of eminent domain to acquire any easements or other real property interests for Tenaska unless otherwise mutually agreed to by the Parties.

(viii) Payment by Tenaska for the Initial Improvements and the Pump Station shall be in accordance with paragraph 6(b).

(b) Commencement of Operations.

(i) City shall use its best efforts to secure from the Texas Commission on Environmental Quality and any other appropriate federal or state agency any necessary authorizations required to supply water to Tenaska or to otherwise meet its obligations under this Agreement in accordance with any applicable time constraints in this Agreement; provided, however, Tenaska shall, at no cost or liability, cooperate with City as shall be reasonably necessary to further City's efforts.

(ii) Commencing no later than the Completion Deadline, City shall make available at the Metering Point 1 340,000 gallons of Metered Water (as defined herein) per day (herein referred to as the "Supply of Water", "Water Supply", or "Water Supplied") and shall be able to deliver 320,000 gallons of Treated Water per day to Metering Point 2. The total amount of water supplied to all customers through Metering Point 1 shall be the "Metered Water." If the Authority does not complete all of the improvements under the Facilities Agreement by the Completion Deadline, the City shall still be obligated to satisfy its obligations under this subpart (ii) on and after the Completion Deadline.

(iii) City makes no representation or warranty, whether express or implied, that Water Supplied is suitable for Tenaska's purposes; however, the City represents that the Treated Water will have an average turbidity less than 5 NTU. The Treated Water to be provided to Tenaska under this Agreement is not potable.

(c) On-Going Operation and Maintenance.

(i) This paragraph 4(c) applies to the operation, maintenance, repairs, and replacements associated with the City's Extended Water System after the Initial Improvements and Pump Station improvements, have been completed by the City.

(ii) During the term of this Agreement the City shall not consent to the Authority nor shall the City lien, encumber, subordinate, transfer or convey any of their interest in the City's Extended Water System to any other person or entity without the prior written consent of Tenaska, which shall not be unreasonably withheld. Throughout the term of this Agreement, the City shall or shall cause the Authority to repair, replace, operate, and maintain all of the City's Extended Water System, in a manner consistent with (i) the terms and provisions of this Agreement, (ii) the Plans and Specifications, (iii) industry practice, and (iv) all applicable federal, state or local laws, statutes, regulations, orders, requirements and codes.

(iii) Tenaska shall be responsible for its proportionate share of any costs incurred by the City to operate, maintain, repair, and replace the Pipeline necessary for the City's obligations to Tenaska under this Agreement in accordance with the following formula:

$$\text{Allocated Repair Costs} = \left( \frac{0.34 \text{ MGD}}{(0.34 \text{ MGD} + B)} \right) \text{Total Repair Costs}$$

With "B" equaling the sum of the capacity (in millions of gallons per day) used or reserved by Other Customers (hereafter defined) connected to the Pipeline. Payment shall be made in accordance with this paragraph 4 and with paragraph 6. "Other Customers" means all customers other than Tenaska to whom the City sells water through the Pipeline. For the avoidance of doubt, Other Customers includes Tenaska Frontier.

(iv) The City, in its sole discretion, may finance the costs for the design and construction of any maintenance, repair, improvements, upgrade, replacement, or other modification of the City's Extended Water System as the City determines is necessary to supply Treated Water to Tenaska and comply with its obligations under this paragraph 4(c). If the City elects to finance the costs of the City's Extended Water System, the City shall allocate to Tenaska a portion of the debt service in accordance with the formula described in paragraph 6(c)(i)(2). The "Cost of Financing" shall be the total cost of the design and construction of any maintenance, repair, improvements, upgrade, replacement, or other modification of the City's Extended Water System, including all costs of engineering, design, construction, inspection, fees for issuance, attorneys, financial advisors, bond ratings, escrow agents, reserve funds, and other obligations typically incurred and financed by the City for similar projects.

(v) Not later than August 31st of each year, the City shall prepare a budget for the operation and maintenance of the Pipeline for the next ensuing Fiscal Year of the City, which on the Effective Date of this Agreement is October 1 to September 30, but which may be changed by the City from time to time ("Budget"). Tenaska's proportionate share (as determined in accordance with paragraph 4(c)(iii)) of total projected operation and maintenance costs for the Pipeline as set out in the Budget shall be referred to herein as the "Budgeted Operation and Maintenance Fee" for the Pipeline. A copy of such Budget shall be mailed by the City to Tenaska within fifteen business (15) days after being approved by the City of Huntsville City Council. Promptly after the end of each Fiscal Year, the expenses incurred by the City for the

operation and maintenance of the Pipeline during that Fiscal Year will be determined. If all payments made by Tenaska are less than the amount of Tenaska's proportionate share of the actual expenses and charges for the Pipeline, then Tenaska shall pay the amount of such deficiency with the next monthly bill. Any excess shall be applied as a credit to Tenaska's next monthly bill. In the event the City must make repairs or replacements of the Pipeline necessary for the City's obligations to Tenaska under this Agreement that equal or exceed \$30,000 and that are not provided for in the Budget, the City shall submit an itemized invoice to Tenaska of the estimated or actual costs of the repairs and replacements, and Tenaska shall pay the City Tenaska's share, as determined by paragraph 4(c)(iii), of the City's costs for the repairs and replacements of the Pipeline within thirty (30) days after receipt of the invoice together with reasonable evidence of the reasons for the repair or replacement. If Tenaska fails to pay any amount when due, interest thereof shall accrue at the rate of ten percent (10%) per annum from the date when due until paid.

(vi) If the City requires interim payments for costs of repairs and replacements of the Pipeline that equal or exceed \$30,000, to reconcile any over or under payments made by Tenaska based on estimated costs, Tenaska shall pay the amount of such deficiency with the next monthly bill and the City shall apply as a credit any excess paid to the City by Tenaska's next monthly bill or bills.

(vii) The City agrees to provide to Tenaska upon written request information regarding the maintenance of the Pump Station, including maintenance manual specifications, logs of maintenance performed, and other relevant documentation. In no event, however, shall the City be required to provide such information more than once annually. If such information shows a deficiency in said maintenance the City will request that the Authority correct said deficiency.

(d) (i) Tenaska shall purchase Treated Water solely and exclusively from the City in accordance with the provisions of this Agreement. Except as otherwise permitted in paragraph 4(d), Tenaska shall not purchase water from any other supplier without obtaining the prior written consent of the City; provided, however, Tenaska shall be entitled to purchase or otherwise obtain and use water from other sources whenever (1) the Supply of Water is Interrupted (as defined in paragraph 8(a)) or City does not deliver the Supply of Water because of an Excusable Interruption (as defined in paragraph 8(b)), but only during the period of Interruption or Excusable Interruption; (2) City fails to deliver the volume of Treated Water required by this Agreement for other reasons than a default by Tenaska; or (3) this Agreement is terminated by mutual written agreement of the Parties or in accordance with any provision of this Agreement.

(ii) If Tenaska purchases or otherwise obtains water from a person or entity other than the City whenever allowed by paragraph 4(d)(i), and the City is able to deliver the other water to Metering Point 2 using the Pipeline, the City shall have the right to deliver the other water. If Tenaska purchases or otherwise obtains other water from a person or entity other than the City whenever allowed by paragraph 4(d)(i), and the City is unable to deliver the other water through the Pipeline to Metering Point 2, Tenaska shall have the right to use alternative delivery methods until the City is able to provide Treated Water or the other water to Metering Point 2 through the Pipeline.

(iii) Tenaska shall not use any other water source for its commercial operation at the Generating Station Site other than the City's water except as follows: (1) for potable water for consumption and typical indoor office use, (2) whenever permitted by paragraph 4(d)(i), (3) for any water required for Tenaska's operations of its administration building, (4) use of demineralized water for turbine/compressor wash water, and (5) water required for intermittent compressor washing.

(iv) Tenaska shall be entitled to secure water, including the right to purchase water for use at the Generating Station from any other source, including any other person or entity at all times following the expiration or termination of this Agreement. The provisions of this paragraph 4(d)(iv) shall survive the expiration or termination of this Agreement.

(v) Tenaska shall not resell the Treated Water to any other person or entity after its delivery by the City to Metering Point 2.

## 5. METERING POINT

(a) A metering station with all pertinent metering equipment shall be owned, installed, continually operated and maintained, tested, calibrated and adjusted by the City, to be located at a point designated by the City and where the Supply of Water enters the Pipeline ("Metering Point 1") on property of the City or the Authority near the Water Plant. A metering station with all pertinent equipment shall be owned and continually operated and maintained by the City, to be located at a point designated by the City at Metering Point 2. The City shall install, or have installed, other metering stations to be owned, operated and maintained by the City to serve Other Customers connected to the Pipeline (with all of the additional metering points collectively referred to as "Metering Point 3"). Collectively, Metering Point 1, Metering Point 2, and Metering Point 3 are referred to as the "Metering Points" or "Metering Stations." The Metering Stations shall be capable of providing accurate and continuous measurement and recording of the quality of Treated Water, rate of the Treated Water flow, and volume of Treated Water. The City shall require Tenaska to pay for the installation of a SCADA system at Metering Point 2, and shall require Tenaska to pay for any SCADA system improvements made by the City at Metering Point 1 that are directly attributable to the addition of Tenaska as a customer. Tenaska bears the responsibility for maintaining the Treated Water quality and flow rate at any point on its side of the Metering Point 2. Title to Treated Water passes from the City to Tenaska at Tenaska's side of Metering Point 2.

City shall test all metering equipment at least annually and shall maintain the equipment within acceptable industry standards of accuracy. Acceptable accuracy shall be a variation within plus or minus three percent (3%) at the manufacturer's recommended testing range. Upon either Party's request such metering equipment may be retested at the requesting Party's expense. If upon test, said Treated Water metering equipment is found to be in error by not more than three percent (3%), then any previous records produced based on such meter shall be deemed accurate, but such meter shall be immediately adjusted to record more accurately. If such metering equipment is found to be in error by more than three percent (3%), then the Parties shall use reasonable efforts to determine the volume of Treated Water actually metered at the Metering Point 1, Metering Point 2, and Metering Point 3 to properly allocate the Metered Water delivered through the Pipeline between Tenaska and Other Customers during the period affected by such error, and the equipment shall be adjusted to record accurately. Tenaska shall have the right to request that the City test and adjust the metering equipment of Other Customers served by the

Pipeline in accordance with this paragraph 5(a). City shall notify Tenaska of the scheduled time and date of each test of any of the Metering Stations at least three (3) days in advance of each test and Tenaska shall have the right to have a representative present at the time of any test.

(b) City and Tenaska shall each have the right to have their respective representatives examine and audit the other Party's records concerning the quality, volume and flow rate of Water Supplied to Tenaska at the Metering Points.

(c) The City shall supply, upon request by Tenaska, but in no event more than monthly, a chemical analysis report of the Treated Water prepared by the City's laboratory or designee which report shall include an analysis of raw water and clarified water for the analyses similar to that set forth in the example on the attached Exhibit "E." In the event Tenaska desires a more comprehensive chemical analysis of the Water Supplied, then the cost of such shall be borne by Tenaska.

(d) The City reserves the right of reasonable access to the Roan's Prairie Pipeline easements and Generating Station Site to those times reasonably agreed to in advance by Tenaska to allow the City (1) to make inspections of the Roan's Prairie Pipeline to prevent the waste of water and to protect the quality of the Treated Water and its rate of flow, and (2) to perform reasonably required tests.

(e) The Parties understand that because the Generating Station is a peaking plant, when Treated Water will be taken and the rate at which the Water Supply will be taken will fluctuate. However, City and Tenaska will make reasonable efforts to deliver and take, respectively, Treated Water in a manner coordinated between the Parties over the period of time the Water Supply is needed by Tenaska. Tenaska and the City agree that the Authority will be permitted to control and operate the Pump Station as a part of the Water Plant's operations; provided, that this provision shall not be construed to relieve the City of any of its obligations under this Agreement.

(f) To allocate the Metered Water between Tenaska and Other Customers using the Pipeline, Tenaska's Metered Water (its "Allocated Volume") (gallons) shall be determined using the following formula:

$$\text{Allocated Volume} = \left( \frac{\text{VolMP2}}{\text{VolMP2} + \text{VolMP3}} \right) \text{VolMP1}$$

With "VolMP1" equaling the volume of water (gallons) metered at Metering Point 1, with "VolMP2" equaling the volume of water (gallons) metered at Metering Point 2, and with "VolMP3" equaling the sum of the volume of water (gallons) metered at Metering Point 3.

6. OPTION FEE, RATES, INVOICING, AND PAYMENT; LATE CHARGE; TERMINATION OF WATER SERVICE

During the term of this Agreement, Tenaska shall pay the City for the City's services as follows:

(a) Option Period. Tenaska shall pay the following fees during the Option Period of this Agreement:

(i) Option Fee and Extension Payments. Within fifteen (15) days of the Effective Date of this Agreement, Tenaska shall pay the City the sum of \$25,000.00 as the Option Fee, which is together with any Extension Payments independent consideration for the grant of the Option under this Agreement during the Option Period. Accordingly, the Option Fee and any Extension Payments shall not be applied to any other payments due under this Agreement. The Parties stipulate that the Option Fee and any Extension Payments are sufficient consideration for the Option granted under this Agreement. This Agreement shall terminate if Tenaska fails to pay the total Option Fee or any Extension Payments to the City within the time provided by this Paragraph or in Paragraph 3, as applicable.

(ii) Annual Standby Fee. An amount equal to the Authority's Annual Standby Fee (as defined therein) for raw water made available to City under the Raw Water Agreement between the City and the Authority ("Annual Standby Fee").

(b) Predelivery. Unless this Agreement has previously been terminated, from the end of the Option Period to the date City begins to deliver Treated Water through the Pipeline to Tenaska, Tenaska shall pay to the City the following amounts:

(i) The annual cost to the City for 65 acre-feet of raw water in accordance with the Raw Water Agreement ("Raw Water Charge"), which shall be paid in 1/12<sup>th</sup> increments and invoiced monthly in accordance with paragraph 6(e); and

(ii) Initial Improvements. An amount equal to all direct out-of-pocket expenses, reasonably and necessarily incurred by the City for the acquisition, permitting, design, construction, and testing of Initial Improvements specified in Exhibit "A", including water used for such tests;

(iii) Pump Station Improvements. An amount equal to Tenaska's proportionate share of the City's out-of-pocket expenses, reasonably and necessarily incurred by the City, for the acquisition, permitting, design, construction, testing, of the improvements to the Pump Station and other facilities identified on Exhibit "B." Tenaska's proportionate share for the Pump Station improvements shall be in accordance with the following formula:

$$\text{Allocated Pump Station Costs} = \left( \frac{0.34}{(7.34)} \right) \text{Total Pump Station Costs}$$

and;

(iv) Predelivery Service Fee. Tenaska shall pay the City a fee equal to 5% of the total cost of the Initial Improvements and Tenaska's proportionate share for the Pump Station Improvements, as provided above, (the "Predelivery Service Fee"). The estimated Predelivery Service Fee shall be paid by Tenaska as contracts are awarded by the City or the Authority (but not earlier than the expiration of the Option Period) and the initial amount paid by Tenaska upon a contract award shall be based on the bid received by the City or the Authority. If the actual cost exceeds the bid cost, Tenaska shall pay the applicable difference in the Predelivery Service

Fee upon receipt of an invoice together with reasonable evidence of the costs from the City as provided by paragraph 6(a).

(c) Post Delivery. After the date City has commenced the delivery of Treated Water through the Pipeline to Tenaska at Metering Point 2 in volumes required by paragraph 4(b)(ii), the City will send an itemized invoice to Tenaska and Tenaska shall pay the City for Treated Water the following amounts:

(i) Minimum Monthly Water Charge. A minimum monthly charge calculated by adding

(1) 1/12 of the Raw Water Charge; plus

(2) 1/12 of the annual debt service for Cost of Financing, if any, as described in paragraph 4(c)(iv), allocated to Tenaska in accordance with the following formula:

$$\text{Allocated Debt Service} = \left( \frac{0.34 \text{ MGD}}{(0.34 \text{ MGD} + B)} \right) \text{Annual Debt Service}$$

With “B” equaling the sum of the capacity (in millions of gallons per day) allocated to Other Customers connected to the Pipeline; plus

(3) 1/12 of the Tenaska proportion of the remaining annual debt service originally incurred by the City to construct the Pipeline for Tenaska Frontier (“Original Cost of Financing”);

(4) 1/12 of the Readiness to Serve Fee of \$95,000;

(5) 1/12 of the Tenaska proportion of the Budgeted Operation and Maintenance Fee for the Pipeline; and

(ii) (1) Volume Charge.

After there has been a reconciliation of the Budget, Tenaska shall pay to the City a volume charge (“Volume Charge”) equal to the result of multiplying the number for each one thousand gallons of Allocated Volume times the quotient of the HRWSS Expenses (hereafter defined), less the line items for all raw water less the line items for all debt service of the Huntsville Regional Water Supply System (“HRWSS”), including the Original Cost of Financing, less \$650,000 divided by each one thousand gallons treated by the HRWSS in the twelve (12) month period included in the audit as shown in the following formula:

$$\text{Volume Charge} = \frac{\text{Allocated Volume}}{1000} \left[ \frac{\text{HRWSS Expense} - (\text{Raw Water} + \text{Debt Service} + \$650,000)}{\text{HRWSS Treated Water} / 1000} \right]$$

“HRWSS Expenses” means the Authority’s expenses for operating the HRWSS, which are herein referred to as the “HRWSS Expenses”.

(2) Reconciliation of Water Charge.

Within thirty (30) days after the City receives the annual audit report of the Authority (“Annual Audit Report”), the City will prepare and deliver to Tenaska a reconciliation report (“Reconciliation Report”). The Reconciliation Report will compare the City’s actual costs for Tenaska’s Allocated Volume against payments made by Tenaska under paragraph 6(c)(ii) for the Volume Charge (“Reconciled Volume Charge”). The Reconciliation Report shall identify the amount of Allocated Volume, the actual HRWSS Expenses and the Reconciled Volume Charge. The Reconciled Volume Charge is the result of multiplying each one thousand gallons of Allocated Volume covered by the Annual Audit Report times the quotient (of the Authority’s actual expenses for operating the HRWSS, less the line items for all debt service of the HRWSS, including the Original Cost of Financing, as all such items are reported in the Annual Audit Report of the Authority, less \$650,000) divided by each one thousand gallons of all water treated by HRWSS, as shown in the following formula:

$$\text{Reconciled Volume Charge} = \frac{\text{Allocated Volume}}{1000} \left| \frac{\text{HRWSS Expense} - (\text{Raw Water} + \text{Debt Service} + \$650,000)}{\text{HRWSS Treated Water} / 1000} \right|$$

If the Volume Charge paid by Tenaska exceeds the Reconciled Volume Charge, the City will refund the difference to Tenaska when the City delivers the Reconciliation Report to Tenaska. If the Volume Charge paid by Tenaska is less than the Reconciled Volume Charge, Tenaska will pay the additional amount owed within thirty (30) days of receipt of the Reconciliation Report.

Additionally, for each one thousand gallons of Allocated Volume in excess of 21,180,315 gallons during the period covered by the Annual Audit Report of the Authority, Tenaska shall pay the City for the raw water at a rate of twenty-five percent (25%) of the then current industrial rate for potable water.

(d) Adjustment of Minimum Charge. If Tenaska extends this Agreement under the provisions of paragraph 2, then that portion of the minimum monthly charge provided for in subparagraph 6(c)(i)(3) for the Extended Term shall be adjusted proportionate to the change in the Consumer Price Index-Urban published by the U.S. Department of Labor Statistics, or its successor, from the Effective Date to the commencement of each Extended Term.

(e) Payment Due Dates; Late Charges. Tenaska shall make each payment provided for by paragraphs (6)(a)(ii), 6(b), and 6(c) within thirty (30) days after receipt of the invoice; however, City may not invoice Tenaska for any amounts under paragraph 6(b)(ii) that are covered by the Facilities Agreement until the Authority invoices City for said amounts. If Tenaska fails to pay any amount when due, interest thereof shall accrue at the rate of ten percent

(10%) per annum from the date when due until paid. Subject to the notice period provided by paragraph 14(p), if Tenaska refuses or fails to pay the charges and fees described in paragraphs 6(b) and 6(c), the City shall have the right to discontinue the Supply of Water to Metering Point 2 unless Tenaska is disputing any of said charges or fees. The discontinuance of the Supply of Water shall not release Tenaska from its obligation to make payment of any amount or amounts due or to become due under this Agreement. City shall pay to Tenaska within thirty (30) days after receiving same from Authority any overpayments, reconciliation payments, or other amounts originally paid by Tenaska that Authority pays to the City pursuant to the Facilities Agreement.

(f) Clarifier Reimbursements. Any time during the first twenty (20) years of this Agreement, if the City supplies water to customers other than Tenaska or Tenaska Frontier ("Future Customers"), using the City's Extended Water System, the City will pay to Tenaska within thirty (30) days after providing water to the Future Customer an amount equal to the total initial cost to construct the 4.2 MGD clarifier multiplied by that Future Customer's proportionate share of the annual maximum amount of water to be delivered by the City to the Future Customer by the City's Extended Water System.

## 7. FUTURE CUSTOMERS

(a) Tenaska acknowledges that City is contractually obligated by its 1998 Agreement to provide water to Tenaska Frontier first before providing water service to other customers connected to the Pipeline.

(b) The Parties recognize that the City may have other customers in the future desiring to purchase water from the City using the City's Extended Water System. Subject to City's obligation to serve Tenaska Frontier first, the City shall have a right to use the City's Extended Water System to serve water to Future Customers, subject also to the condition that doing so will in no way interfere with the City providing the Supply of Water to Tenaska and the condition that Tenaska's rights and the City's obligations under this Agreement will receive priority over Future Customers. The Parties agree that the City will allocate the Metered Water, Original Cost of Financing, Cost of Financing, and the costs incurred by the City to operate, maintain, repair, and replace the Pipeline between Tenaska and the Future Customers using the allocation formulas provided in paragraphs 4(c), 5(f), and 6(b)(iii). For avoidance of doubt, for purposes of those calculations the Future Customers will be considered Other Customers as used in those calculations.

## 8. CONTINUITY OF SERVICE

(a) Scheduled Interruptions for Necessary Maintenance. Upon receipt by Tenaska from City of notice prior to any scheduled suspension, interruption, delay, reduction or other interference ("Notice of Interruption") of the Supply of Water ("Interruption", "Interrupt", or "Interrupted"), City may temporarily Interrupt ("Scheduled Interruption") the Supply of Water during a period not to exceed twelve (12) hours, which is agreed to by Tenaska prior to such Interruption to correct the reason for the Interruption. Whenever possible, a proposed Scheduled Interruption shall be scheduled during a shut-down of the Generating Station. The Notice of Interruption shall specify the duration and extent of the proposed Scheduled Interruption in the Water Supply and the reason therefor.

(b) Excusable Interruptions.

(i) If the Supply of Water is Interrupted as a result of an Excusable Interruption (as hereinafter defined), directly affecting the City's Water System and City's Extended Water System then during the Excusable Interruption the City shall not be obligated to deliver the Supply of Water to Tenaska.

(ii) The term "Excusable Interruption" means acts of God, comets, drought or water supply shortage in which the Authority has implemented pro rata reductions in the City's raw water supply in accordance with Texas Water Code § 11.039, earthquake, explosion, fire, flood, insurrection, landslide, lightening, meteors, natural calamity, riot, storm, war, washout, unforeseen breakage of Pipeline, the cutting of line by a third party beyond the reasonable control of the Party affected, governmental restraint or regulation (other than by the City), and breakdown or damage to the City's Water System not due to the City's neglect, action or failure to properly maintain the City's Water System to the extent any of the foregoing should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by the Party claiming an Excusable Interruption ("Affected Party"). However, "Excusable Interruption" shall not include (x) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic or (y) with respect to the City's obligation to deliver the Water Supply on and after the Completion Deadline, the Authority's breach of its obligations to construct Initial Improvements pursuant to the Facilities Agreement.

(iii) The Affected Party shall, by reason of any Excusable Interruption for which it has claimed relief under this paragraph 8(b):

(1) use its best efforts to mitigate the effects of such Excusable Interruption and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably affordable and practicable;

(2) furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Excusable Interruption; and

(3) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the Excusable Interruption is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.

(iv) When the Affected Party is able, or would have been able if it had complied with its obligations under this paragraph 8(b), to resume the performance of any or all of its obligations under this Agreement affected by the Excusable Interruption, then the period of Excusable Interruption relating to such event or circumstance shall be deemed to have ended. No Excusable Interruption shall relieve the Affected Party of any obligation that accrued prior to the commencement of such Excusable Interruption, and the suspension of the Affected Party's performance shall be no greater scope than is required by the Excusable Interruption.

(v) In the event that either Party is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if such Party gives notice stating the reasons therefor to the other Party as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such

obligations are no longer affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the performance obligations of such Party shall be suspended. The suspension of the Party's performance obligations shall be for no longer period than that necessary to cause such inability to be remedied with reasonable dispatch. If the City is the Affected Party and the Excusable Interruption lasts longer than ninety (90) days, then Tenaska may terminate this Agreement by delivering written notice to the City prior to the time that the City resumes its full performance.

(c) Conservation and Pro Rata Reductions. Tenaska shall develop and implement water conservation measures using the applicable elements of Title 30, Chapter 288 of the Texas Administrative Code. In the case of shortage of water resulting from drought, accident or other cause, the Authority has the right pursuant to Articles 7 and 16 of the Huntsville Raw Water Agreement and Texas Water Code § 11.039 to divide the water to be distributed among all of its customers pro rata according to the amount of water to which each customer may be entitled. In the event that the Authority reduces the amount of water pro rata to each customer, the City may reduce proportionately the amount of water that is available to Tenaska under this Agreement during the period of time the Authority has implemented pro rata reductions. Such a reduction shall be considered an "Excusable Interruption" under paragraph 8(b).

## 9. TAXES

Each Party shall pay all sales, real or personal property taxes and assessments imposed on such Party pursuant to applicable law or local custom with respect to the activities of generation, transportation, delivery, sale, emission, disposal or use of Treated Water.

## 10. ASSIGNMENT AND DELEGATION

(a) Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Tenaska or City without the written permission of the other Party and no delegation of any obligation or of the performance of any obligation by either Tenaska or City shall be made without the written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, nothing contained in this paragraph 10 shall be construed to restrict Tenaska in any manner from freely granting a security interest, transferring in trust, mortgaging, hypothecating, assigning, or otherwise transferring Tenaska's right, title, and interest, or delegating its duties under this Agreement to any lender or its collateral agent or other person, its successors or assigns providing credit or loans to Tenaska in connection with the financing, refinancing or operation of the Generating Station (a "Lender") or construed to restrict any Lender from exercising its rights or pursuing its remedies available under any loan agreements, security agreements or other instruments or documents between itself and Tenaska or otherwise available to such Lender at law or in equity; and that Tenaska may assign this Agreement, without the prior written permission of City, to Tenaska's Lender(s), and City will execute a consent to such assignment as may be reasonably requested by such Lender(s) and its agreement to any amendments to this Agreement and the Facilities Agreement that do not materially affect the rights or obligations of the Parties that are requested by any Lender(s). Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this paragraph 10. Notwithstanding the preceding provisions of this paragraph, Tenaska shall have the right, without the consent of the City, to assign this Agreement, in whole or in part, to: (i) an Affiliate of Tenaska; (ii) an entity to which Tenaska conveys or leases any

part of the Generating Station Site provided the assignment is in connection with the sale or lease of any part of the Generation Station Site.

(b) Either Party may assign its rights and delegate its obligations to any subsidiary or affiliate of such Party provided that no such assignment or delegation releases such Party from any of its obligations. An affiliate of Tenaska shall be a corporation or other business entity which is owned or is controlled by, owns or controls or is under common ownership or control with Tenaska.

(c) This Agreement shall be legally binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors, and permitted assigns.

## 11. RESPONSIBILITY OF PARTIES

(a) Except as expressly limited by any other provision of this Agreement, City shall be solely responsible for payment of all costs and expenses in respect to any and all loss, action, suits, proceedings, claims, liabilities, damages, causes of action, demands, assessments, judgments, penalties, fines costs and expenses, including attorney's fees (collectively "Damages") that may result or arise from or out of or in connection with (i) any act, error, or omission of the City, including any of City's performance or nonperformance of, or under, this Agreement, (ii) any inaccuracy in or breach of or omission from any representation or warranty made by City in this Agreement, and (iii) any nonfulfillment, partial or total, of any of the covenants or agreements made by City in this Agreement. Further, if Tenaska, its officers, affiliates, partners, employees and assigns shall sustain or otherwise incur any Damages as described in the preceding sentence, City shall to the extent allowed by law, reimburse Tenaska, its officers, affiliates, partners, employees and assigns for any such Damages sustained or otherwise incurred by any of them. In any circumstance, where negligence by the Parties is concurrent and contributes to the cause of the same Damages, then each of the Parties shall be responsible and liable to the degree of their own negligence.

(b) Except as expressly limited by any other provision of this Agreement, Tenaska shall be solely responsible for payment of all costs and expenses in respect to any and Damages that may result or arise from or out of or in connection with (i) any act, error, or omission of Tenaska, including any of Tenaska's performance or nonperformance of, or under, this Agreement, (ii) any inaccuracy in or breach of or omission from any representation or warranty made by Tenaska in this Agreement, and (iii) any nonfulfillment, partial or total, of any of the covenants or agreements made by Tenaska in this Agreement. Further, if the City, its members of its governing body, officials, officers, employees and assigns shall sustain or otherwise incur any Damages as described in the preceding sentence, Tenaska shall reimburse City, its members of its governing body, officials, officers, employees and assigns for any such Damages sustained or otherwise incurred by any of them. In any circumstance, where negligence by the Parties is concurrent and contributes to the cause of the same Damages, then each of the Parties shall be responsible and liable to the degree of their own negligence.

(c) For purposes of this paragraph 11, the obligation of either Party to reimburse the other for Damages shall not include any of the other Party's own lost profits, or exemplary damages.

(d) The provisions of this paragraph 11 shall survive the consummation of the transactions contemplated by, and the termination of, this Agreement.

(e) (i) Notwithstanding anything to the contrary contained in this Agreement, City agrees that this Agreement is solely between City and Tenaska, and City agrees that only Tenaska (and not any of its officers, employees or partners) shall be liable for damages or money judgments or a specific performance, whether based upon contract (including this Agreement), warranty, negligence, indemnity, strict liability or otherwise which may result or arise from or out of or in connection with any act, error, or omission of Tenaska under this Agreement, including its construction of any facilities identified in this Agreement, its operation of the Generating Station or from any inaccuracy in or breach of or omission from any representation or warranty made by Tenaska in this Agreement, or any nonfulfillment, partial or total, of any of the covenants or agreements made by Tenaska in this Agreement.

(ii) Notwithstanding anything to the contrary contained in this Agreement, Tenaska agrees that this Agreement is solely between City and Tenaska, and Tenaska agrees that only City (and not any of the members of its governing body or its officers or employees), to the extent allowed by law, shall be liable for damages or money judgments or a specific performance, whether based upon contract (including this Agreement), warranty, negligence, indemnity, strict liability or otherwise which may result or arise from or out of or in connection with any act, error, or omission of City under this Agreement, including its construction of the Initial Improvements and operation of the City's Water System or from any inaccuracy in or breach of or omission from any representation or warranty made by City in this Agreement, or any nonfulfillment, partial or total, of any of the covenants or agreements made by City in this Agreement.

(iii) The Parties agree that any obligations or liabilities of City to Tenaska arising from or out of or in connection with this Agreement are solely the obligations of City's waterworks and sanitary sewer systems, and that any of such obligations or liabilities of City to Tenaska shall never be payable out of any funds raised or to be raised by taxation, and any of such obligations or liabilities of City to Tenaska shall be payable solely as an operating expense of its waterworks and sanitary sewer systems (except those obligations which are to be funded with proceeds of bonds as provided in this Agreement), and City covenants and agrees to establish, adjust, and revise its rates and charges for the use and services of its waterworks and sanitary sewer systems from time to time so that its revenues of such systems shall be sufficient to pay all operating expenses of such systems including obligations of City to Tenaska arising from or out of or in connection with this Agreement.

(f) Except as expressly provided in paragraph 11(e), nothing in this Agreement shall be construed to preclude either Party from pursuing a remedy against a third party.

(g) City recognizes the undertakings of City to provide a Supply of Water, all in accordance with this Agreement, are essential to the operation of the Generating Station and that such obligations are obligations for which failure in performance cannot be adequately measured or compensated by money damages alone. City agrees that in addition to all other remedies at law or in equity, and to the extent allowed by law, Tenaska shall be entitled to the equitable remedy of specific performance of City's obligations to provide a Supply of Water, all in accordance with this Agreement pursuant to mandamus, mandatory injunction or other appropriate judicial remedy to assure specific performance by City.

(h) The Parties acknowledge that, pursuant to Texas Government Code § 2253.021, performance and payment bonds will be required of contractors for the improvements identified in Exhibits "A" and "B".

## 12. REPRESENTATIONS AND WARRANTIES

The representations and warranties made respectively by the Parties shall remain in existence during the term of this Agreement.

(a) Tenaska represents and warrants that:

(i) Tenaska is a Delaware limited liability company organized and existing under and by virtue of the laws of the State of Delaware and has the power and authority to own its properties and to carry on the business as presently conducted and as represented in this Agreement;

(ii) This Agreement has been duly authorized, executed, and delivered by Tenaska; and Tenaska, and the person executing this Agreement, has all requisite corporate power and authority to execute, deliver, and perform this Agreement; and this Agreement constitutes a valid and binding obligation of Tenaska, enforceable in accordance with its terms and conditions;

(iii) The execution, delivery, and performance of this Agreement will not violate, or be in conflict with, or result in a material breach of, or constitute a default under, any material agreement, order, judgment, or decree to which Tenaska is a party or by which Tenaska is bound;

(iv) Tenaska shall cooperate with City, at no cost or liability to Tenaska, as may be necessary to further City's best efforts to obtain any required permits, such as environmental assessments, U.S. Army Corps of Engineers' permits, stormwater permits, cultural resources (archaeological) permits, special use permits, and interbasin transfer permits; and

(v) Tenaska will use its reasonable best efforts, at no cost or liability to Tenaska, to not be included within the CCN of any entity other than the City of Huntsville. The Parties agree this Agreement is a wholesale treated water contract.

(b) City represents and warrants that:

(i) City is a municipal corporation duly organized, validly existing and in good standing under and by virtue of the laws of the State of Texas and has the corporate power and authority to own its properties and to carry on its business as presently conducted and as represented in this Agreement;

(ii) Except as provided in subparagraphs 12(a)(v) and 12(b)(iii), City has lawful authority to supply water as contracted for herein;

(iii) City will use its best efforts to timely obtain all permits, including any interbasin transfer permit, and all authorizations and all certificates, and all other authorities necessary to permit City to comply with the terms and provisions of this Agreement;

(iv) This Agreement has been duly authorized, executed, and delivered by City and that City has the requisite power and authority to execute, deliver, and perform this Agreement;

(v) This Agreement constitutes a valid and binding obligation of City, enforceable in accordance with and to the extent of its terms and conditions;

(vi) The source of the raw water supply to be delivered to Tenaska shall be from the intake facilities of the Authority located on Lake Livingston;

(vii) The execution, delivery, and performance of this Agreement will not violate, or be in conflict with, or result in a material breach of, or constitute a default under, any material agreement, order, judgment, or decree to which City is a party or by which City is bound.

(c) Upon written request from Tenaska, City shall promptly deliver to Tenaska a certificate stating that as of the date of the execution of this Agreement and as of the Effective Date, each of City's representations and warranties contained in paragraphs 12(b) are true and correct, and City shall deliver an opinion of counsel to the same effect as to City's representations and warranties contained in paragraphs 12(b). City shall concurrently provide Tenaska with a complete transcript of the proceedings evidencing the authority of City to execute and deliver this Agreement, including the incumbency of relevant members of its governing body, officials, officers, or employees and compliance with the Open Meetings Laws and all requirements of City's charter.

(d) At the time of the written request described in paragraph 12(c), Tenaska shall concurrently deliver to City a certificate stating that as of the execution of this Agreement and as of the Effective Date, each of Tenaska's representations and warranties contained in paragraph 12(a)(i) through (iii) are true and accurate, and Tenaska shall deliver an opinion of counsel to the same effect as to Tenaska's representations and warranties contained in paragraph 12(a)(i) through (iii), and Tenaska shall provide City with a complete transcript as may reasonably be necessary to evidence the authority of Tenaska to execute and deliver this Agreement, including the incumbency of relevant officers or employees in compliance with all requirements of its partnership agreement.

Other than as provided in paragraphs 12(a), 12(b), 12(c), and 12(d), neither Party makes any representation or warranty in this Agreement.

### 13. WAIVER OF SUBROGATION

Each Party shall ensure that any policy of insurance which it carries as insurance against property damage or against general liability for property damage or bodily injury (including death) that may occur in connection with the construction, maintenance, or operation of the City's Water System or any electrical system used in conjunction therewith shall either name the other Party as additional insured or include a waiver of insurer's rights of subrogation against the

other Party, its successors and assigns, and the respective directors, officers, employees, agents, and representatives of such other Party and its successors and assigns. Further, to the extent permitted by such policy, each Party shall waive such rights of subrogation. Notwithstanding the foregoing, nothing in this paragraph 13 shall affect the indemnity obligations set forth in paragraph 11.

14. MISCELLANEOUS PROVISIONS

(a) Notices. Except as otherwise provided in this paragraph, any notice, request, authorization, invoice, payment, direction, or other communication as allowed or required under this Agreement shall be given in writing and may be delivered in person, or by facsimile, or by email, or by overnight delivery service guarantying next day delivery, or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

Tenaska Roan's Prairie Partners, LLC  
Attn: Todd Jonas, Senior Vice President  
14302 FNB Parkway  
Omaha, Nebraska 68154  
Phone: 402-691-9500  
Fax: 402-691-9526  
Email: tjonas@tenaska.com

City of Huntsville, Texas  
Attn: City Manager  
1212 Avenue M  
Huntsville, TX 77340  
Phone: 936-291-5400  
Fax: 936-291-5409  
Email: citysecretary@huntsvilletx.gov

In the event a Party utilizes "facsimile" transmitted signed documents or scanned and emailed signed documents, the Parties agree to accept and to rely upon same; and the Party shall provide to the other Party, within 72 hours of transmission, such documents bearing the original signatures. As clarification, only attachments to emails will be considered for notice purposes and nothing within the body of an email will be considered a notice under this Agreement. Either Party may change its address or Designated Representative specified above by giving the other Party reasonable notice of such change in accordance with this paragraph. All notices, requests, and authorization of directions or other communications by a Party shall be deemed delivered when deposited in the mail, when deposited with the overnight delivery service, at the time of the facsimile or email transmission as provided in this paragraph or personally delivered to the other Party.

(b) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liability on either Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of or to otherwise bind the other Party.

(c) Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

(d) Entire Agreement. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

(e) No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns, and legal representatives, and the third-party beneficiaries, if any, specifically identified in this Agreement, including, without limitation, any Lender(s).

(f) Amendment. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

(g) Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement, and delivery of documents) at no cost or liability not contemplated by this Agreement as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

(h) Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

(i) Applicable Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America.

(j) Venue. If venue is proper in Walker County, the venue of any litigation arising out of this Agreement shall be in Walker County, State of Texas, or such other place in Texas as the Parties may agree in writing.

(k) Disputes/Default.

(i) Prior to either Party's right to claim that the other has defaulted or otherwise breached any obligation or other provision of this Agreement, the Parties shall first attempt to resolve the potential claim of default or breach in accordance with paragraph 14(k).

(ii) In the event either Party claims the other is in material default or either Party disputes the validity of any agreement or warranty or representation under this Agreement or the other's interpretation or performance of any provision under this Agreement, including the other's failure to perform (anyone or all of which shall be referred to as a "Dispute"), the disputing Party shall notify the other that a Dispute exists, specifying the nature and extent of the

Dispute (“Dispute Notice”). During such attempted Dispute resolution, the Parties shall continue to proceed in good faith and diligently perform their respective obligations under this Agreement.

(iii) In the event the Dispute is not resolved within twenty (20) days after the delivery of the Dispute Notice, the disputing Party may then take legal action in law or equity subject to the restrictions and limitations imposed by this Agreement; provided, because the Parties agree that the nature and subject matter of this Agreement are so unique City and Tenaska shall also have available the remedy for specific performance.

(l) Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party. Whenever used in this Agreement, the term (i) “including” shall mean “including without limitation” whether or not so specified, (ii) “term of this Agreement” shall include an Extended Term if exercised, (iii) “NTU” shall mean a measure of relative light transmission through a sample based on use of a nephelometer turbidity unit, and (iv) “average turbidity” shall mean the turbidity of Treated Water based on daily samples and as reported based upon the sum of the turbidity values obtained over each month divided by the number of samples obtained during the month.

(m) Counterpart Originals. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which together shall constitute one instrument.

(n) Survival. Whether or not so specified in this Agreement, the representations, and warrants identified in paragraph 12 (other than in paragraphs 12(a)(iv), 12(a)(v), 12(b)(iii), 12(b)(vi), 12(c), and 12(d)), and the remedies and indemnities, including any waivers or limitations thereupon, of City and Tenaska contemplated herein shall survive the expiration or termination of this Agreement for a period not to exceed two (2) years.

(o) Termination for City Default. In addition to any other right of Tenaska to terminate this Agreement, Tenaska may terminate this Agreement for any material breach of, or default under, this Agreement by City, including for any breach of any representation or warranty made by City in this Agreement. Such termination shall be effective thirty (30) days following receipt of written notice by City from Tenaska specifying such breach or default unless such breach or default is cured within such thirty (30) day period. In the event Tenaska terminates this Agreement pursuant to this paragraph 14(o), Tenaska shall have no further obligation under this Agreement, except as provided in paragraph 11.

(p) Tenaska Cure Period. Before exercising any rights against Tenaska for any breach of this Agreement, the City must notify Tenaska in writing of the breach and Tenaska will have thirty (30) days from the receipt of said notice to cure the breach.

## 15. CONSENT AND AGREEMENT LEGAL OPINION

The City acknowledges that, as a condition of Tenaska obtaining financing for construction of the Generating Station, Tenaska’s Lender(s) will require a collateral assignment of this Agreement. In connection therewith, such Lenders will require Tenaska to execute a

collateral assignment of this Agreement and an estoppel certificate together with a Consent and Agreement, all in a form and substance satisfactory to the Lenders, as well as deliver an opinion from legal counsel as to the organization and standing of the City, the validity and proper execution of this Agreement, and like matters. The City agrees to execute and deliver such Consent and Agreement and to deliver such opinion of legal counsel as such Lenders may reasonably require and in form and substance as the Lenders and City may reasonably agree.

#### 16. OPTION TO TERMINATE

Tenaska may, in its sole discretion, terminate this Agreement upon notice to the City (“Notice of Termination for Convenience”); provided, however, that in the event of such termination Tenaska shall remain obligated to pay to the extent incurred by the City prior to the delivery date of the Notice of Termination for Convenience: (i) Option Fee; plus (ii) the amount necessary to reimburse the City for any Annual Standby Fees that the City is obligated to pay to the Authority under paragraph 6(a)(ii), plus (iii) after Tenaska exercises its Option under paragraph 3, any amount due to City pursuant to paragraphs 6(b) and 6(c), provided, that any amount due in connection with subparts (ii) and (iii) of this sentence shall be limited to the amount accrued through the effective date of such termination; plus (iv) after City deposits the Construction Funds (as defined in the Facilities Agreement) with the Authority, a lump sum payment of \$75,000. The Notice of Termination for Convenience shall notify City of Tenaska’s decision to terminate this Agreement as of the date specified in the Notice of Termination for Convenience. A decision to terminate made in accordance with this paragraph 16 shall be enforceable without obligation in the future for Tenaska, except as expressly provided in paragraph 11 or this paragraph 16.

#### 17. INSURANCE

During the term of this Agreement, the Parties shall be obligated to procure and maintain, each at their respective cost and expense, the following policies of insurance:

(a) Insurance to be maintained by City:

(i) All-Risk Builder’s Risk. Until completion of construction of the Initial Improvements and Pump Station Improvements the City shall maintain or require the Authority to maintain, as applicable, “All-Risk” Builder’s Risk insurance in a form acceptable to Tenaska which includes coverage for flood, earthquake, transit and testing perils in an amount equal to the full replacement value of the Initial Improvements. The cost of such insurance shall be borne by Tenaska and shall be considered an operation and maintenance expense for the City’s Extended Water System. Tenaska will only be required to pay Tenaska’s proportionate share of such insurance for the Pump Station Improvements, consistent with the manner described in Section 6(b)(iii) above.

(ii) Upon completion of the Initial Improvements and throughout the term of the Agreement, the City shall maintain or cause the Authority to maintain, as applicable, “all-risk” property and machinery breakdown insurance which includes coverage for flood and earthquake perils in an amount equal to the full replacement cost of the City’s Extended Water System.

(iii) Commercial General Liability. Throughout the term of the Agreement, the City will maintain Commercial General Liability insurance for bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per occurrence and in the aggregate. Such insurance shall include but not be limited to coverage for broad form contractual liability, XCU hazards, broad form property damage liability, personal injury liability, independent contractors, products, and completed operations liability.

(iv) Comprehensive Auto Liability. Throughout the term of this Agreement, the City will maintain Comprehensive Auto Liability coverage with bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per occurrence and in the aggregate.

(v) Worker's Compensation and Employers' Liability. Throughout the term of the Agreement, the City will maintain Worker's Compensation insurance which complies with the statutory limits of the workers' compensation laws of the State of Texas and Employers' Liability insurance with limits of \$1,000,000 each accident and \$1,000,000 disease policy limit/each employee.

(vi) Excess Umbrella Liability Insurance. Throughout the term of the Agreement, the City will maintain Excess Umbrella Liability Insurance with a limit of \$1,000,000 per occurrence and in the aggregate.

The City shall also cause its contractor(s) for the Initial Improvements and Pump Station Improvements to comply with the above insurance requirements.

(b) Insurance to be maintained by Tenaska:

(i) Commercial General Liability. Tenaska will maintain Commercial General Liability insurance for bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per occurrence and in the aggregate. Such insurance shall include but not be limited to coverage for broad form contractual liability, XCU hazards, broad form property damage liability, personal injury liability, independent contractors, products, and completed operations liability.

(ii) Comprehensive Auto Liability. Throughout the term of this Agreement, Tenaska will maintain Comprehensive Auto Liability coverage with bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per occurrence and in the aggregate.

(iii) Worker's Compensation and Employers' Liability. To the extent that Tenaska has any employees, Tenaska will maintain, Worker's Compensation insurance which complies with the statutory limits of the workers' compensation laws of the State of Texas and Employers' Liability insurance with limits of \$1,000,000 each accident and \$1,000,000 disease policy limit/each employee.

(iv) Excess Umbrella Liability Insurance. Tenaska will maintain Excess Umbrella Liability Insurance with a limit of \$1,000,000 per occurrence and in the aggregate. Tenaska may satisfy the limit required under (i) and (iv) through any combination of primary and/or excess liability policies.

(c) Waiver of Subrogation. The City and Tenaska hereby agree to waive its and its insurers rights of subrogation against the other Party and the City further agrees to waive its rights of subrogation against Tenaska's Lenders and any other parties as reasonably requested by Tenaska.

(d) Additional Insured Status. The City hereby agrees to add Tenaska and Tenaska's lenders identified to City by Tenaska any time during the term of this Agreement and any other parties as reasonably requested by Tenaska as additional insureds under the policies of insurance required in paragraphs 17(a)(iii), (iv), and (vi). Tenaska hereby agrees to add the City as an additional insured under the policies of insurance required in paragraphs 17(b)(i), (ii) and (iv).

(e) Evidence of Coverage. Prior to commencement of construction, each Party will provide certificates of insurance to the other Party as evidence of the insurance coverages required. In addition, on or before the expiration date of any policy of insurance required under this paragraph 17, the Party will provide certificates of insurance evidencing the renewal of such coverage. All policies of insurance required in this paragraph 17 will provide for 30 days' written notice prior to cancellation except for non-payment of premiums which shall require 10 days' prior written notice. If any insurer is unwilling or unable to provide the notice of cancellation, then the Party required to maintain the insurance shall provide such cancellation notice to the other Party.

(f) Availability of Insurance. If either Party is unable to obtain the required insurance coverages or the required limits of any such coverage are not available in the commercial market on reasonable terms, such Party shall deliver notice of such fact to the other Party, with a description of its reasonable efforts to satisfy such requirement. The obligation to maintain a particular coverage under this Agreement or the limit of such coverage shall be waived or modified (for so long a coverage is not able to be obtained in the commercial market on reasonable terms) but only if the lender then holding the first priority security interest in the Generating Station has agreed that such coverage is not required to be maintained or that the amount of such coverage may be so reduced.

(g) Other Insurance. The Parties may elect to purchase additional insurances for its respective interests.

18. ESTOPPEL CERTIFICATES. Within thirty (30) days, after delivery of a written request by either Party, the other Party will execute a document addressed to anyone designated by the requesting party: (i) confirming the status of this Agreement and the performance of the obligations set forth herein, (ii) certifying to the terms of this Agreement, (iii) restating the representations and warranties in this Agreement as of the date of the document, and (iv) providing such other information and confirmation reasonably related to this Agreement as the requesting Party may reasonably request (which if Tenaska is the requesting Party, such information or confirmation may include matters relating to the ability of the City to perform its obligations pursuant to this Agreement).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

Attest:

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Lee Woodward, City Secretary  
City of Huntsville, Texas

\_\_\_\_\_  
Andy Brauning, Mayor  
City of Huntsville, Texas

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney  
Huntsville, Texas

THE STATE OF TEXAS           §  
  §  
COUNTY OF WALKER         §

BEFORE ME, the undersigned authority, on this day personally appeared Andy Brauning known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the CITY OF HUNTSVILLE, TEXAS, a home rule city in Texas, and that he executed the same as the act of the City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Texas

SEAL

TENASKA ROAN'S PRAIRIE PARTNERS, LLC,  
A Delaware Limited Liability Company

By: \_\_\_\_\_  
Robert A. Ramaekers  
Vice President of Tenaska Roan's  
Prairie Partners, LLC

THE STATE OF NEBRASKA     §  
  §  
COUNTY OF DOUGLAS       §

BEFORE ME, the undersigned authority, on this day personally appeared Robert A. Ramaekers known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TENASKA ROAN'S PRAIRIE PARTNERS, LLC, a Delaware Limited Liability Company, and that he executed the same as the act of Tenaska Roan's Prairie Partners, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Nebraska

SEAL

## EXHIBIT A

### Initial Improvements

1. Construction of a new clarifier at the Water Plant capable of continuously producing 4.2 million gallons per day of Treated Water with an average turbidity of less than 5 NTU.

## **EXHIBIT B**

### **Pump Station and SCADA System Improvements**

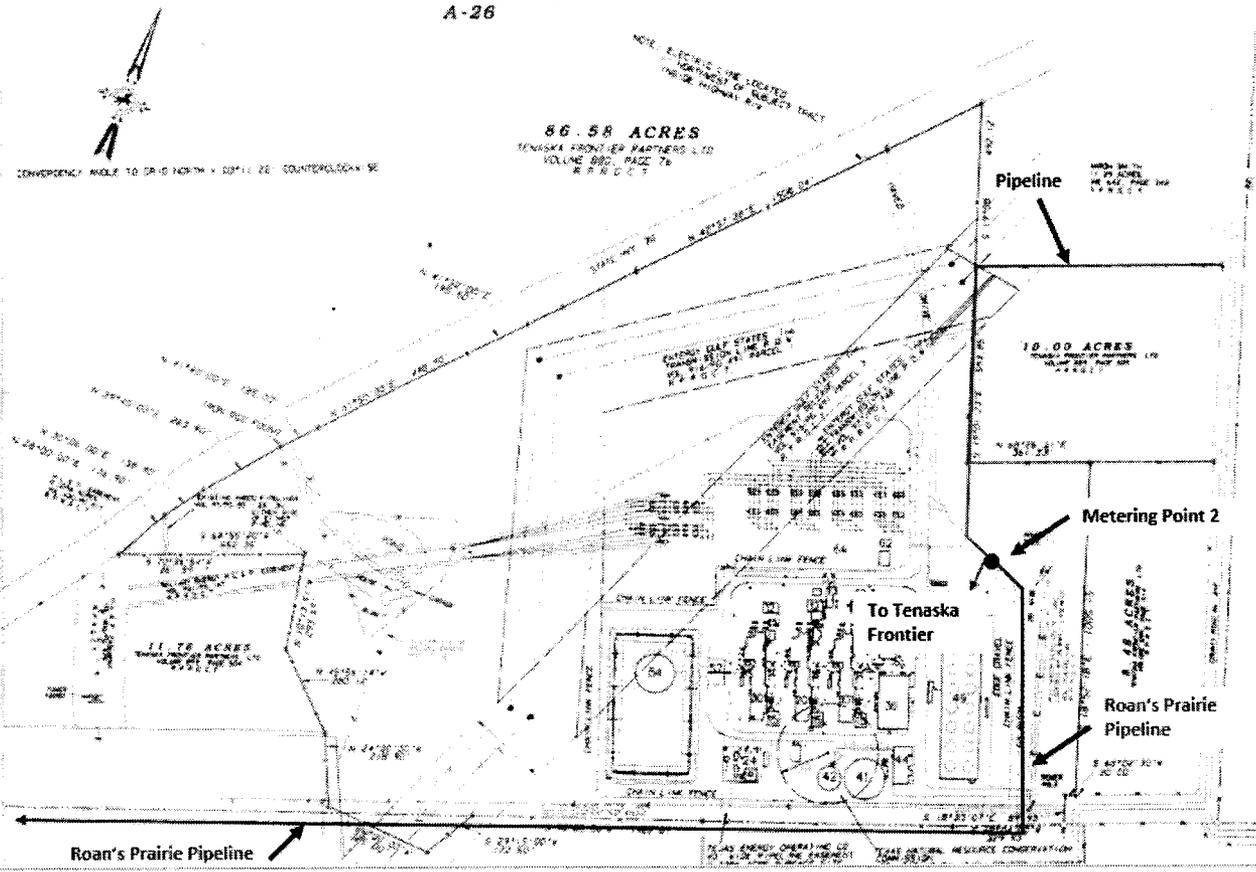
1. Improvements to the meter at Metering Point 1 and the supervisory control and data acquisition system at the Pump Station;
2. Pump Station Improvements – replace the wet-end of the pumps (bowls, impellers, pump shaft, bearings, etc.) to increase the flow of each pump to 4.0 MGD at 395 total dynamic head (for type 316 stainless steel impellers).

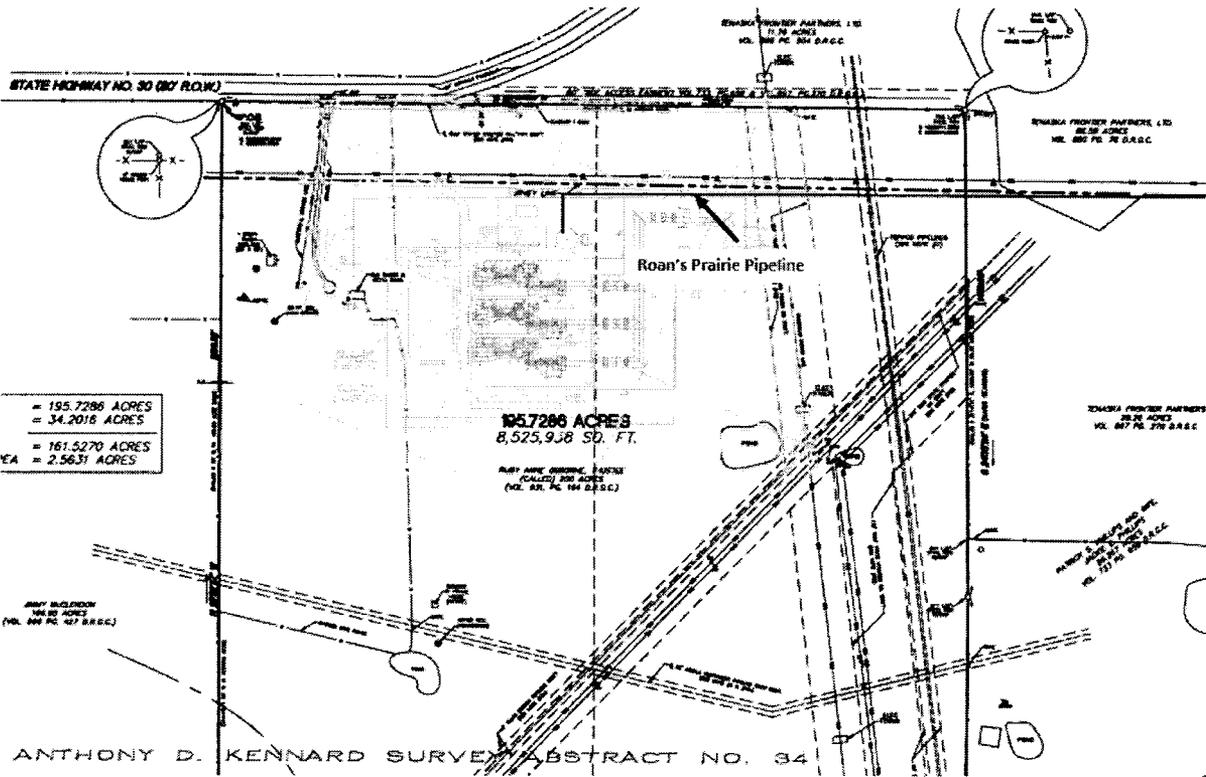
## EXHIBIT C

### Meter and supervisory control and data system at Metering Point 2

1. A supervisory control and data acquisition system to facilitate the delivery of Treated Water to the Generating Station by allowing the City to:
  - Measure the water level in the service water tank at the Generating Station, which in turn, operates the pumps at the Pump Station.
  - Control the valve on service water tank inlet at the Generating Station.
  - Accurately meter the volume of Treated Water delivered to the Generating Station.







**EXHIBIT E**

**TRINITY RIVER AUTHORITY LAKE LIVINGSTON LABORATORY  
CHEMICAL ANALYSIS REPORT TURBIDITY (in NTU)**

**HUNTSVILLE REGIONAL WATER SUPPLY SYSTEM  
MONTH/YEAR: \_\_\_\_\_**

	NTU1	NTU2	NTU3	NTU4	NTU5	NTU6
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
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16						
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24						
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29						
30						
31						

MAX.						
MIN.						
AVG.						

**Item # 2**

FINANCING AND CONSTRUCTION AGREEMENT  
BETWEEN THE CITY OF HUNTSVILLE, TEXAS  
AND THE TRINITY RIVER AUTHORITY OF TEXAS

STATE OF TEXAS                   §  
  §  
COUNTY OF TARRANT         §

THIS FINANCING AND CONSTRUCTION AGREEMENT (hereinafter called "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TRINITY RIVER AUTHORITY OF TEXAS, a conservation and reclamation district operating under special and general law (herein called "Authority"), and the CITY OF HUNTSVILLE, TEXAS, a home-rule municipal corporation (herein called "City"). The Authority and City are herein called each a "Party" and jointly the "Parties" to this Agreement.

WHEREAS, City desires to provide water to Tenaska Roan's Prairie Partners, LLC ("Tenaska") for use at a proposed 650 megawatt natural gas-fired peaking power plant; and

WHEREAS, City and Tenaska have entered into an Agreement for the Purchase and Delivery of Treated Water, effective on \_\_\_\_\_ ("Tenaska Agreement"); and

WHEREAS, the Authority and City have entered into a Raw Water Supply Contract ("Contract") of the same date as this Agreement, pursuant to which the Authority will sell to the City the water the City is obligated to furnish Tenaska pursuant to the Tenaska Agreement; and

WHEREAS, the Authority must construct a new clarifier, improvements to Metering Point 1 and pump station improvements to furnish water to the City to enable the City to fulfil its obligations pursuant to the Tenaska Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, in order to allow Authority to sell raw water for industrial purposes to City the Parties hereby agree to the terms and conditions hereinafter set forth, to-wit:

ARTICLE 1

PLANS AND SPECIFICATIONS DEVELOPMENT

Within two months of receiving written notice from the City ("Notice to Proceed"), the Authority shall engage Alan Plummer and Associates to design the facilities identified in the Tenaska Agreement. The date that the Authority engages Alan Plummer and Associates for said design is referred to as the "Design Engagement Date". The facilities to be designed and constructed are as follows (the "Improvements"):

1. A new clarifier at the Huntsville Regional Water Supply System Water Plant capable of continuously producing 4.2 million gallons per day of clarified water with an average turbidity of less than 5 NTU, and which is otherwise suitable for the treatment requirements of the Authority;
2. Improvements to the meter at Metering Point 1 (as defined in the Tenaska Agreement) and the supervisory control and data acquisition system at the Pump Station; and

3. Pump Station Improvements – replace the wet-end of the pumps (bowls, impellers, pump shaft, bearings, etc.) to increase the flow of each pump to 4.0 MGD at 395 total dynamic head (for type 316 stainless steel impellers).

All costs associated with the design of the Improvements shall be borne by the City, and shall be paid in full by the City as specified in this Agreement. Prior to the design of any of the Improvements, the Authority shall invite the City and Tenaska to participate in a pre-design meeting with the Authority to help ensure that any engineering plans and specifications prepared under the Authority's direction meet the City's technical requirements. The City and Tenaska shall have the right to review and comment on those engineering plans and specifications for the Improvements during the design process. The design, selection of materials, equipment manufacturers and resolution of design comments by the City and Tenaska shall be at the Authority's sole, reasonable discretion. Notwithstanding anything to the contrary in this Agreement, in all events the Authority's approval of the plans and specifications for the Improvements must be consistent with the design criteria in the attached Exhibit A. The plans and specifications for the Improvements approved pursuant to this Article 1 are referred to as the "Approved Plans." After the Authority has initially approved the Approved Plans, the Authority may not thereafter modify the Approved Plans without the City's written consent, which shall not be unreasonably withheld.

## ARTICLE 2

### CONSTRUCTION OF IMPROVEMENTS

The Authority shall design and construct the Improvements in accordance with the procurement requirements and limitations of Texas Water Code Chapter 49. The design and construction of the Improvements will be accomplished in two phases, which will be separately funded by the City. The Authority shall not proceed with the design or execute a contract for the construction of the Improvements, and the Authority's obligation to construct the Improvements shall not accrue, until and unless the City provides the Authority funding to proceed: 1) with the design of the Improvements and engineering support through the award of the bid by the Authority; and 2) in the amount of the cost bid furnished by the selected bidder. The City shall furnish payment to the Authority in the amount of the design budget within 14 days after the Authority delivers the Design Invoice described below. The City shall fund, by deposit of immediately available funds (and not a letter of credit or other security) with the Authority, the anticipated cost of construction, construction administration engineering services to be furnished by Alan Plummer and Associates and the estimated cost of Authority-furnished construction inspection (the "Construction Funds") within 14 days of the bid opening for the construction of the Improvements (the "Construction Funding Deadline"). The Authority shall utilize a fixed price contract for the construction of the Improvements in accordance with the Approved Plans pursuant to the form attached as Exhibit B.

The Authority will notify the City in writing at least 10 days prior to both (i) the date that the Authority will formally request bids for the construction of the Improvements and (ii) the date that the Authority's board votes on the approval of the selected bidder. At the City's written request, the Authority will delay either or both of the events described in subparts (i) and (ii) of the preceding sentence until further written notice from the City (a "Bid or Award Delay"). Additionally, at the City's written request, the Authority will notify potential bidders of the potential delay described in subpart (ii) so that bidders may accommodate said potential delay. If the delay in subpart (ii) lasts longer than 60 days after the bid opening, then the Authority may terminate the existing bids and may restart the bid process in accordance with the terms of this Agreement once the City delivers written notice to the Authority that the applicable Bid or Award Delay has terminated. The City may terminate this Agreement at no cost at any time prior to the date that the City deposits the Construction Funds with the Authority pursuant to this Article 2.

The Authority shall create on its books a separate account to be known as the "Trinity River Authority of Texas Huntsville Regional Water Supply System, Clarifier Improvements Design and Construction Fund" (the "Fund"). The Fund shall be maintained and applied by the Authority for the sole purpose of paying the costs of design, construction, construction administration (to be furnished by Alan Plummer and Associates) and Authority inspection related to the Improvements as provided for in this Contract. The Authority will invoice the City (the "Design Invoice") the estimated cost of design of the Improvements within ten days after engaging Alan Plummer and Associates to design the Improvements. The Authority will separately and subsequently invoice the City for the construction, construction administration and inspection upon the Authority's opening of bids to construct the Improvements. Upon payment, to be rendered upon receipt of the foregoing invoices, the Authority will credit the monies received from the City to the Fund. The City shall be responsible for any adjustments in the Fund for demonstrable shortages in the Fund for the cost of the construction, construction administration and inspection of the Improvements. If such adjustments require the deposit of additional funds, the Authority shall invoice the City and the City shall furnish such additional funding within 45 days of receipt of such invoices. Upon final completion of the Improvements and acceptance of same by the Authority, the Authority shall conduct a final cost accounting to determine the extent of any remaining unspent funds in the Fund. To the extent there is money remaining in or that should have remained in the Fund after all costs have been paid, the amount of remaining funds will be returned to the City. To the extent the remaining funds are insufficient to pay all costs associated with the Improvements, the Authority will submit an invoice for payment to the City and the City shall pay the Authority for such additional costs within 45 days of receipt of notice. The Authority will make its books and records relating to the Fund available to the City for its review during normal business hours and with advance reasonable notice.

Title to all improvements shall be in the Authority. The Authority agrees to substantially complete construction of Improvements within 24 months after the Design Engagement Date; however said deadline will be extended day-for-day for any City delays in furnishing its payment to fund construction of the Improvements beyond the Construction Funding Deadline or for any Bid or Award Delay.

The Parties acknowledge that it is in the Authority's and the City's best interest for the Authority to construct the Improvements. The Parties also acknowledge that the City must be able to ensure that the facilities are constructed in a timely manner to meet its contractual obligations to Tenaska. For these reasons, the Parties agree that, in addition to other remedies available under this Agreement, the City shall be entitled to equitable relief in the form of an injunction or specific performance, but not damages, attorneys' and other professional fees or costs, in the event the Authority does not complete the construction of the facilities during the time period prescribed by this Agreement.

### ARTICLE 3

#### THIRD-PARTY BENEFICIARY

Authority agrees that City shall be an express third-party beneficiary for the purpose of enforcing the liquidated damages provision in the Authority's construction contract documents, to be executed by the Authority and its contractor, who will be constructing the improvements identified in the Tenaska Agreement. The Authority agrees to include in its construction contract documents the following language:

For each calendar day of delay beyond the Contract Time for Substantial Completion, the Owner may charge Liquidated Damages in the amount of \$1,060

per calendar day and for each calendar day of delay beyond the Contract Time for Final Acceptance, but having achieved Substantial Completion, the Owner may charge Liquidated Damages in the amount of \$1,060 per calendar day. City is a third-party beneficiary for purposes of enforcement of liquidated damages pursuant to this section. Owner shall cooperate in the City's enforcement of this section, but shall not be required to be and the City shall not implead the Authority as a party plaintiff to such an action. All costs incurred by the Authority in connection City's enforcement of this section shall be "operations and maintenance expenses" for purposes of the Huntsville Regional Water Supply System Contract between Owner and City.

Except for the foregoing, this Agreement does not and is not intended to confer any rights or remedies upon any person or party other than the Parties.

#### ARTICLE 4

##### ADDRESSES AND NOTICE

All notices, payments and communications required herein shall be sent, respectively, to the Southern Region Manager of the Trinity River Authority of Texas at P.O. Box 1554, Huntsville, Texas 77340 and to the City of Huntsville, c/o the City Manager, at 212 Avenue M, Huntsville, Texas 77340.

#### ARTICLE 5

##### CERTIFIED NOTICE

Any notice of breach of this Agreement, notice of forfeit, or notice of force majeure by either Party shall be sent by certified mail with return receipt requested to the addresses stated above. The Parties shall have the right from time to time and at any time to change their respective addresses and both will have the right to specify as its address any other address by giving at least 15 days' written notice to the other Party.

#### ARTICLE 6

##### DEFAULT

In the event that either City or Authority shall breach or fail to perform any of the provisions of this Agreement, the aggrieved Party shall promptly notify the other Party of the breach or failure to perform ("Default Notice"). In the event such breach or failure to perform is not cured within 30 days after the receipt of such notice, the Party sending the notice, at its discretion, may notify the other Party of its intention to declare this Agreement terminated. Upon receipt of such notice the violating Party shall have 30 days to cure such violation or if the violation cannot reasonably be cured in 30 days, such longer time as is reasonably required not to exceed 90 days if within 15 days of receiving the notice the defaulting Party commences to cure the default and thereafter continuously and diligently pursues the cure prior to final action by the other Party declaring this Agreement terminated. Any notice requirement under the terms of this Article shall be in writing and shall be delivered by certified mail in accordance with Articles 4 and 5 above. The Parties agree to deliver copies of any Default Notice to Tenaska at 14302 FNB Parkway Omaha, Nebraska 68154, attention: Legal Department and to any other parties reasonably specified in writing by the City.

No failure on the part of either Party to this Agreement to require the performance by the other Party of any provision of this Agreement shall in any way affect either Party's right to

enforce such provision, nor shall any waiver by either Party be held to be a waiver of any other provision. No rights under this Agreement may be waived and no modification or amendment to this Agreement may be made except by written amendment executed by the Parties.

#### ARTICLE 7

#### SEVERABILITY

The Parties hereto agree that if any of the provisions of this Agreement are held to be invalid or to contravene Texas law, or the laws of the United States, such fact shall not invalidate the entire Agreement, but it shall be construed as though not containing that particular provision, and the rights and obligations of the Parties shall be construed and remain in force accordingly.

#### ARTICLE 8

#### ASSIGNMENT

The Parties understand and agree that this Agreement may not be assigned without the express written consent of other Party except to a successor entity created by law to take over substantially all of the functions for which the Party now has responsibility. However, no assignment to a successor entity shall relieve a Party from liability pursuant to this Agreement without the agreement of the other Party, which agreement may be withheld.

#### ARTICLE 9

#### VENUE

The place of performance as agreed to by the Parties to this Agreement shall be Tarrant County, Texas. In the event any legal proceeding is brought to enforce this Agreement or any provision hereof the same shall be brought in said Tarrant County, Texas.

#### ARTICLE 10

#### FORCE MAJEURE

In the event that the performance by the Parties hereto of any of the Parties' obligations or undertaking hereunder shall be interrupted or delayed by an occurrence beyond the reasonable control of that Party (the "Affected Party") and not occasioned by the conduct of or the failure to take action by either Party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto ("Force Majeure Event"), then the Parties shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof. Notwithstanding the preceding sentence, economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic will not be a Force Majeure Event. Additionally, the Affected Party:

1. Will give prompt notice to the other Party of any Force Majeure Event;
2. Use its best efforts to mitigate the effects of such Force Majeure Event as promptly as reasonably practicable;

3. Furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of the Force Majeure Event; and

4. Resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the Force Majeure Event is remedied or ceases to exist. No damages shall be recoverable from Authority by City by reason of the suspension of the delivery of water due to any of the causes above mentioned, and no failure of Authority to meet any obligations by reason of force majeure shall relieve City from its obligations to make payments required under the terms of this Agreement.

#### ARTICLE 11

#### STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS

This Agreement is subject to all applicable federal, state and local laws and any applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction. Nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction, and each Party agrees to make a good faith effort to support such proposed laws and regulations which would be consonant with the performance of this Agreement in accordance with its terms. The City acknowledges that it is responsible for securing the authorization of the TCEQ for any new, not previously authorized, points of diversion of water diverted pursuant to this Agreement.

#### ARTICLE 12

#### INDEMNITY

**SUBJECT TO AND WITHOUT WAIVING IMMUNITIES AND DEFENSES, TO THE EXTENT IT LEGALLY MAY, THE PARTIES HEREBY AGREE TO INDEMNIFY EACH OTHER AND PROVIDE A LEGAL DEFENSE FOR AND/OR HOLD EACH OTHER HARMLESS FROM AND DEFEND EACH OTHER AGAINST ANY CLAIM THAT MAY ARISE IN CONNECTION WITH OR THAT ARISES AS A RESULT OF THIS AGREEMENT.**

ARTICLE 13

EFFECTIVE DATE

The Effective Date of this Agreement is \_\_\_\_\_.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which is deemed to be an original and as of the day and date written above.

**TRINITY RIVER AUTHORITY OF TEXAS**

**CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
J. KEVIN WARD, General Manager

\_\_\_\_\_  
ANDY BRAUNINGER, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HOWARD S. SLOBODIN, Secretary  
Board of Directors

\_\_\_\_\_  
LEONARD SCHNEIDER, City Attorney

(SEAL)

(SEAL)

## EXHIBIT A

### DESIGN CRITERIA

One new solids contact clarifier is proposed with associated walkways, piping, electrical, lighting, instrumentation and sitework. The clarifier is 65' diameter and 19' - 6" wall height (18' - 0" SWD) in a concrete basin utilizing similar internal components to clarifier #3 which has equipment furnished by Walker Process. The equipment includes 2 sludge rakes with drive, internal mixer with variable speed drive, reaction well, draft tube, rectangular effluent launders with orifices, half bridge with center pier support and center platform configuration. The basin will have tube settlers, and may require full dome cover for algae control if copper sulfate cannot be fed. Sludge will be removed from a hopper using an actuated sludge blow-down valve controlled from the PLC. Piping includes influent raw water, dosed with lime, coagulant, polymer and ferrous sulfate, settled water piping for both Tenaska and the filters, drain piping, sludge blow-down piping, external sludge recycle piping and plant water piping with hose stations. The raw water piping requires modifications to the existing rapid mix vault and raw water pipe, and replacement with a static mixer, with associated chemical feed systems (4 systems). A walkway extension is required on the existing elevated pipe rack and to the new bridge and possibly a new stair off the bridge may be necessary. The bridge and walkways are anticipated to be galvanized steel and the clarifier mechanism is anticipated to be steel with coatings and a cathodic protection system for corrosion resistance. Instrumentation including flow meters, pH, and turbidity meters will be provided and tied into the SCADA system via a PLC provided in this project. The clarifier will have a control panel furnished by the clarifier manufacturer and will have controls for the recycle mixer speed, run and alarm status for both drives, and torque alarm for sludge drive. Site work includes sidewalks, grading, seeding and sodding; and erosion control of disturbed areas, as well as accommodating excavated material onsite.

**EXHIBIT B**

**FORM OF CONSTRUCTION CONTRACT**

**SECTION 00400**

**AGREEMENT**

STATE OF TEXAS §

COUNTY OF TARRANT §

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the TRINITY RIVER AUTHORITY OF TEXAS (hereinafter called ("OWNER")) and \_\_\_\_\_ (hereinafter called "CONTRACTOR").

**WITNESSETH:**

WHEREAS, in accordance with law, OWNER has caused Contract Documents to be prepared and an Invitation to Bid to be published, for and in connection with Trinity River Authority of Texas, Project Name \_\_\_\_\_ (hereinafter called "WORK" or "PROJECT"); and

WHEREAS, CONTRACTOR, in response to the Invitation to Bid, has submitted to OWNER, in the manner and at the time specified, a sealed Bid in accordance with the Instructions to Bidders; and

WHEREAS, OWNER, in the manner prescribed by law, has publicly opened, examined, and tabulated the Bids submitted, and has determined CONTRACTOR to be the lowest responsive, responsible bidder for the WORK and duly awarded to CONTRACTOR a contract therefore, for the sum or sums named in CONTRACTOR'S Bid.

NOW, THEREFORE, in consideration of the compensation to be paid to the CONTRACTOR and the mutual agreements herein contained, the parties to these presents have agreed and hereby agree as follows:

ARTICLE I

WORK

CONTRACTOR shall perform all WORK, including the assumption of all obligations, duties, and responsibilities necessary for the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the WORK; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the WORK, and bonds, insurance, and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by the CONTRACTOR for the WORK included in and covered by OWNER'S award of this contract to the CONTRACTOR, such award being based on the acceptance by OWNER of CONTRACTOR'S Bid.

ARTICLE II

ENGINEER

The PROJECT has been designed by name of Engineering Firm who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authorities assigned to ENGINEER in the Contract Documents in connection with completion of the WORK in accordance with the Contract Documents.

ARTICLE III

TIME OF COMPLETION

The CONTRACTOR shall substantially complete the work items of the Project within \_\_\_ calendar days of receipt of written Notice to Proceed and shall complete all aspects of the work within \_\_\_ calendar days of receipt of written Notice to Proceed.

ARTICLE IV

CONTRACT SUM

The OWNER shall pay to the CONTRACTOR for performance of the WORK, and the CONTRACTOR shall accept as full compensation therefore the following sums (subject to adjustments for actual quantities and as provided in the Contract Documents):

Total Amount for Materials and Services      \$ \_\_\_\_\_

for all WORK covered by and included in the contract award and designated in ARTICLE I,

payment thereof to be made in current funds in the manner provided in the Contract Documents.

ARTICLE V

CONTRACT DOCUMENTS

The WORK shall be performed in accordance with the Contract Documents which consist of the signed Agreement, the Addenda, Change Orders, Field Orders, Notice to Proceed, the Supplementary Conditions, Site Certificate, the General Conditions, Notice of Award, Invitation to Bid, the Bid, the Bid Bond, the Specifications, the Drawings, the Performance Bond and Payment Bond, and any Special Bonds.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in several counterparts, each of which is deemed to be an original and as of the day and date first written above.

**(CONTRACTOR'S NAME)**

**TRINITY RIVER AUTHORITY OF TEXAS**

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
J. KEVIN WARD, General Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
HOWARD S. SLOBODIN, Secretary  
Board of Directors

(SEAL)

(SEAL)

Item # 3

RAW WATER SUPPLY CONTRACT  
BETWEEN THE CITY OF HUNTSVILLE, TEXAS  
AND THE TRINITY RIVER AUTHORITY OF TEXAS

STATE OF TEXAS                   §  
  §  
COUNTY OF TARRANT         §

THIS RAW WATER SUPPLY CONTRACT (hereinafter called "Contract") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TRINITY RIVER AUTHORITY OF TEXAS, a conservation and reclamation district operating under special and general law (herein called "Authority"), and the CITY OF HUNTSVILLE, TEXAS, a home-rule municipal corporation (herein called "City"). The Authority and City are herein called each a "Party" and jointly the "Parties" to this Contract.

WHEREAS, Authority holds Certificate of Adjudication No. 08-4248, as amended, which authorizes the Authority to impound the normal flow of the Trinity River in Lake Livingston; and

WHEREAS, Certificate of Adjudication No. 08-4248 authorizes the Authority to appropriate, divert and sell water stored in Lake Livingston, subject to the approval of the Texas Commission on Environmental Quality ("TCEQ") of a point or points of diversion; and

WHEREAS, City desires to provide water to Tenaska Roan's Prairie Partners, LLC ("Tenaska") for use at the proposed 650 megawatt natural gas-fired peaking power plant; and

WHEREAS, City and Tenaska have entered into an Agreement for the Purchase and Delivery of Treated Water, effective on \_\_\_\_\_, 2016 ("Tenaska Agreement"); and

WHEREAS, City desires to purchase from the Authority, on an annual basis, a certain amount water impounded in Lake Livingston pursuant to Certificate of Adjudication No. 08-4248 for the foregoing purpose.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, Authority agrees to sell raw water for industrial purposes to City and City agrees to pay Authority charges for raw water sold to City upon terms and conditions hereinafter set forth, to-wit:

ARTICLE 1

QUANTITY OF RAW WATER

Authority shall sell to City up to 65 acre-feet per year of raw water from Authority's rights pursuant to Certificate of Adjudication No. 08-4248. The raw water sold to City by Authority may be applied by the City to industrial uses only. The rate of diversion or demand shall not exceed 0.34 million gallons per day.

City's right to the foregoing quantity of raw water is conditioned on Authority's rights under Certificate of Adjudication No. 08-4248. If Authority's rights under Certificate of Adjudication No. 08-4248 are changed by any action beyond the control of Authority, and any such change reduces, or has the effect of reducing, the amount of raw water the Authority has the right to use or sell, then, in that event, City's right to the foregoing quantity of raw water shall

be reduced proportionately by the percentage of the decrease in Authority's rights under Certificate of Adjudication No. 08-4248.

## ARTICLE 2

### CHARGES FOR RAW WATER

Authority's annual charge to City for the rights granted hereunder shall consist of an "annual charge" for raw water sold to City during Authority's preceding fiscal year. The Authority's fiscal year is December 1 to November 30, which may be changed by the Authority from time to time. The "annual amount" of raw water sold to City by Authority will be 65 acre-feet per year. The "annual charge" shall be calculated by multiplying the total "annual amount" by Authority's then-prevailing rate for raw water as established by Authority Resolution No. R-1403, or any subsequent revision thereof or substitute therefor. That rate (or any future rate as established by Authority's Board of Directors) is incorporated by reference into this Contract and is a material term of this Contract, and the Parties hereby stipulate that such rates are just, reasonable and without discrimination.

For the initial fiscal year after the City executes an agreement for the sale of treated water by City to Tenaska, City shall pay Authority on or before the first day of November of the initial fiscal year a portion of the "annual charge," which will be calculated by multiplying the then-prevailing rate for raw water by the "annual amount," dividing by 365, and multiplying by the number of days remaining in the initial fiscal year after City reaches the agreement with Tenaska. City agrees that on or before the first day of each November after the initial fiscal year the City will pay to Authority an amount equal to the "annual charge" as calculated above for the then-current fiscal year. The now-prevailing rate for water sales that is incorporated by reference in this Contract is \$95 per acre-foot. Authority will advise City in writing prior to any change in that rate.

It is agreed by the Parties that the charge per acre-foot of raw water sold to City shall never be less than the cost of such raw water to Authority, as determined by Authority. In the event of any revisions to Resolution No. R-1403, City's future payments hereunder shall be calculated as provided above, but using the newly established rate structure.

## ARTICLE 3

### EXCESS WATER

Within sixty calendar days after each annual payment by City of the "annual charge," Authority shall verify the amount of water City has diverted during the preceding Contract year. If City has diverted an amount of water in excess of the amount Authority is obligated to sell to City hereunder together with the water City is separately entitled to divert, Authority shall recalculate the "annual charge" for the previous Contract year and City shall pay to Authority the additional amount due within thirty days of receipt of an invoice for the excess water diverted.

## ARTICLE 4

### SOURCE OF CONTRACT PAYMENTS

Authority shall not demand payment by City of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes levied by City. City's obligations under this Contract shall not be construed to be a debt of City of such kind as to require it under Texas law to levy and collect a tax to discharge such obligation, it being expressly understood by the Parties hereto that all payments due by City hereunder are to be made from water and sewer revenues received by City. City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks and sewer system as defined in Texas Government Code Chapter 1502, and that all such payments will constitute operating expenses of City's waterworks and sewer system.

City agrees to fix and collect such rates and charges for water and sewer services to be supplied by its waterworks and sewer system as will produce revenues in an amount equal to at least the minimum payments due under this Contract and other contracts with Authority and to comply with provisions of ordinances authorizing any outstanding revenue bonds.

The Parties agree that the duties and obligations of each as governmental entities are subject to limitations regarding appropriations under the Texas Constitution.

## ARTICLE 5

### DIVERSION FACILITIES

The diversion of water under this Contract shall occur using the City's existing diversion facilities that deliver raw water under the August 24<sup>th</sup>, 1976 Trinity River Authority of Texas – City of Huntsville Raw Water Supply Contract, as amended, and under the April 22, 1998 Huntsville Raw Water Supply Agreement. If the City determines that it is necessary to add additional diversion facilities to the existing diversion location or add a new diversion location to deliver the water under this Agreement, City shall file and have approved by Authority and the TCEQ, if approval by TCEQ is required, detailed plans and specifications showing the location, size, and capacity of the diversion structure and a legal description of the intended point of diversion. If the City proposes to increase the diversion rate over that which is authorized by Certificate of Adjudication No. 08-4248, Authority and TCEQ must also approve the new rate of diversion. The cost of diversion facilities and costs associated with the operation and maintenance thereof shall be borne by City.

## ARTICLE 6

### METERING

City shall provide, operate, and maintain a meter or meters, approved by Authority, to record monthly water diverted for Tenaska, including any meter or meters necessary to distinguish the amount of water diverted for Tenaska from the amount of water diverted for any other users. For the purpose of accounting for water, City shall determine the amount of water diverted each month by recording, as a minimum, the reading on City's meter on the last day of each calendar month. City shall report such reading to Authority monthly. Authority reserves the right to read and inspect the meter or meters during normal business hours and will allow City reasonable advance notice and the opportunity to have representatives present during the reading and inspection. If requested in writing by Authority, City shall calibrate its water meter or meters. Authority shall have the opportunity to have a representative present during such calibration. If upon any test of the water meter, the percentage of inaccuracy of such metering

equipment is found to be in excess of 3 percent, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, but in no event further back than a period of 6 months. If the meter is out of service so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meter is out of service shall be estimated and agreed upon by the Parties on the basis of the best data available. Authority reserves the right to install a check meter; it being understood that in no event shall Authority be liable for any special or consequential damages occasioned by the installation of said check meter. To the extent not already provided, Authority will grant to City such easements, licenses and other rights reasonably necessary for City to exercise its rights and satisfy its obligations under this paragraph.

## ARTICLE 7

### WATER CONSERVATION

City shall cooperate with and assist Authority in its efforts to develop and implement plans, programs, and rules to conserve water resources and to promote practices that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the recycling and reuse of water. The City and any successive wholesale raw water customers shall develop and implement a water conservation plan or water conservation measures using the applicable elements of Chapter 288 of the TCEQ's rules. Prior to the diversion of raw water under this Contract, City shall forward its water conservation plan and drought contingency plan to Authority for its review. In the case of a shortage of water resulting from drought, accident, or other cause, the water delivered under this Contract shall be divided in accordance with Texas Water Code Section 11.039.

City shall require that any subsequent wholesale purchaser of the water sold to City under this Contract to implement water conservation plan or measures that are consistent with the water conservation goals of Authority and City, and meet any applicable state law requirements.

## ARTICLE 8

### TERM OF CONTRACT

This Contract shall be effective upon the date hereof and shall remain in force and effect until December 31, 2054 (the "Primary Term"). Not less than 30 days prior to the expiration of the Primary Term, City may give notice to the Authority to exercise a ten-year extension, in which event the Contract will then expire on December 31, 2064 (the "Secondary Term"). Not less than 30 days prior to the expiration of the Secondary Term, City may give notice to the Authority to exercise an additional ten-year extension, in which event the Contract will then expire on December 31, 2074.

## ARTICLE 9

### ADDRESSES AND NOTICE

All notices, payments and communications required herein shall be sent, respectively, to the Southern Region Manager of the Trinity River Authority of Texas at P.O. Box 1554, Huntsville, Texas 77340 and to the City of Huntsville, c/o the City Manager, at 212 Avenue M, Huntsville, Texas 77340.

## ARTICLE 10

### CERTIFIED NOTICE

Any notice of breach of this Contract, notice of forfeit, or notice of force majeure by either Party shall be sent by certified mail with return receipt requested to the addresses stated above. The Parties shall have the right from time to time and at any time to change their respective addresses and both will have the right to specify as its address any other address by giving at least 15 days' written notice to the other Party.

## ARTICLE 11

### DEFAULT

In the event that either City or Authority shall breach or fail to perform any of the provisions of this Contract, the aggrieved Party shall promptly notify the other Party of the breach or failure to perform ("Default Notice"). In the event such breach or failure to perform is not cured within 30 days after the receipt of such notice, the Party sending the notice, at its discretion, may notify the other Party of its intention to declare this Contract terminated. Upon receipt of such notice the violating Party shall have 30 days to cure such violation or if the violation cannot reasonably be cured in 30 days, such longer time as is reasonably required not to exceed 90 days if within 15 days of receiving the notice the defaulting Party commences to cure the default and thereafter continuously and diligently pursues the cure prior to final action by the other Party declaring this Contract terminated. Any notice requirement under the terms of this Article shall be in writing and shall be delivered by certified mail in accordance with Articles 9 and 10 above. The Parties agree to deliver copies of any Default Notice to Tenaska at 14302 FNB Parkway Omaha, Nebraska 68154, attention: Legal Department and to any parties specified by City in writing. In the event a Default Notice is sent by Authority to City for failure to pay the annual charge, Authority will accept payment directly from Tenaska for the annual charge.

No failure on the part of either Party to this Contract to require the performance by the other Party of any provision of this Contract shall in any way affect either Party's right to enforce such provision, nor shall any waiver by either Party be held to be a waiver of any other provision. No rights under this Contract may be waived and no modification or amendment to this Contract may be made except by written amendment executed by the Parties.

## ARTICLE 12

### SEVERABILITY

The Parties hereto agree that if any of the provisions of this Contract are held to be invalid or to contravene Texas law, or the laws of the United States, such fact shall not invalidate the entire Contract, but it shall be construed as though not containing that particular provision, and the rights and obligations of the Parties shall be construed and remain in force accordingly.

## ARTICLE 13

### CONTRACT ASSIGNMENT

The Parties understand and agree that this Contract may not be assigned without the express written consent of other Party except to a successor entity created by law to take over substantially all of the functions for which the Party now has responsibility. However, no assignment to a successor entity shall relieve a Party from liability pursuant to this Contract without the agreement of the other Party, which agreement may be withheld.

## ARTICLE 14

### TERMINATION

This Contract may be terminated upon mutual written consent of the Parties hereto. The City, at its sole discretion, may terminate this Contract: 1) upon the receipt of a Notice of Termination for Convenience from Tenaska; 2) if Tenaska fails to exercise its option as provided by the Tenaska Agreement (the "Tenaska Option"); or, 3) if the Tenaska Agreement terminated in accordance with the terms of that agreement.

The obligations of the City and Authority contained in Articles 13, 15, 19, 20, 23 and 26 shall survive the termination of this Agreement in the event that Authority has executed a contract for the construction of the improvements described in Article 28.

## ARTICLE 15

### VENUE

The place of performance as agreed to by the Parties to this Contract shall be Tarrant County, Texas. In the event any legal proceeding is brought to enforce this Contract or any provision hereof the same shall be brought in said Tarrant County, Texas.

## ARTICLE 16

### FAILURE TO DELIVER

City agrees that in the event of water shortage, Authority shall incur no liability for the reduction or termination of sales of water hereunder, when, in Authority's sole judgment, such action is necessary to comply with any order of any court or administrative body or any statute or regulation of any governmental body (which does not include the Authority) having appropriate jurisdiction.

Authority has adopted a water conservation and drought contingency plan. If City fails to implement its own drought contingency plan at the request of the Authority, Authority is authorized to institute rationing and to enforce any contractual, statutory, or common law remedies available to Authority necessary to protect the public welfare. If the City fails to implement its drought contingency plan at the request of the Authority, the Authority may reduce the amount of water made available to the City under this Contract to the amount of water Authority estimates would be necessary to satisfy City's demand if City had implemented its drought contingency plan.

## ARTICLE 17

## QUALITY OF RAW WATER

Water sold hereunder is non-potable, raw water. Authority expressly disclaims any warranty as to the quality or suitability for use by City. City agrees that any variation in the quality or characteristics of water contemplated for sale hereunder shall not entitle City to avoid its obligation to make payments provided for herein. *THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION HEREIN.*

### ARTICLE 18

#### PAYMENT OF TAXES

In the event any sales or use taxes, or taxes of any similar nature are hereafter imposed on gathering, taking, sale, use, or consumption of the water received by City hereunder, the amount of such taxes shall be borne by City. In addition to all other charges, and whenever Authority shall be required to pay, collect, or remit any such taxes on water received by City, then City shall promptly reimburse Authority therefor.

### ARTICLE 19

#### DELINQUENT PAYMENTS

All amounts due and owing to Authority by City shall, if not paid when due, bear interest at the rate of 10 percent per annum from the date when due until paid. If any amount due and owing by City to Authority is placed with an attorney for collection, City shall pay to Authority reasonable attorneys' fees, in addition to all other payments provided for herein, including interest.

### ARTICLE 20

#### FORCE MAJEURE

In the event that the performance by the Parties hereto of any of the Parties' obligations or undertaking hereunder shall be interrupted or delayed by an occurrence beyond the reasonable control of that Party (the "Affected Party") and not occasioned by the conduct of or the failure to take action by either Party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto ("Force Majeure Event"), then the Parties shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof. Notwithstanding the preceding sentence, economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic will not be a Force Majeure Event. Additionally, the Affected Party:

1. Will give prompt notice to the other Party of any Force Majeure Event;
2. Use its best efforts to mitigate the effects of such Force Majeure Event as promptly as reasonably practicable;
3. Furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of the Force Majeure Event; and
4. Resume the performance of its obligations under this Contract as soon as is reasonably practicable after the Force Majeure Event is remedied or ceases to exist.

No damages shall be recoverable from Authority by City by reason of the suspension of the delivery of water due to any of the causes above mentioned, and no failure of Authority to meet any obligations by reason of force majeure shall relieve City from its obligations to make payments required under the terms of this Contract.

## ARTICLE 21

### STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS

This Contract is subject to all applicable federal, state and local laws and any applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction. Nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction, and each Party agrees to make a good faith effort to support such proposed laws and regulations which would be consonant with the performance of this Contract in accordance with its terms. The City acknowledges that it is responsible for securing the authorization of the TCEQ for any new, not previously authorized, points of diversion of water diverted pursuant to this Contract.

## ARTICLE 22

### REPORTING REQUIREMENTS

The effectiveness of this Contract is dependent upon Authority and City complying with the rules and regulations of the TCEQ or an agency succeeding to its jurisdiction. Authority will file an executed copy of this Contract with the Executive Director of said Commission pursuant to the rules of the Commission. City shall submit an annual written report to the Authority, on forms provided by said Commission, indicating the total amount of water diverted under this Contract each week and each month. In addition, on or before the fifth day of each month, City shall furnish to Authority, on forms provided by Authority, the total amount of water diverted under this Contract during the prior month.

## ARTICLE 23

### INDEMNITY

**SUBJECT TO AND WITHOUT WAIVING IMMUNITIES AND DEFENSES, TO THE EXTENT PROVIDED BY LAW, THE PARTIES HEREBY AGREE TO INDEMNIFY EACH OTHER AND PROVIDE A LEGAL DEFENSE FOR AND/OR HOLD AUTHORITY HARMLESS FROM AND DEFEND EACH OTHER AGAINST ANY CLAIM THAT MAY ARISE IN CONNECTION WITH OR THAT ARISES AS A RESULT OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO THE QUALITY, QUANTITY, USE, MISUSE, TRANSPORTATION, CHARGES FOR AND METERING OF WATER OR THE INSTALLATION, INSPECTION, ADJUSTING, AND TESTING OF METERING EQUIPMENT.**

## ARTICLE 24

### CONDITION SUBSEQUENT

The City is not obligated to pay the Annual Charge for raw water unless and until Tenaska exercises its option to purchase water from the City in accordance with the Tenaska Agreement. This Contract (and the commitment described below) shall terminate in the event

Tenaska fails to exercise its option to purchase water from the City as provided by the Tenaska Agreement.

ARTICLE 25

COMMITMENT

Upon the execution of this Agreement, and until Tenaska exercises its option to purchase water from the City under the Tenaska Agreement, City shall have the right to purchase and this Contract shall be deemed to be the commitment by the Authority to deliver 65 acre-feet per year of raw water (the "Standby Quantity") from the Authority's right to divert and use raw water from Lake Livingston, pursuant to Certificate of Adjudication No. 08-4248. The Authority's standby charge to the City for the commitment granted hereunder shall consist of an annual standby fee (the "Annual Standby Fee"). The Annual Standby Fee shall be calculated by multiplying the Standby Quantity in acre-feet by the standby fee set forth in Resolution No. R-1403 ("R-1403"), or any subsequent revision of that resolution as approved by the Authority's Board of Directors. The Authority's standby fee as of the Effective Date of this Contract is 30%. This calculation is as follows:

$$\text{Annual Standby Fee} = \frac{(\text{Standby Quantity in AF}) \times (\text{standby fee set forth in R-1403})}{(365) \times (\text{number of days the Contract is effective for the fiscal year which shall not extend beyond the last day of the option period in the Tenaska Agreement})}$$

The City agrees that on or before November 1, 2016, it will pay to the Authority an amount equal to the Annual Standby Fee as calculated above for Authority's then-current fiscal year. On or before November 1<sup>st</sup> of each year thereafter until this Contract terminates or until Tenaska exercises the Tenaska Option, the City will pay to the Authority an amount equal to the Annual Standby Fee as calculated above for Authority's then-current fiscal year. The commitment described in this article shall terminate on November 1, 2024.

The current R-1403 Raw Water Rate for water sales that is incorporated by reference in this Contract is \$95 per acre-foot. The Authority will advise the City in writing of any changes in that rate or to R-1403. In the event of any revisions to R-1403, the City's future payments hereunder shall be calculated as provided above, but using the newly established rate and fee structure.

The Annual Standby Fee paid by the City pursuant to this Contract shall be retained by the Authority in consideration of the grant of the commitment, and shall not constitute a credit towards future purchases of raw water by the City. The City stipulates and agrees that the charges and policies specified in this Contract related to this commitment are just, reasonable, and without discrimination, and constitute standby fees and are not rates charged for the sale of water controlled by the Authority under Certificate of Adjudication No. 08-4248.

ARTICLE 26

EFFECTIVE DATE

The Effective Date of this Contract is \_\_\_\_\_, 2016.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which is deemed to be an original and as of the day and date first written above.

**TRINITY RIVER AUTHORITY OF TEXAS**

**CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
J. KEVIN WARD, General Manager

\_\_\_\_\_  
ANDY BRAUNINGER, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HOWARD S. SLOBODIN, Secretary  
Board of Directors

\_\_\_\_\_  
LEONARD SCHNIDER, City Attorney

(SEAL)

**Item # 4**

**SECOND AMENDMENT TO AGREEMENT FOR PURCHASE AND DELIVERY  
OF TREATED WATER**

This Second Amendment to the Agreement for the Purchase and Delivery of Treated Water ("Second Amendment"), entered into the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between the City of Huntsville, Texas, a home rule municipal corporation in Walker County, Texas ("City"), and Tenaska Frontier Partners, Ltd., a Texas limited partnership ("Tenaska"). This Second Amendment shall constitute an amendment to the June 1, 1998 Agreement for Purchase and Delivery of Treated Water between the City and Tenaska, as amended by the First Amendment to the Agreement for the Purchase and Delivery of Treated Water, dated August 21, 2001, (the "Treated Water Agreement"). Whenever used in this Second Amendment, the term "Party" shall mean City or Tenaska, individually, and the term "Parties" shall mean City and Tenaska, collectively.

**RECITALS:**

WHEREAS, pursuant to the Treated Water Agreement, City contracts with Tenaska for the provision of water to its electric generating plant located near Shiro, Grimes County, Texas, and the City serves Tenaska through a pipeline constructed by Tenaska and owned and operated by City ("Pipeline"); and

WHEREAS, the Pipeline serving Tenaska is sized to supply up to 8.4 million gallons per day ("MGD"), and Tenaska has reserved up to 7.0 MGD capacity in the Pipeline; and

WHEREAS, the Treated Water Agreement contemplates in paragraph 6 that additional users may be served by the Pipeline and Tenaska and City will enter into agreements as necessary to meter water usage by Other Customers, and to provide for proportionate allocation of expenses of, and responsibility for the repair, replacement, and maintenance of the Pipeline; and

WHEREAS, Tenaska Roan's Prairie Partners, LLC ("Tenaska Roan's Prairie") intends to construct, own, and operate a 650 megawatt natural gas-fired peaking plant together with related equipment and other improvements at a location near the Tenaska facility in Shiro, Grimes County, Texas; and

WHEREAS, City and Tenaska Roan's Prairie, on \_\_\_\_\_, 2016, entered into an agreement to provide Tenaska Roan's Prairie with treated water through the Pipeline and to proportionately allocate water delivered by the Pipeline and expenses and responsibilities for the Pipeline between Tenaska, Tenaska Roan's Prairie, and any other future customers that may connect to the Pipeline; and

WHEREAS, this Second Amendment provides for the proportionate allocation of expenses of, and responsibility for the repair, replacement, and maintenance of the Pipeline; and

WHEREAS, the City has authority pursuant to Texas Local Government Code § 552.001 to provide water service inside and outside its city limits in a manner that is in the best interest of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree to amend, modify and change certain paragraphs of the Treated Water Agreement as follows:

A. Paragraph 3(c) shall be amended in its entirety to read as follows:

3(c) Title to the materials and consumables to be incorporated into the Pipeline and Pump Station shall transfer as a donation from Tenaska to the City upon delivery of the same to the construction site and prior to their incorporation or use by Tenaska or its contractors or subcontractors. Tenaska hereby grants, transfers and conveys all of its right, title and interest in such materials and consumables effective as of such date. City hereby accepts the transfer of title to such materials and consumables as a donation as of such effective date. The foregoing transfer of title does not relieve Tenaska of its obligation to construct the Pipeline and the Pump Station nor any obligation for protection, custody, care and operational control of the Pipeline and Pump Station until the time of completion of the Pipeline, the Pump Station and the Water Intake/Plant Improvements. The City shall assume all such obligations thereafter except as expressly set forth in connection with the Pipeline set forth in this paragraph 3(c). During the term of this Agreement the City shall not lien, encumber, subordinate, transfer or convey any of its interest in the Pipeline or the Pump Station to any other person or entity without the written consent of Tenaska. Throughout the term of this Agreement, the City shall repair, replace, operate, and maintain all of the City's Water System and the Pipeline in a manner consistent with (i) the terms and provisions of this Agreement, (ii) the Plans and Specifications, (iii) industry practice, and (iv) all applicable federal, state or local laws, statutes, regulations, orders, requirements and codes; provided, however, that if an Interruption, other than a Scheduled Interruption, in the Supply of Water is caused due to a problem with the Pipeline and Tenaska makes a determination that the problem cannot be solved by the City within twelve (12) hours after the problem arises, then at any time during the term of this Agreement, Tenaska, in its discretion, may, but shall not be obligated to, undertake the repair, replacement and maintenance of the Pipeline in accordance with the foregoing standards. If Tenaska undertakes the repair, replacement and maintenance of the Pipeline as provided in the immediately preceding sentence, the cost of all such repair, replacement, and maintenance work shall be allocated as provide in this paragraph 3(c) below. Any enlargement, improvement, or extension of the Pipeline made for the sole purpose of serving Other Customers shall be made at the sole expense of the City. Tenaska shall be responsible for its proportionate share of any costs incurred by the City to operate, maintain, repair, and replace the Pipeline in accordance with the following formula:

$$\textit{Tenaska Allocated Pipeline Repair Costs} = \left( \frac{7 \textit{ MGD}}{(7 \textit{ MGD} + B)} \right) \textit{Total Pipeline Repair Costs}$$

With "B" equaling the sum of the capacity (in millions gallons per day) allocated to Other Customers connected to the Pipeline.

The City, in its sole discretion, may finance any costs associated with the design and construction of any maintenance, repair, improvements, upgrade, replacement, or other modification of the Pipeline. If the City elects to finance the costs, the City shall allocate to Tenaska a portion of the debt service (unless such design and construction is for the

purpose of serving Other Customers, in which case, Tenaska shall not be subject to such allocation) in accordance with the formula described in paragraph 5(b)(i)(2), with the "Cost of Financing" being the total cost of the design and construction of any maintenance, repair, improvements, upgrade, replacement, or other modification of the Pipeline, including all costs of engineering, design, construction, inspection, fees for issuance, attorneys, financial advisors, bond ratings, escrow agents, reserve funds, and other obligations typically incurred and financed by the City for similar projects.

Except as otherwise provided in this paragraph 3(c), on or before September 1 of each year, the City will send an itemized budget to Tenaska. Tenaska may review the budget and provide comments to the City regarding the budget. The City may, but is not required to, adjust the budget based on Tenaska's comments. Tenaska shall pay the City each month one-twelfth (1/12<sup>th</sup>) of Tenaska's proportionate share (determined pursuant to the formula for allocation of Repair Costs shown above) of the City's costs as presented in the budget to operate, maintain, repair, and replace the Pipeline. Tenaska shall make each payment provided for in this paragraph 3(c) in accordance with paragraph 5(d).

In the event the City must make repairs or replacements of the Pipeline that are not included in the budget and that equal or exceed \$30,000, the City shall submit an itemized interim invoice to Tenaska of the estimated or actual costs of the repairs and replacements for Tenaska's review and comment. To the extent practicable, the City will provide Tenaska 30 days' notice before undertaking such repairs. The City may, but is not required to, adjust the itemized interim invoice based on Tenaska's comments. Tenaska shall pay the City Tenaska's proportionate share of the City's costs for the repairs and replacements of the Pipeline within thirty (30) days after receipt of the interim invoice, but only to the extent such amounts do not arise or result from, our of or in connection with the negligent acts, errors, or omissions of the City, the Authority, or any of its or their agents. If Tenaska fails to pay any amount when due, interest thereof shall accrue at the rate of ten percent (10%) per annum from the date when due until paid.

As part of the City's Reconciliation Report described in paragraph 5(b)(ii)(2), Tenaska's proportionate share of the operation and maintenance expenses of the Pipeline actually incurred by the City during the preceding fiscal year of the City will be determined. If all payments made by Tenaska are less than Tenaska's proportionate share of the actual expenses, then Tenaska shall pay the amount of the deficiency with the next itemized invoice from the City. Any excess paid by Tenaska shall be applied as a credit to Tenaska's next itemized invoice or invoices.

B. Paragraphs 4(a) shall be amended in its entirety to read as follows:

- 4(a) A metering station with all pertinent metering equipment shall be owned, installed, continually operated and maintained, tested, calibrated and adjusted by the City, to be located at a point designated by the City and where the Supply of Water enters the Pipeline ("Metering Point 1") on property of the City or the Authority near the Water Plant Site. The amount of water supplied through Metering Point 1 shall be the "Metered Water." A metering station with all pertinent equipment shall be owned, installed and continually operated and maintained by the City, tested, calibrated and adjusted by the City, to be located at a point designated by the City and where the supply of water leaves the Pipeline and enters the Electric Plant Site ("Metering Point 2"). The City may install,

or have installed, other metering stations to be owned, operated and maintained by the City, tested, calibrated and adjusted by the City, to serve Other Customers connected to the Pipeline (“Metering Point 3”), and such other metering stations shall be located where the supply of water leaves the Pipeline and enters another pipeline or facility that is not part of the existing City’s Extended Water System. Collectively, Metering Point 1, Metering Point 2, and Metering Point 3 are referred to as the “Metering Points” or “Metering Stations.” The Metering Stations shall be capable of providing accurate and continuous measurement and recording of the quality of Treated Water, rate of the Treated Water flow, and volume of Treated Water. The City may require Tenaska to install a supervisory control and data acquisition (SCADA) system at Metering Point 2, and may require Tenaska to pay for its proportionate share of any improvements to the SCADA system at Metering Point 1, unless such SCADA system is required for the purpose of serving Other Customers. Any SCADA system installed at Metering Point 1 shall be considered an operation, maintenance, repair, and replacement cost to the Pipeline as provided by paragraph 3(c). Tenaska bears the responsibility for maintaining the Treated Water quality and flow rate at any point on its side of the Metering Point 2. City shall test all metering equipment at least annually and shall maintain the equipment within acceptable industry standards or accuracy. Acceptable accuracy shall be variation within plus or minus three percent (3%) at the manufacturer’s recommended testing range. Upon either Party’s request such metering equipment may be retested at the requesting Party’s expense. If upon test, said Treated Water metering equipment is found to be in error by not more than three percent (3%), then any previous records produced based on such meter shall be deemed accurate, but such meter shall be immediately adjusted to record more accurately. If such metering equipment is found to be in error by more than three percent (3%), then the Parties shall use reasonable efforts to determine the volume of Treated Water actually metered at the Metering Point 1 and Metering Point 2 to properly allocate the Metered Water delivered through the Pipeline between Tenaska and Other Customers during the period affected by such error, and the equipment shall be adjusted to record accurately. Tenaska shall have the right to request that the City test and adjust the metering equipment of Other Customers served by the Pipeline in accordance with this paragraph 4(a). City shall notify Tenaska of the schedule time and date of each test at the Metering Points at least three (3) days in advance of each test of any of the Metering Stations and Tenaska shall have the right to have a representative present at the time of any test.

C. Paragraph 4(f) shall be added as follows:

4(f) To allocate the Metered Water between Tenaska and Other Customers using the Pipeline, Tenaska’s Allocated Volume (gallons) shall be determined using the following formula:

$$Tenaska\ Allocated\ Volume = \left( \frac{VolMP2}{VolMP2 + VolMP3} \right) VolMP1$$

With “VolMP1” equaling the volume of water (gallons) metered at Metering Point 1, with “VolMP2” equaling the volume of water (gallons) metered at Metering Point 2, and with “VolMP3” equaling the sum of the volume of water (gallons) metered at Metering Point 3.

D. Paragraph 5(b)(i)(2) shall be amended to read as follows:

5(b)(i)(2) 1/12 of the annual debt service for Cost of Financing allocated to Tenaska in accordance with the following formula:

$$Tenaska\ Allocated\ Debt\ Service = \left( \frac{7\ MGD}{(7\ MGD + B)} \right) Annual\ Debt\ Service$$

With "B" equaling the sum of the total capacity in million gallons per day allocated to Other Customers connected to the Pipeline; plus

E. Paragraph 5(b)(ii)(b) shall be amended to read as follows:

5(b)(ii)(1) Volume Charge

(b) After there has been a reconciliation of such an operating budget, Tenaska shall pay to the City a volume charge equal to the result of multiplying the number for each one thousand gallons of Allocated Volume times the quotient of the Adjusted Huntsville Regional Water Supply System ("HRWSS") Expenses (i.e., the Authority's expenses ("HRWSS Expenses") for operating the HRWSS, less the line items for all raw water less the line items for all debt service of the HRWSS, including the Cost of Financing, less \$650,000) divided by each one thousand gallons treated by the HRWSS in the twelve (12) month period included in the audit, as shown in the following formula:

$$VolumeCharge = \frac{AllocatedVolume}{1000} \left| \frac{HRWSSExpense - (RawWater + DebtService + \$650,000)}{HRWSS\ Treated\ Water / 1000} \right|$$

F. Paragraph 5(b)(ii)(2) shall be amended to read as follows:

5(b)(ii)(2) Reconciliation of Water Charge. Within thirty (30) days after the City receives the Annual Audit Report of the Authority, the City will prepare and deliver to Tenaska a reconciliation report ("Reconciliation Report"). The Reconciliation Report will compare the City's actual costs for Allocated Volume against payments made by Tenaska under paragraph 5(b)(ii) for the Volume Charge ("Reconciled Volume Charge"). The Reconciliation Report shall identify the amount of Allocated Volume, the actual HRWSS Expenses and the Reconciled Volume Charge. The Reconciled Volume Charge is the result of multiplying each one thousand gallons of Allocated Volume covered by the Annual Audit Report times the quotient (of the Authority's actual expenses for operating the HRWSS, less the line items for all raw water less the line items for all debt service of the HRWSS, including the Cost of Financing, as all such items are reported in the Annual Audit Report of the Authority, less \$650,000) divided by each one thousand gallons of all water treated by HRWSS, as shown in the following formula:

$$ReconciledVolumeCharge = \frac{AllocatedVolume}{1000} \left| \frac{HRWSSExpense - (RawWater + DebtService + \$650,000)}{HRWSS\ Treated\ Water / 1000} \right|$$

If the Volume Charge paid by Tenaska exceeds the Reconciled Volume Charge, the City will refund the difference to Tenaska when the City delivers the Reconciliation Report to Tenaska. If the Volume Charge paid by Tenaska is less than the Reconciled Volume Charge, Tenaska will pay the additional amount owed within thirty (30) days of receipt of the Reconciliation Report.

Additionally, for each one thousand gallons of Allocated Volume in excess of 2,190,000,000 gallons during the period covered by the Annual Audit Report of the Authority, Tenaska shall pay the City for the raw water at a rate of twenty-five percent (25%) of the then current industrial rate for potable water.

- G. Paragraph 5(b)(iii) is deleted in its entirety.
- H. Paragraph 6 shall be amended in its entirety to read as follows:
  - 6. OTHER CUSTOMERS. The Parties recognize that the City may have customers other than Tenaska desiring to purchase water from the City using the City's Extended Water System ("Other Customers"). Subject to City's obligation to serve Tenaska first, the City shall have a right to use the City's Extended Water System to serve water to Other Customers up to 1.4 MGD, subject also to the condition that doing so will in no way interfere with the City providing the Supply of Water to Tenaska or Tenaska's right to use the Pipeline and the Pump Station as provided in paragraph 2(b), paragraph 2(c) or paragraph 3(d). The Parties agree that the City will allocate the Metered Water, Cost of Financing, and the costs incurred by the City to operate, maintain, repair, and replace the Pipeline between Tenaska and the Other Customers using the allocation formulas provided in paragraphs 3(c), 4(f), and 5(b).
- I. Paragraph 7(d) shall be added in as follows:
  - 7(d) Conservation and Pro Rata Reductions. Tenaska shall develop and implement water conservation measures using the applicable elements of Title 30, Chapter 288 of the Texas Administrative Code. In the case of a shortage of water resulting from drought, accident or other cause, the Authority has the right pursuant to Article 15 of the Huntsville Raw Water Supply Contract, entered into as of April 22, 1998, and Texas Water Code § 11.039 to divide the water to be distributed among all of its customers pro rata according to the amount of water to which each customer may be entitled. In the event that the Authority reduces the amount of water pro rata to each customer, the City may reduce proportionately the amount of water that is available to Tenaska under this Agreement during the period of time the Authority has implemented pro rata reductions. Such a reduction shall be considered an "Excusable Interruption" under paragraph 7(b).
- J. The addresses listed in paragraph 13(a) shall be amended as follows:

TENASKA FRONTIER PARTNERS, LTD.

ATTN: Aaron Dubberly  
14302 FNB Parkway  
Omaha, Nebraska 68154-5212  
Phone: 402-691-9540

Fax: 402-691-9530

CITY OF HUNTSVILLE, TEXAS

ATTN: City Manager

1212 Avenue M

Huntsville, TX 77340

Phone: 936-291-5400

Fax: 936-291-5409

K. All of Other Terms Remain in Force and Effect. The City and Tenaska intend and agree that all other terms and conditions of the Treated Water Agreement not expressly amended by this Second Amendment shall remain in full force and effect. If there is a conflict between the terms and conditions of this Second Amendment and the Treated Water Agreement, the terms and conditions of this Second Amendment control.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

*[Signatures Follow]*

Attest:

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Lee Woodward, City Secretary  
City of Huntsville, Texas

\_\_\_\_\_  
Andy Brauninger, Mayor  
City of Huntsville, Texas

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney  
City of Huntsville, Texas

THE STATE OF TEXAS           §

§

COUNTY OF WALKER           §

BEFORE ME, the undersigned authority, on this day personally appeared Andy Brauninger known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the CITY OF HUNTSVILLE, TEXAS, a home rule city in Texas, and that he executed the same as the act of the City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Texas

SEAL

TENASKA FRONTIER PARTNERS, LTD.

By: Tenaska VI Partners, L.P.  
Managing General Partner

By: Tenaska VI, Inc.  
Managing General Partner

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

Title: \_\_\_\_\_

THE STATE OF NEBRASKA §

§

COUNTY OF DOUGLAS §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TENASKA FRONTIER PARTNERS, LTD, a Texas limited partnership, and that he executed the same as the act of Tenaska Frontier Partners, LTD for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Nebraska

SEAL

Item # 5

WASTEWATER DISPOSAL AGREEMENT

This Wastewater Disposal Agreement ("Agreement") is entered into the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by the City of Huntsville, Texas, a home rule municipal corporation in Walker County, Texas ("the City") and Tenaska Roan's Prairie Partners, LLC, a Delaware limited liability company, ("Tenaska"). The term "Party" shall mean the City or Tenaska, individually, and the term "Parties" shall mean the City and Tenaska, collectively.

RECITALS:

A. Tenaska intends to construct, own, and operate a 650 megawatt natural gas-fired peaking plant together with related equipment and other improvements ("Generating Station") at a location near Shiro, Grimes County, Texas ("Generating Station Site").

B. The Generating Station will generate wastewater ("Wastewater"), which the City agrees to accept at its Robinson Creek Wastewater Treatment Facility located at 4420 FM 1374, Huntsville, Texas (the "Robinson Creek Facility") subject to the provisions of this Agreement.

C. In order to accept the Wastewater the City will need to make certain improvements to the Robinson Creek Facility, which Tenaska has agreed to fund.

D. The City has authority pursuant to Chapter 46 of the City's Code of Ordinances (the "City's Code") to accept the Wastewater from batch hauling by truck and treat the Wastewater at the Robinson Creek Facility.

E. Pursuant to Section 46-181 of the City's Code, the City has the authority to enter into special agreements with industrial users setting out special terms under which industrial users may discharge into the City's wastewater collection and treatment system ("City's Wastewater System").

F. With the improvements that will be funded by Tenaska, the City has determined that it has the capacity to accept and treat the Wastewater at the Robinson Creek Facility in the amounts requested by Tenaska, and that it is in the City's best interest and the best interest of the citizens of the City of Huntsville, Texas, to enter into this Agreement to accept and treat the Wastewater at the Robinson Creek Facility.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. Term of Agreement. This Agreement shall be effective upon its execution by the duly authorized representatives of each Party. The term of this Agreement shall extend to December 31, 2054 subject to the termination rights set out in Section 2. If at the end of the Term, Tenaska is then not in material default under this Agreement beyond the cure period in Section 2(b) below, Tenaska shall have the right to extend this Agreement for two consecutive 10-year terms ("Extended Term"). Tenaska shall exercise its right(s) to extend this Agreement under this Section 1 by delivery of written notice of such exercise to City to be given no later

than one hundred eighty (180) days prior to the expiration of the then current term of this Agreement.

2. Termination of Agreement; Opportunity to Cure.

a. The City may terminate this Agreement if (1) Tenaska is unable to comply with any applicable Federal, State, or City pretreatment standards after an opportunity has been provided by the City, in accordance with Section 2(b), to comply with the standards; (2) Tenaska violates the City's wastewater disposal ordinances and standard as set out in Chapter 46 of the City's Code, (2) Tenaska fails to comply with the terms and conditions of this Agreement, (3) the disposal of wastewater into the City's Wastewater System causes or will cause the City to violate its wastewater discharge permits or other authorizations, (4) Tenaska fails to pay any required fees or surcharges within the time provided by this Agreement, or (5) Tenaska fails to notify the City of a change in the Wastewater that results in the Wastewater exceeding the Quality Requirements (defined below) to the extent the Quality Requirements apply to the Generating Station.

b. Before exercising any remedies against Tenaska for a violation of this Agreement, the City will provide written notice to Tenaska of the violation and thirty (30) days to cure the violation. If Tenaska fails to provide any notice to the City as required by this Agreement, Tenaska will be deemed to have cured said failure by providing the appropriate notice to the City during said thirty (30) day cure period.

c. Tenaska may terminate this Agreement for convenience at any time and at no cost to Tenaska (except for the payment of any amounts otherwise owed by Tenaska under this Agreement as of the termination date) by delivering written notice thereof to the City.

3. Robinson Creek Facility Improvements.

a. City shall provide wastewater service upon the receipt of written notice to commence wastewater service to Tenaska ("Notice to Commence Wastewater Service") and upon completion of the Facility Improvements.

b. By no later than 90 days after Tenaska delivers its Notice to Commence Wastewater Service to the City, the City shall have designed, engineered, constructed and put in operating condition those facilities identified on the attached Exhibit "A" (collectively, the "Facility Improvements"). The City will provide Tenaska with a written monthly update on the status of construction of the Facility Improvements until the Facility Improvements have been completed (the "Construction Update").

c. Tenaska shall have the right to review and comment upon all designs and engineering plans and specifications ("Plans and Specifications") for the Facility Improvements and all architects, engineers and contractors or other professionals utilized by the City in connection with the Plans and Specifications prior to their finalization and implementation. Tenaska will reimburse the City for the actual third-party costs, without any mark-up or City overhead, paid by the City for the Facility Improvements within 30 days after receipt by Tenaska of a written request from the City, which request must include copies of paid invoices and other reasonable evidence of the costs paid by the City. If Tenaska fails to pay any of the foregoing amounts when due, interest shall accrue at the rate of ten percent per annum from the date when due until paid.

d. If the City does not complete the work described in this Section 3 by the deadlines in Section 3 or if the City will not complete said work by said deadline as evidenced by a Construction Update, then Tenaska may (but is not obligated to) take those actions that are necessary to satisfy the City's obligations and complete the improvements described in Section 3(b) and Exhibit "A" ("Self Help Actions"). The City shall cooperate with Tenaska in connection with the Self Help Actions. Tenaska shall allow a representative of the City to be present during the Self Help Actions. Tenaska will comply with City's safety and operational protocols at its Robinson Creek Facility and shall only have access to the portions of the City's Robinson Creek Facility that are necessary to complete the improvements described on Exhibit "A". The City's cooperation will include granting Tenaska access to any facilities or lands and assigning the City's rights to any agreements, Plans and Specifications, easements, or other rights necessary for the Self Help Actions. If Tenaska takes any Self Help Actions, the City shall pay Tenaska that portion of the costs ("Additional Self Help Costs") of the Self Help Actions that are greater than or additional to the costs that Tenaska would have paid the City if Tenaska had not taken the Self Help Actions. The City shall pay the Additional Self Help Costs within ten days after Tenaska delivers to the City a written request ("Self Help Reimbursement Request") with documents reasonably evidencing those costs together with interest accrued thereon at the rate of ten percent per annum from the date when due until paid. At Tenaska's option, the Additional Self Help Costs may be offset against any amount Tenaska may owe the City pursuant to this Agreement. Neither the exercise of any Self Help Actions nor the payment of any Self Help Reimbursement Request shall be a cure of any default for the purpose of determining whether the City is in default pursuant to this Agreement. The rights of Tenaska pursuant to this Section may be exercised by any Lender (hereafter defined).

4. Acceptance and Treatment.

a. The estimated source, quality, and characteristics of the Wastewater is described on the attached Exhibit "B". The quality of the Wastewater shall not exceed any national categorical pretreatment standards (as provided in 40 CFR 423.10) to the extent applicable to the Generating Station, or the City's local limits as set out in the City's Code (as provided in Section 46-179 of the City's Code) to the extent applicable to the Generating Station (collectively, the "Quality Requirements"). If the Wastewater exceeds these requirements, the City may require Tenaska to pretreat the Wastewater prior to disposal as provided by the City's Code.

b. The City shall accept Wastewater for disposal by truck from Tenaska at the Robinson Creek Facility Monday through Friday from 7:30 a.m. to 3:00 p.m. The City shall not be required to accept more than 102,000 gallons of Wastewater in any given day from Tenaska at the Robinson Creek Facility. The City may prohibit the disposal of the Wastewater if the Wastewater would cause a pass-through or interference, or contains a substance the disposal of which is prohibited by the City Code, including but not limited to Section 46.177 of the City's Code, or exceeds the Wastewater quality described in Section 3(a) above. The City, to ensure compliance, may inspect and test the contents of all Wastewater hauled by Tenaska to the City's Wastewater System for disposal.

c. Tenaska shall be responsible for transporting the Wastewater to the Robinson Creek Facility by truck at Tenaska's sole cost. Title to the Wastewater passes from Tenaska to the City when the Wastewater leaves Tenaska's transportation vehicles and enters into the receiving apparatus at the Robinson Creek Facility.

d. The City shall use its best efforts to maintain from all appropriate federal or state agency any necessary authorizations required to meet its obligations under this Agreement; however, Tenaska shall at no cost or liability cooperate with the City as may be reasonably necessary.

e. Tenaska shall comply with the City's ordinances and standards relating to the disposal of wastewater into the City's Wastewater System, as those may be amended from time to time. However, in exercising the City's rights under this Section 3(d), the City will not discriminate against Tenaska in imposing any pre-treatment requirements upon Tenaska's Wastewater that are more stringent than those imposed upon other parties with similar concentrations of dissolved solids.

5. Fees. Upon receipt by the City of Tenaska's Notice to Commence Wastewater Service, Tenaska shall pay to the City 1.5 times the then prevailing monthly base rate for commercial users on a monthly basis for the remaining term of the Agreement. Tenaska shall also pay 1.5 times the City's then prevailing per thousand gallon usage rate for commercial users. When calculating the fees owed by Tenaska, no gallons shall be included as part of the base rate. Additionally, the amount of wastewater disposed of into the City's Wastewater System by Tenaska shall be rounded up to the nearest 1,000 gallons. Tenaska shall make each payment provided for by this Section 4 within 30 days after receipt of the invoice. If Tenaska fails to pay any amount when due, interest thereof shall accrue at the rate of ten percent per annum from the date when due until paid.

6. Authorizations. This Agreement is a "Special Agreement" as that term is defined by section 46.181 of the City's Code, and so long as this Agreement is in effect and Tenaska complies with the City's ordinances and standards relating to the disposal of wastewater into the City Wastewater System, this Agreement serves as Tenaska's authorization to discharge the Wastewater into the City's Wastewater System in lieu of any permit that might otherwise be required by Chapter 46 of the City's Code. The City represents and warrants to Tenaska that the City has all required permits, authorizations, and lawful authority to accept and treat Wastewater as contracted for herein. The City will use its best efforts to timely obtain all future permits, authorizations and other authorities necessary to permit the City to continue to comply with this Agreement and Tenaska shall cooperate with the City, at no cost or liability to Tenaska, as may be necessary for the City to obtain the foregoing. Nothing in this Section waives the City's permitting and other requirements for individual haulers delivering Wastewater to the City's facilities; except however, the City will not impose (a) any requirements on haulers under this Agreement that it does not impose on other similar haulers utilizing the City's Robinson Creek Facility, except that haulers transporting Tenaska's Wastewater may carry up to 10,000 gallons of Wastewater at a time, or (b) charge any fees or costs on any hauler, all of which are covered by Section 4 above.

7. Continuity of Service.

a. Upon receipt by Tenaska from the City of a written notice prior to any scheduled suspension, interruption, delay, reduction or other interference ("Notice of Interruption") of the receipt of Wastewater at the Robinson Creek Facility ("Interruption", "Interrupt", or "Interrupted"), the City may temporarily Interrupt ("Scheduled Interruption") the receipt of Wastewater at the Robinson Creek Facility during a period not to exceed 24 hours, which is agreed to by Tenaska prior to such Interruption to correct the reason for the

Interruption. Whenever possible, a proposed Scheduled Interruption shall be scheduled during a shut-down of the Generating Station. The Notice of Interruption shall specify the duration and extent of the proposed Scheduled Interruption and the reason therefor. With additional written notice, the City may extend the period of the Scheduled Interruption if such additional time is reasonably necessary to correct the reasons for the interruption; however, if there is a conflict between the terms of this Section 7(a) and Section 7(b) below, the terms of Section 7(b) will prevail. During a Scheduled Interruption or during any period in which the City is in default under this Agreement, Tenaska will have the rights provided in Section 7(c)(4) below.

b. If the receipt of Wastewater is Interrupted as a result of an Excusable Interruption (as hereinafter defined), directly affecting the Robinson Creek Facility then during the Excusable Interruption the City shall not be obligated to receive Wastewater at the Robinson Creek Facility. The term "Excusable Interruption" means acts of God, comets, earthquake, explosion, fire, flood, insurrection, landslide, lightening, meteors, natural calamity, riot, storm, war, washout, governmental restraint or regulation, breakdown or damage to the City's Wastewater System, point of Wastewater delivery at the City's Robinson Creek Facility, or its power supply, or blockage to access to the point of Wastewater delivery at the City's Robinson Creek Facility, to the extent any of the foregoing should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by the City. However, "Excusable Interruption" shall not include economic conditions that render the City's performance of this Agreement unprofitable or uneconomic.

c. The City shall, by reason of any Excusable Interruption for which it has claimed relief under Section 6(b):

(1) use its best efforts to mitigate the effects of such Excusable Interruption and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;

(2) furnish weekly reports to Tenaska regarding the progress in overcoming the adverse effects of such event or circumstance of Excusable Interruption;

(3) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the Excusable Interruption is remedied or such event or circumstance, or the effect thereof on the City, ceases to exist; and

(4) accept Wastewater from Tenaska at the City's A.J. Brown Wastewater Treatment Plant; however, in such event Tenaska may not use delivery vehicles hauling more than 5,000 gallons of Wastewater per vehicle at this other treatment plant.

d. When the City is able, or would have been able if it had complied with its obligations under this Section 6, to resume the performance of any or all of its obligations under this Agreement affected by the Excusable Interruption, then the period of Excusable Interruption relating to such event or circumstance shall be deemed to have ended. The suspension of the City's performance shall be no greater scope than is required by the Excusable Interruption.

e. In the event that the City is rendered unable, wholly or in part, by Excusable Interruption, to carry out its obligations under this Agreement, except for those obligations requiring the payment of money, and if the City gives notice stating the reasons

therefor to Tenaska as soon as practicable after the occurrence being claimed as an Excusable Interruption then, insofar as and to the extent and for such reasonable time that such obligations are no longer affected (not including those obligations requiring the payment of money) by the Excusable Interruption, the City's performance obligations shall be suspended.

8. Assignment.

a. Except as otherwise provided herein, no right or interest in this Agreement shall be assigned by either Tenaska or the City without the written permission of the other Party and no delegation of any obligation or of the performance of any obligation by either Tenaska or the City shall be made without the written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, nothing contained in this Section 7 shall be construed to restrict Tenaska in any manner from freely granting a security interest, transferring in trust, mortgaging, hypothecating, assigning, or otherwise transferring Tenaska's right, title, and interest, or delegating its duties under this Agreement to any lender or its collateral agent or other person, its successors or assigns providing credit or loans to Tenaska in connection with the financing, refinancing or operation of the Generating Station (a "Lender") or construed to restrict any Lender from exercising its rights or pursuing its remedies available under any loan agreements, security agreements or other instruments or documents between itself and Tenaska or otherwise available to such Lender at law or in equity; and that Tenaska may assign this Agreement, without the prior written permission of the City, to Tenaska's Lender(s), and the City will execute (x) a consent to such assignment as may be reasonably requested by such Lender(s) and (y) its agreement to any amendments to this Agreement that do not materially affect the rights or obligations of the Parties that are requested by any Lender(s). Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this Section 7. Notwithstanding the preceding provisions of this Section, Tenaska shall have the right, without the consent of the City, to assign this Agreement, in whole or in part, to: (i) an affiliate of Tenaska; (ii) an entity to which Tenaska conveys or leases any part of the Generating Station Site provided the assignment is in connection with the sale or lease of any part of the Generating Station Site.

b. Either Party may assign its rights and delegate its obligations to any subsidiary or affiliate of such Party provided that no such assignment or delegation releases such Party from any of its obligations. An affiliate of Tenaska shall be a corporation or other business entity which is owned or controlled by, owns or control, or is under common ownership or control with Tenaska.

c. This Agreement shall be legally binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors, and permitted assigns.

9. Tenaska Lenders. The City acknowledges that, as a condition of Tenaska obtaining financing for construction of the Generating Station, Tenaska's Lender(s) will require a collateral assignment of this Agreement. In connection therewith, such Lenders will require Tenaska to execute a collateral assignment of this Agreement and an estoppel certificate together with a "Consent and Agreement", all in a form and substance satisfactory to the Lenders, as well as deliver an opinion from legal counsel as to the organization and standing of the City, the validity and proper execution of this Agreement, and like matters. The City agrees to execute and deliver such Consent and Agreement and to deliver such opinion of legal counsel as such

Lenders may reasonably require and in form and substance as the Lenders and the City may reasonably agree.

10. Estoppel Certificates. Within thirty (30) days, after delivery of a written request by either Party, the other Party will execute a document addressed to anyone designated by the requesting Party: (i) confirming the status of this Agreement and the performance of the obligations set forth herein, (ii) certifying to the terms of this Agreement, and (iii) providing such other information and confirmation reasonably related to this Agreement as the requesting Party may reasonably request (which if Tenaska is the requesting Party, such information or confirmation may include matters relating to the ability of the City to perform its obligations pursuant to this Agreement).

11. Miscellaneous Provisions.

a. The Parties shall have all rights and remedies available at law or in equity for a breach of this Agreement.

b. Except as otherwise provided in this Section, any notice, request, authorization, invoice, payment, direction, or other communication as allowed or required under this Agreement shall be given in writing and may be delivered in person, or by facsimile, or by email, or by overnight delivery service guarantying next day delivery, or by first class United States certified mail, properly addressed, return receipt requested with the required postage prepaid, to the intended recipient as follows:

Tenaska Roan's Prairie Partners, LLC  
Attn: Todd Jonas, Senior Vice President  
14302 FNB Parkway  
Omaha, Nebraska 68154  
Phone: 402-691-9500  
Fax: 402-691-9526  
Email: tjonas@tenaska.com

City of Huntsville, Texas  
Attn: City Manager  
1212 Avenue M  
Huntsville, Texas 77340  
Phone: 936-291-5400  
Fax: 936-291-5409  
Email: citysecretary@huntsvilletx.gov

In the event a Party utilizes "facsimile" transmitted signed documents or scanned and emailed signed documents, the Parties agree to accept and to rely upon same; and the Party shall provide to the other Party, within 72 hours of transmission, such documents bearing the original signatures. As clarification, only attachments to emails will be considered for notice purposes and nothing within the body of an email will be considered a notice under this Agreement. Either Party may change its address by giving the other Party reasonable notice of such change in accordance with this Section. All notices, request, and authorization of directions or other communications by a Party shall be deemed delivered when deposited in the mail, when

deposited with the overnight delivery service, at the time of the facsimile or email transmission as provided in this Section or personally delivered to the other Party.

c. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

d. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements of the Parties with respect to the subject matter hereof.

e. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

f. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; and to this end the terms and provisions of this Agreement are agreed to be severable.

g. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas, except to the extent such laws may be preempted by the laws of the United States of America.

h. If venue is proper in Walker County, the venue of any litigation arising out of this Agreement shall be in Walker County, State of Texas, or such other place in Texas as the Parties may agree in writing.

i. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either Party. Whenever used in this Agreement, the term "including" and "include" shall mean "including without limitation" whether or not so specified.

j. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which together shall constitute one instrument.

*[Signatures Follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

Attest:

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Lee Woodward, City Secretary  
City of Huntsville, Texas

\_\_\_\_\_  
Andy Brauningner, Mayor  
City of Huntsville, Texas

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney  
City of Huntsville, Texas

THE STATE OF TEXAS           §  
  §  
COUNTY OF WALKER           §

BEFORE ME, the undersigned authority, on this day personally appeared Andy Brauningner known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the CITY OF HUNTSVILLE, TEXAS, a home rule city in Texas, and that he executed the same as the act of the City for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Texas

SEAL

TENASKA ROAN'S PRAIRIE PARTNERS, LLC,  
A Delaware Limited Liability Company

By: \_\_\_\_\_  
Robert A. Ramaekers  
Vice President of Tenaska Roan's  
Prairie Partners, LLC

THE STATE OF NEBRASKA     §  
  §  
COUNTY OF DOUGLAS       §

BEFORE ME, the undersigned authority, on this day personally appeared Robert A. Ramaekers known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TENASKA ROAN'S PRAIRIE PARTNERS, LLC, a Delaware Limited Liability Company, and that he executed the same as the act of Tenaska Roan's Prairie Partners, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
The State of Nebraska

SEAL

## **EXHIBIT "A"**

### **FACILITY IMPROVEMENTS**

1. Expansion of entry drive to accommodate trucks holding greater than 4,200 gallons.
2. Removal of existing dump tank and installation of 6-inch diameter piping.
3. Installation of 4-inch quick connect cam lock for other disposal trucks.

Estimated cost (2015\$) is \$62,000.00.

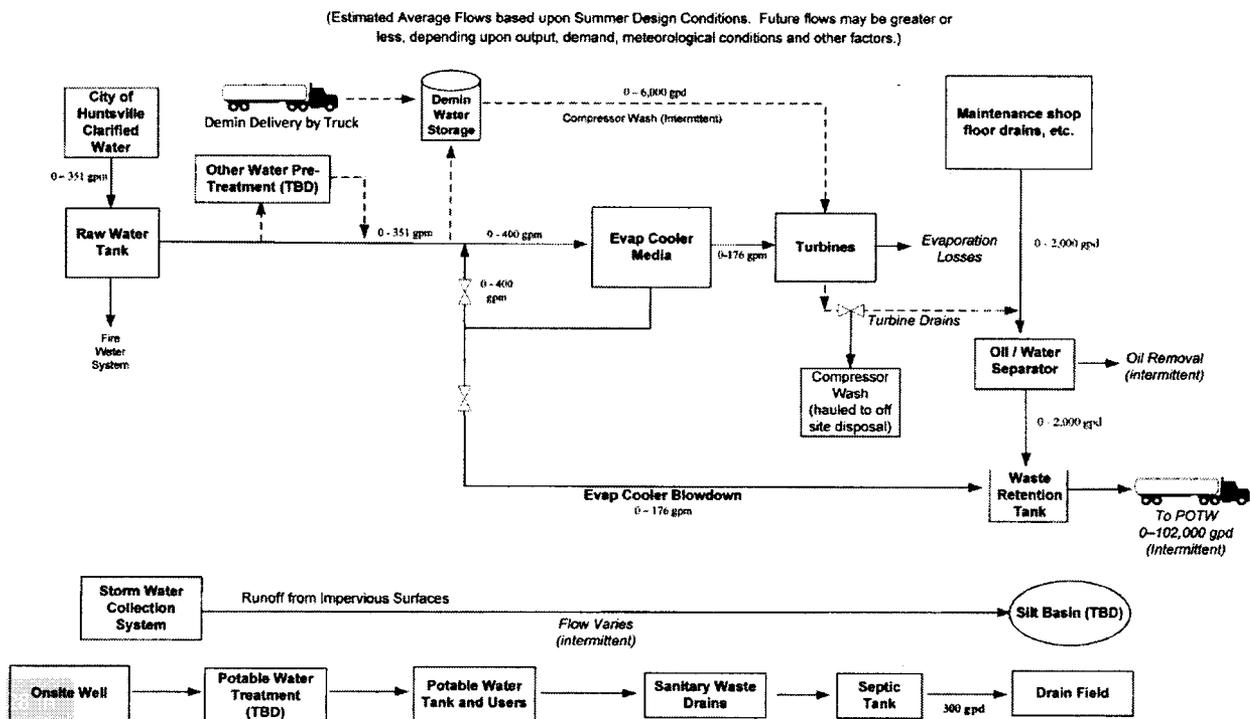
## EXHIBIT "B"

### WASTEWATER

The preconstruction anticipated wastewater quality is:

Arsenic	—	5.7	ug/L
Cadmium	—	0.0	ug/L
Copper	—	16.3	ug/L
Lead	—	5.1	ug/L
Mercury	—	0.0	ug/L
Nickel	—	22.6	ug/L
Selenium	—	5.4	ug/L
Silver	—	0.0	ug/L
Zinc	—	127.7	ug/L
Total Dissolved Solids	—	915.1	mg/L

Also, see the following flowchart:







## CITY COUNCIL AGENDA

5/17/2016

Agenda Item: 8a

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**Item/Subject:** Consider authorizing the City Manager to sign Addendum A, in the amount of \$1,383,054.20, to the Construction Manager at Risk (CMAR) Agreement with Garney Construction for Town Creek Drainage Improvement Project, first reading.

**Initiating Department/Presenter:** Neighborhood Resources, Engineering

**Presenter:** Sherry McKibben, Y.S. Ramachandra

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**Recommended Motion: FIRST READING** - Move to authorize the City Manager to sign Addendum A, in the amount of \$1,383,054.20, to the Construction Manager at Risk Agreement with Garney Construction for Town Creek Drainage Improvement 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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**Discussion:** In November 2015, the City Council authorized the City Manager to enter into a CMAR contract with Garney Construction (Garney) for pre-construction services for the Town Creek Drainage Project. Since that time, Garney has worked with the City's contracted engineering firm, Klotz Associates, on completion of the design and value engineering of the drainage structures. During this phase of the design, a four sub-projects approach (detention pond, open channels, underground structures, and utility relocations) to bidding the project was deemed the most effective method to get the best value for the City. On April 19, 2016 the City Council approved an agreement with Garney Construction to provide Construction Manager at Risk (CMAR) services for the City of Huntsville to construct the Town Creek Drainage Improvement Project.

At the May 3<sup>rd</sup> Council meeting, Council approved entering into an interlocal agreement with SHSU granting certain street segments in return for drainage easements for the detention pond. This easement should be signed by both parties and filed the first part of June.

In working with the engineering firm, Klotz Associates, Garney began advertising effective April 22, 2016, Request for Proposals (RFP) for the detention pond portion of this project. The detention pond construction will be at the location where SHSU's intramural fields currently exist and include grading the bottom and slopes, inserting of new 24" pipe inside the existing 72" rail tanker cars beneath the pond, grout filling the annular space between the new 24" pipe and existing 72" tanker cars, and installing a new culvert crossing underneath Bearkat Boulevard.

Proposals were opened on May 9, 2016, and subsequently scored by a team consisting of the Engineer (Klotz), Contractor (Garney), and City staff. For the detention pond portion of the Town Creek project, Garney is recommending awarding a construction contract to Solid Bridge Construction. The construction of the detention pond and new culvert crossing underneath Bearkat Boulevard is one of the most important aspects of the Town Creek Drainage Improvement project in order to contain and control the storm water before entering the open channels and underground structures downstream.

This agenda item is to amend Garney's Construction contract to include the guaranteed maximum price for the construction of the detention pond portion of the Town Creek Project, in the amount of \$1,383,054.20

Should the City Council wish to suspend the Rules of Procedure in order to adopt the item on the first reading, the following motion will suffice:

I move to suspend the City Council Rules of Procedure requirement for a second reading in accordance with its provision in Section 9 and, upon a two-thirds vote of the members of the City Council present, authorize the City Manager to sign Addendum A, in the amount of \$1,383,054.20, to the Construction Manager at Risk Agreement with Garney Construction for Town Creek Drainage Improvement Project.

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**Previous Council Action:** On November 17, 2015 Council awarded the pre-construction contract to Garney. On April 19, 2016, Council awarded the Construction Manager at Risk contract to Garney.

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**Financial Implications:**

Item is budgeted: 702-7140-62300 **In the amount of \$ 1,383,054.20**

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

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**Associated Information:**

- Addendum A (page 3)
- Exhibit #1 - GMP for Detention Pond (Bid Package #1) (page 4)
- Proposal Evaluation (page 5)

ADDENDUM "A"

to the

AGREEMENT FOR CONSTRUCTION MANAGER-AT-RISK SERVICES BETWEEN  
THE CITY OF HUNTSVILLE AND GARNEY CONSTRUCTION

This Addendum "A" is effective \_\_\_\_\_, 2016, and is incorporated into and will be deemed to supplement the Agreement for Construction Manager-At-Risk Services ("Agreement") between the City of Huntsville, Texas ("City") and Garney Construction ("Garney") entered into on April 21, 2016. This Addendum "A" shall be attached to the Agreement.

WHEREAS: The City of Huntsville, Texas and Garney Construction executed an agreement (referred to within as "pre-construction") for Construction Manager At-Risk services to design and construct the Town Creek Drainage Project with such agreement approved by the Huntsville City Council on November 17, 2016;

WHEREAS: Garney Construction has conducted Requests for Proposal processes as set forth and in conformance with Section 2.3.2 of the pre-construction agreement;

WHEREAS: For the services more fully described and discussed below, Garney Construction wishes to offer a Guaranteed Maximum Price proposal for the City's review and acceptance in accordance with 2.4.1.3.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Exhibit 1 includes the Guaranteed Maximum Price proposal submitted to construct the detention pond portion of this project for the City of Huntsville Town Creek Project with a maximum not to exceed cost of 1,383,054.20.

Signatures below constitute approval of Exhibits #1 for a total Guaranteed Maximum Price of 1,383,054.20, as well as the associated proposals and vendor recommendations submitted by Garney Construction.

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

Garney Construction  
Construction Manager

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

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



1333 NW Union Road, Kansas City, MO 64118  
Phone: 816 741 4600  
Fax: 816 741 4488  
www.garney.com

Mr. Matt Benoit  
City Manager  
City of Huntsville, Texas

May 11, 2016

**RE: Town Creek Drainage Project – Addendum A – Detention Basin**

Mr. Benoit-

Garney Companies respectfully requests the City of Huntsville issue an Addendum to the current Contract for CMAR services on the above referenced project to include the construction of the **Detention Facilities** and crossing of Bearkat Blvd. near the South end of the project area. We request this addendum include authorization for Garney to enter into contract with **Solid Bridge Construction** in the not to exceed amount of **\$1,383,054.20** for completion of this work.

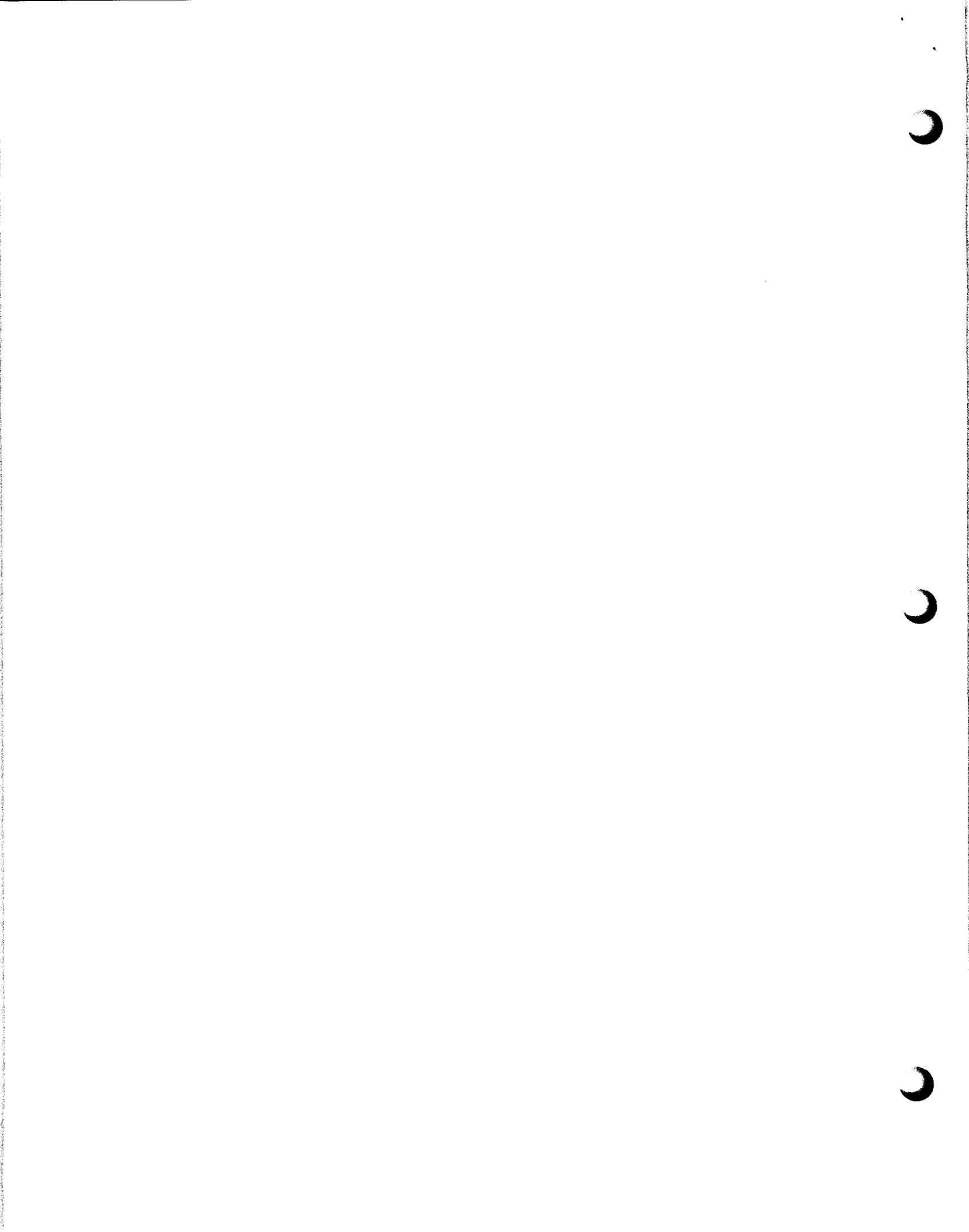
Additional detailed information regarding the specific scope of work for the Detention Facilities can be found in the plans, specifications, and contract information provided as a part of Bid Package #1. Please let us know if additional information is required by the City to issue this Addendum A.

Respectfully,

GARNEY COMPANIES, INC.

David Burkhart  
Operations Manager

PROPOSAL EVALUATION		COMPANY:	COMPANY:	COMPANY:
Description	Weighting Value	Crockett Const.	Solid Bridge Const.	Randy Roan Const.
TOTAL POINT VALUE:	100	69.71	93.27	78.32





## CITY COUNCIL AGENDA

5/17/2016

Agenda Item: 8b

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**Item/Subject:** Consider authorizing the City Manager to sign an Interlocal Agreement between the City of Huntsville and the Texas Department of Criminal Justice for water service at the Ellis and Estelle Units.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager; Steve Ritter, Director of Finance

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**Recommended Motion:** Move to authorize the City Manager to sign an Interlocal Agreement between the City of Huntsville and the Texas Department of Criminal Justice for water service at the Ellis and Estelle Units.

---

**Strategic Initiative:** Goal #7 - Finance - Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** In 1995, the City of Huntsville executed an agreement with the Texas Department of Criminal Justice (TDCJ) to supply water to the Ellis and Estelle Units (the "units"). The units are approximately 13 miles north of the city limits along FM 980. The 1995 agreement is somewhat unclear as to the expiration date, but in any case, the latest possible date appears to be September 30, 2016 (TDCJ began taking water and was billed in September 1996).

Presently, the rate paid by TDCJ for these units is \$2.32/1,000 gallons of water used. With an estimated 545,259,000 gallons to the units, annual revenue (including the debt service on the water line that supplies water to the units) is approximately \$1,553,177. Presently, users in the city limits in the same "customer class" pay \$6.26/1,000 gallons. Further, Ordinance 2002-21 states customers outside the City limits shall pay a 25% surcharge for city water service (rates are 125% of the inside City limits rates), bringing the current charge to \$7.82/1,000 gallons.

In March, City staff invited TDCJ to discuss the expiration date of the agreement. TDCJ absolutely desires to be served by City water. As a matter of courtesy to the region's largest employer (and largest water user), City staff offered to negotiate the terms of a new agreement and acceleration to the rates paid by users in the same customer class. Specifically, City staff offered a phased implementation to ease the transition and allow TDCJ to make state legislative appropriations requests to occur. Ultimately, the negotiations have not reached an agreement. With that, City staff is recommending Council consideration of an Interlocal Agreement with a phased increase, accelerating TDCJ rates to the \$7.82/1,000 gallons and insulating them from additional rate increases for a period of eight years. The recommended rate schedule is as follows:

	<u>Rate/1,000</u> <u>gallons</u>	<u>%</u> <u>Increase</u>	<u>Estimated</u> <u>annual</u> <u>usage (000s</u> <u>omitted)</u>	<u>Estimated</u> <u>annual revenue</u>	<u>Additional</u> <u>Revenue</u>
Present	\$ 2.32			\$ 1,553,177	
10/1/2016	\$ 4.29	84.91%	545,259	\$ 2,339,161	\$ 785,984
10/1/2017	\$ 6.26	45.92%	545,259	\$ 3,413,321	\$ 1,860,144
10/1/2018	\$ 6.26	0.00%	545,259	\$ 3,413,321	\$ 1,860,144
10/1/2019	\$ 6.26	0.00%	545,259	\$ 3,413,321	\$ 1,860,144
10/1/2020	\$ 7.04	12.46%	545,259	\$ 3,838,623	\$ 2,285,446
10/1/2021	\$ 7.82	11.08%	545,259	\$ 4,263,925	\$ 2,710,748
10/1/2022	\$ 7.82	0.00%	545,259	\$ 4,263,925	\$ 2,710,748
10/1/2023	\$ 7.82	0.00%	545,259	\$ 4,263,925	\$ 2,710,748
					\$ 16,784,132

As you consider this item, please carefully reflect on the following:

- There are currently 157 other meters in the Institutional Rate category. They include SHSU and other TDCJ correctional facilities. They are all within the City limits. Combined, they consume an estimated 879,665,000 gallons of water annually, compared with approximately 545,259,000 for TDCJ's Ellis & Estelle Units. In short, among the other water customers in the same class, there is a distinct disparity in rates paid. This agreement will reconcile that inconsistency.
- The recent Trinity River Authority Plant Expansion and Improvement Project included a new filtration system for the removal of nitrates from the source water. The filtration system accounted for approximately \$3.5 million of the project total. Nitrate levels above 10 mg/l are dangerous for infants and individuals in poor health. Nitrate levels in the Trinity River can elevate during certain weather conditions, but particularly after heavy rains due to fertilizer runoff. The nitrate-removing filtration system primarily benefits the Ellis and Estelle Units because those facilities receive 100% TRA surface water. In the City limits, TRA water is blended with groundwater at the Palm Street Water Plant before distribution. Because TDCJ was in an existing water rate contract for the units, TDCJ did not share in the rate increases to pay the debt service on the TRA plant expansion, nor did they or incur any additional costs related to the nitrate filtration system.
- The typical residential user in the city limits uses approximately 6,250 gallons of water. The cost of that consumption amounts to \$4.49/1,000 gallons consumed. The reality is that for most of the 20-year period, the residential users have been subsidizing the cost of water for the Ellis and Estelle Units.
- The first chart below illustrates the level of water usage vs. total revenue among the ten largest water consumers in the community. Note that TDCJ (for all of their units) uses approximately 51% of the total water consumed, but pays only 39.2% of the revenue. That is an imbalance of almost 30%, and largely attributed to the much lower rates paid by for the Ellis and Estelle Units.

- If this proposal is approved, the difference will be largely eliminated.
- According to the City's present rate study recommendations (which have been followed and consistently adopted by the City Council since FY 2012), the rate for Institutional users outside the City limits at October 1, 2023 will be \$9.11/1,000 gallons. By phasing the rate in over six years, TDCJ will save an estimated \$6,161,000 when compared with having no agreement at all.
  - The chart below illustrates estimated annual revenue and debt capacity associated with this rate increase. The April 19 presentation on the Palm Street Water Plant and pressure plane implications recommends estimated expenditures of almost \$23.4 million. The Council will also review recommendations for Service Center replacement with some very significant cost estimates as well; the majority of which will fall on the Water Fund. In short, while the Council may hear the suggestion the rate increases are too much or too fast, the reality is the extra revenue will be absolutely necessary and appropriate.

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**Previous Council Action:** None. This issue was discussed with the Council Finance Committee. Although they did not specifically recommend this phased increase, they were in agreement that a phased approach to \$7.82/1,000 gallons consumed is an appropriate arrangement.

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**Financial Implications:**

- Item is not budgeted:** Depending on the Council's decision on this issue, City staff will budget for additional revenue in the Fiscal Year 2016-2017 budget.
- Item is estimated to generate additional revenue:** Additional revenue is noted in the chart on page 2.

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

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**Associated Information:**

- Proposed Interlocal Agreement (pages 5-8)
- Charts illustrating imbalance in use versus revenue among largest water users and estimated additional debt capacities (page 4)

**TEN LARGEST WATER CUSTOMERS (BASED ON GALLONS CONSUMED)**

<u>Customer</u>	<u>Type of Business</u>	<u>Water Usage<sup>(1)</sup></u>	<u>% of Total</u>	<u>Revenue<sup>(1)</sup></u>	<u>% of Total</u>
Texas Dept of Criminal Justice	State Agency	1,275,482,700	50.98%	\$ 5,845,889.81	39.22%
Sam Houston State University	State University	142,707,000	5.70%	946,126.59	6.35%
C150 1300 Smith Dr. LLC	Apartments	24,550,700	0.98%	144,458.70	0.97%
Arbors of Huntsville	Apartments	18,857,400	0.75%	118,658.05	0.80%
MSWC Connection Property, LLC	Apartments	18,793,400	0.75%	108,366.76	0.73%
Huntsville Independent School Dist	School	18,718,700	0.75%	124,846.94	0.84%
University Place Apartments	Apartments	18,121,900	0.72%	104,362.12	0.70%
Sycamore Avenue Association	Apartments	16,330,300	0.65%	102,386.13	0.69%
Vesper Encore Huntsville, LLC	Apartments	15,930,500	0.64%	96,603.61	0.65%
Ridgewood West	Apartments	14,661,300	0.59%	87,391.09	0.59%
	Totals	<u>1,564,153,900</u>	<u>62.51%</u>	<u>\$ 7,679,089.80</u>	<u>51.54%</u>

Ellis and Estelle's water usage is 545,259,000 (42.7%) of TDCJ's total usage of 1,275,482,700 shown above

Estimated Debt Capacity increases from estimated Revenue increases

	<u>Rate/1,000 gallons</u>	<u>% Increase</u>	<u>Estimated annual usage (000s omitted)</u>	<u>Estimated annual revenue</u>	<u>Additional Revenue</u>	<u>Increase in Revenue from Previous Yr</u>	<u>Debt Capacity increase from increased Revs.</u>
Present	\$2.32			\$1,553,177		\$ -	
10/01/2016	\$4.29	84.91%	545,259	\$2,339,161	\$785,984	\$ 785,984	\$8,870,000
10/01/2017	\$6.26	45.92%	545,259	\$3,413,321	\$1,860,144	\$ 1,074,160	\$12,100,000
10/01/2018	\$6.26	0.00%	545,259	\$3,413,321	\$1,860,144	\$ -	
10/01/2019	\$6.26	0.00%	545,259	\$3,413,321	\$1,860,144	\$ -	
10/01/2020	\$7.04	12.46%	545,259	\$3,838,623	\$2,285,446	\$ 425,302	\$4,800,000
10/01/2021	\$7.82	11.08%	545,259	\$4,263,925	\$2,710,748	\$ 425,302	\$4,800,000
10/01/2022	\$7.82	0.00%	545,259	\$4,263,925	\$2,710,748	\$ -	
10/01/2023	\$7.82	0.00%	545,259	\$4,263,925	\$2,710,748	\$ -	
					\$16,784,132		

INTERLOCAL AGREEMENT  
BETWEEN CITY OF HUNTSVILLE AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
FOR THE PROVISION OF VARIOUS ECONOMIC DEVELOPMENT SERVICES

This Agreement is entered into by the City of Huntsville (City) and Texas Department of Criminal Justice (TDCJ) pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791.

WHEREAS, In 1995, the City entered into an Agreement To Provide Potable Water To The TDCJ Units In The FM 980 Area (herein referred to as "The Agreement"); and

WHEREAS, The Agreement will expire on September 30, 2016; and

WHEREAS, The Agreement provided for water rates to the TDCJ Ellis and Estelle Units of \$2.32/1,000 gallons; and

WHEREAS, Now that The Agreement will be expiring and TDCJ desires to have the Ellis and Estelle Units provided water service by the City, it is important to adjust the rates in line with other users in the same customer class as the Ellis and Estelle Units; and

WHEREAS, The City recognizes the importance of TDCJ to the community as its largest employer and wishes to phase the water rate increases incrementally.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TX:

I.

As of the first day of October of each year, the water rates will for Ellis and Estelle Units will be increased be set according to schedule below:

10/1/2016	\$ 4.29
10/1/2017	\$ 6.26
10/1/2018	\$ 6.26
10/1/2019	\$ 6.26
10/1/2020	\$ 7.04
10/1/2021	\$ 7.82
10/1/2022	\$ 7.82
10/1/2023	\$ 7.82

The City shall invoice TDCJ for monthly usage. The agreement will terminate on September 30, 2023.

II.

TDCJ agrees that the water delivered to its facilities under this agreement shall be the primary source of water for the units served under the arrangement herein described; and that alternate water sources shall be used by TDCJ only if, and only as long as, the City and TRA are unable to deliver water to TDCJ under this agreement.

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 Texas Department of Criminal Justice, 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 TDCJ 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. If any provision of this agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

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.

Unless otherwise provided in this Agreement, any notice herein provided or permitted to be given, made or accepted by either party must be in writing and may be given by depositing the same in the United States mail postpaid, return receipt requested or by delivering the same to an officer of such party, or by prepaid telegram addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified.

For the purposes of notice, the addresses of the parties shall be as follows:

If to TDCJ:

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

If to the City:

City Manager  
1212 Avenue M  
Huntsville, TX 77340

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

VIII.  
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.

IX.  
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.

X.

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.

Approved on the date or dates indicated.

CITY OF HUNTSVILLE

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

\_\_\_\_\_  
Date

ATTESTED:

APPROVED AS TO FORM:

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

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

Examined and Recommended:

\_\_\_\_\_  
\_\_\_\_\_, Texas Department of Criminal Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_, Texas Department of Criminal Justice

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
\_\_\_\_\_, Texas Department of Criminal Justice

\_\_\_\_\_  
Date



## CITY COUNCIL AGENDA

5/17/2016

Agenda Item: 8c

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**Item/Subject:** Consider the award of fiber installation project to Network Cabling Services, Inc. (NCS) for the installation of conduit and fiber from the City of Huntsville Service Center to the Solid Waste facility.

**Initiating Department/Presenter:** Engineering & Information Technology

**Presenters:** Y.S. "Ram" Ramachandra, City Engineer; Bill Wavra, Interim IT Director

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**Recommended Motion:** Move to award the fiber installation project to Network Cabling Services, Inc. (NCS) for the installation of conduit and fiber from the City of Huntsville Service Center to the Solid Waste facility in the amount of \$149,912.84.

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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:** The installation of fiber line between the Service Center and Solid Waste is ready to proceed. The project was approved by the City Council in September 2015 as part of the FY15-16 CIP budget. It is an extension of the IT Department's initiative to improve security and reliability of electronic communications, as the current wireless antenna system continues to have failures due primarily to exposure.

Services being provided to Solid Waste from the City Hall and public library data centers include access to the City's phone system, file sharing, documents, email, management applications, and the internet. Fiber allows for improved communications to/from City Hall, including offsite database backup and remote IT support of all Solid Waste computers, surveillance cameras, and printers. The existing wireless connection has a maximum capacity of 20 Mbps data transmission rate whereas fiber provides 10,000 Mbps.

Currently, Solid Waste is connected to the Service Center via wireless antenna hardware located on the Service Center roof, on a TxDOT tower, and at the Solid Waste office building. On three separate occasions within the last year this equipment has suffered damage. The cost for replacement has been \$15,043.20 and 120 days of communication downtime.

Solid Waste is an important revenue center generating an average daily total of approximately \$13,977.68, which accrues to \$1,677,321.60 over the above-referenced time frame. Additionally, this income needs to be promptly reconciled through the accounting functions of the Finance Department, which is of course accomplished via wireless communication. Outages require relocation of management personnel in order to maintain business functionality. The scale house attendant's PC remains onsite and connects to City Hall via cellular air card.

With no easy path to Solid Waste, the shortest was chosen. This proposed route will utilize existing conduit from the Service Center Warehouse through Kate Barr Ross Park to Airport Drive. The remaining conduit install will be completed by directional bore. Once the fiber pull is complete, Solid Waste will have direct connectivity to the City Hall and Library Data Centers. The City has the right-of-way and easements along the proposed alignment for fiber installation.

Network Cabling Services (NCS) is a member of the State of Texas Cooperative DIR, and they are in good standing under contract #DIR-SDD-1900. References for NCS were contacted and there were no negative comments. Upon completion, the City is issued a 25-year Corning fiber warranty, although life expectancy could exceed 30-45 years. Due to unprecedented orders and a temporary fiber plant closure, there is a 30-40 week lead time once the fiber order is placed.

The City Attorney was consulted to ensure all City purchasing requirements were met.

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**Previous Council Action:** The fiber communication CIP project from the Service Center to Solid Waste was approved in FY 15-16 in the amount of \$150,000.

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**Financial Implications:**

There is no financial impact associated with this item.

Item is budgeted: 815-81556-62300 Current account balance is \$150,000

Item is not budgeted:

Item is estimated to generate additional revenue:

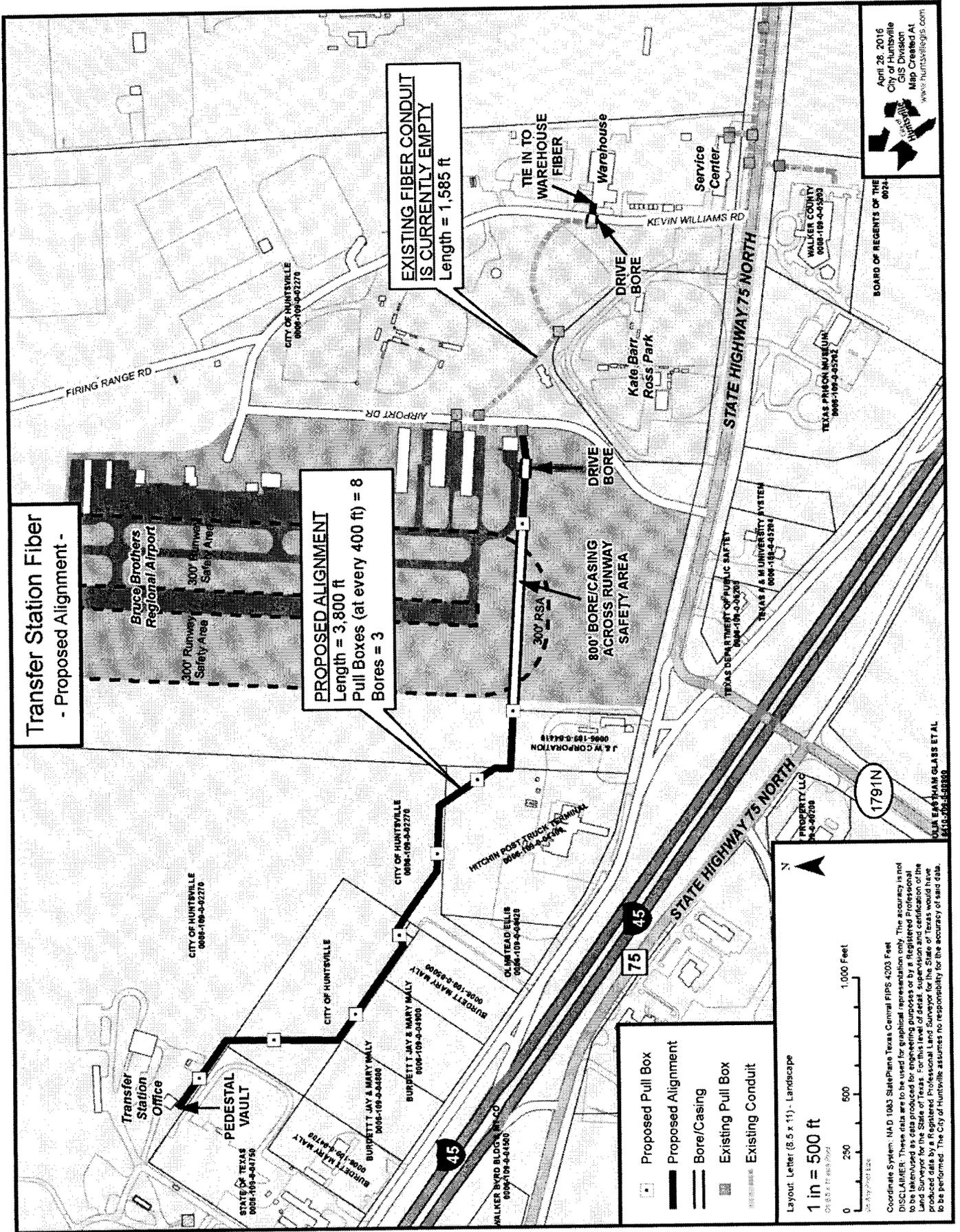
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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Proposed alignment map (page 3)
- Price quote from NCS (pages 4 – 11)





April 21, 2016

City of Huntsville  
1212 Avenue M  
Huntsville, Texas 77340  
Attention: Brent Slott

Project: Transfer Station Fiber Project

Site Location:  
590 I-45 North  
Huntsville, Texas 77340

NCS Quote #: AH-16-110r1

Thank you for allowing Network Cabling Services the opportunity to provide you with this revised proposal regarding the Transfer Station Fiber Project located in Huntsville, Texas.

This proposal provides a Corning Cable System. Network Cabling Services is a Corning Cable System Preferred Installer and as such a 25-Year Extended Product Warranty will be issued upon project completion.

If you should have any questions about this proposal or require additional information, please do not hesitate to contact me.

Sincerely,

Anthony Hernandez  
Estimator/Designer  
Cell: 281-900-9716  
[ahernandez@ncs-tx.com](mailto:ahernandez@ncs-tx.com)

Houston • Corpus • Dallas  
12626 Fuqua Street • Houston, TX 77034  
281-484-1777

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**1. SCOPE OF WORK:****A. Boring Activities**

1. Provide and install one (1) 6" bore from the last pull box near Airport Road to the Transfer Station Building.
2. Provide and pull back three (3) 1.25" Smooth Wall Innerducts through the 6" bore. Innerducts will be Blue, Orange and Green and will have a tracer wire.
3. Provide and install one (1) 17X30 Quazite underground pull box with covers every 400' along the proposed pathway. At total of ten (10) pull boxes will be installed on this project.

**B. Maintenance Building**

1. Provide and install a (roughly) 20' trench from an existing Quazite underground pull box on the North side of the Maintenance Building to the exterior wall of the Maintenance Building.
2. Provide and install one (1) 20X20X8 weather proof junction box on the North exterior wall of the Maintenance Building.
3. Provide and install one (1) 2" schedule 40 PVC conduit from the existing underground pull box to the 20X20X8 junction box.
4. Provide and install a 30' 2" Aluminum conduit riser from the 20X20X8 junction box and penetrate the Maintenance Building. The 2" Aluminum conduit will then route approximately 150' to the office area and stub into the drop ceiling.

**C. Existing 4" PVC conduit**

1. Currently there is an existing 4" underground PVC conduit pathway from the underground pull on the North side of the Maintenance Building to the last pull box near Airport Road.
2. NCS will provide and install either three (3) 1.25" corrugated innerducts or one (1) 3" 3-Cell MaxCell through the existing 4" PVC conduit from the existing underground pull box near the Maintenance Building to an existing pull box near Airport Road.

**D. Transfer Station**

1. Provide and install one (1) 20X20X8 weather proof junction box on the exterior of the Transfer Station Building.
2. Provide and install a 20' 2" Aluminum conduit riser from the 20X20X8 junction box and penetrate the Transfer Station Building.

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**E. Fiber Optic Installation**

1. Provide and install one (1) 48-strand singlemode OSP fiber optic cable from the Maintenance Building to the Transfer Station via new and existing conduit pathway.
2. Provide and install one (1) Corning 2U LC singlemode rack mount fiber patch panel inside the existing network cabinet located in the Maintenance Building.
3. Provide and install one (1) Corning 4U LC singlemode rack mount fiber patch panel in the Transfer Building.
4. Perform forty-eight (48) fiber terminations inside the Maintenance Building and forty-eight (48) fiber terminations inside the Transfer Station Building for a total of ninety-six (96) fiber terminations.
5. NCS will test and certify all fiber strands and supply test documentation at the completion of the project.
6. Please note that the fiber optic cable in this proposal has potential lead-time of up to 30-weeks from the time of order.

**2. PRICING SUMMARY: With (3) 1.25" Corrugated Innerduct**

Materials	\$34,737.39
Labor	\$30,080.40
Equipment/Documentation	\$1,930.30
Boring	\$74,783.52
Travel & Per Diem	\$3,404.00
Payment/Performance Bond	\$3,332.73
Tax	Not Included
<b>Total Cost</b>	<b>\$148,268.34</b>

**2.1 PRICING SUMMARY: With (1) 3" 3-Cell MaxCell**

Materials	\$38,916.89
Labor	\$27,550.91
Equipment/Documentation	\$1,930.30
Boring	\$74,783.52
Travel & Per Diem	\$3,404.00
Payment/Performance Bond	\$3,327.22
Tax	Not Included
<b>Total Cost</b>	<b>\$149,912.84</b>

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### 3. QUALIFICATIONS AND ASSUMPTIONS:

NCS has based this proposal on normal working hours, 7:00 am to 7:00 pm, Monday through Friday, excluding holidays. Over-time is not included in this proposal.

NCS assumes that proper access will be available during working hours to complete the proposal scope of this project.

Any changes or additions to the Scope of Work or the Bill of Materials shall be executed in writing as a change order. Verbal instructions to field technicians do not authorize changes to the scope of work.

NCS cannot be held responsible for the condition of any existing copper/fiber optic cables or conduits that may be utilized for this project.

Due to the volatility in the current communications cabling market, the pricing contained in this proposal is valid for 90 days. Pricing adjustments may be necessary prior to beginning the project.

NCS has not included pricing for participation in a composite cleaning crew. If this is required, an additional price can be given.

NCS will not be responsible for any delays or associated charges due to manufacturer's defects or late delivery of cable and/or equipment that is directly specified or ordered and provided by the customer.

NCS assumes all core holes, poke through devices, raised floor boxes, plywood backboards, ground bus bar cabling to main bus and back boxes either exist or will be provided by others. The cost for taxes has not been included in the proposed price. If taxes are required, an additional add price can be given.

This proposal includes pricing for a Payment and Performance Bond Certificates. A formal Contract is required for NCS to order all Payment and Performance Bonds. All bonds will be due within 10 days of request and shall be for full amount of contract/award. The failure of the successful responder to execute the agreement and supply the required bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the City may grant, shall constitute a default

Proof of Insurance: Certificate of Liability Insurance to be presented to the City of Huntsville. In Description of Operations will need wording similar to: Blanket additional insured is added in favor of the certificate holder with respects to the general liability coverage, as required by a written contract. Blanket Waiver of Subrogation is added in favor of the certificate holder with respects to workers compensation coverage, as required by a written contract.

Certificate Holder to be: City of Huntsville, 1212 Avenue M, Huntsville, TX 77340. Workers Compensation and Automobile Liability shall be at 1,000,000 or greater. Commercial liability shall be at 2,000,000 or greater.

This proposal does not include electrical services or electronic components or labor to move or install network equipment.

Proposal does not include network electronics such as uninterrupted power supplies (UPS), power distribution units (PDU) and wireless access points (WAP).

Proposal does not provide IT services such as hardware configuration and/or software loading.

NCS has not included pricing for any "BIM" or 3D Modeling Services that may be required for this project.

This proposal does not include Service Provider Cabling, Nurse Call Systems and Cabling, Phone Systems, Network Hardware or Telemetry Cabling.

NCS assumes that a secure staging area will be provided at no charge for the storage of equipment such as materials and tools. The City of Huntsville does not take responsibility for any theft, damage or force majeure that could occur to NCS property.

NCS will Sub Contract all underground boring activities to Aspen Utilities.

NCS will provide an on-site Project Manager for the duration of the project.

NCS assumes the City of Huntsville will mark all their Utilities within their Right of Way.

Aspen Utilities will be responsible for the 811 call to request for locates in the area.

The City of Huntsville will responsible for waiving all City permit fees and or Rights of Ways

or easements.

The pricing in this proposal includes a 4% discount for cash, check, or ACH payments.

This proposal does not include requirements for the payment of Prevailing Wages, Davis Bacon Wages, Walsh-Healy Wages, Contract Service Act Wages or any other predetermined or prevailing wages or fringe benefits. In the event there is a requirement for the payment of specific wages and/or fringe benefits, the difference between such specific wages and/or benefits and the actual wages and/or benefits paid, plus NCS's normal mark-up for overhead and profit shall be an extra cost added to this proposal.

A One Year Network Cabling Services Workmanship Warranty will be issued on all installed materials from the date of acceptance.

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#### 4. STANDARD TERMS AND CONDITIONS:

##### 1. Engagement of Services

Once work is authorized by the customer, Network Cabling Services is committed to certain "ramp up" expenses, both direct and indirect (i.e., specific training, travel, special tools, materials, project management, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of Network Cabling Services, these expenses will be due and payable to Network Cabling Services on a pro-rate basis. Any request for reimbursement of these expenses will be itemized and defined.

##### 2. Changes to Scope of Work

Network Cabling Services will notify the customer in writing if there is a material change, scheduling change, or construction delay beyond the scope of work and no fault of Network Cabling Services requiring Network Cabling Services to expend more monies budgeted. The City of Huntsville must approve any/all change order request in writing prior to any work beginning. The customer agrees to pay Network Cabling Services for such expenses plus reasonable profit and overhead if the customer desires to continue under the changed Scope of Work.

##### 3. Permits and Taxes

Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc., will be provided by Network Cabling Services at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

##### 4. Network Cabling Services Employees

The customer agrees that it shall not hire any employee of Network Cabling Services who is currently working on a project for the customer, or any employee of Network Cabling Services who has worked on a project for the customer within the last twelve months. The customer further agrees not to hire any former Network Cabling Services employee that performed any work on a project for the customer at any time within the prior twelve months. The customer agrees and understands that this provision is necessary so that Network Cabling Services can protect its investment of time and money in its employees, as well as any confidential or proprietary information known by its employees.

##### 5. Payment Terms

Standard payment terms are net due in 30 days from invoice date unless stated differently in the above proposal. A service charge may be charged on all past due amounts. Amounts will be considered past due 30 days after date of invoice. You may avoid a service charge or additional service charges upon payment at any time of the unpaid balance.

##### 6. Warranty

All installation work will meet or exceed all NEC, Federal, State and local codes that may apply. No performance warranty will be issued by Network Cabling Services. A one-year workmanship warranty will be issued on all installed materials from the date of acceptance. Network Cabling Service shall provide written 25 year warranty extended product warranty. Network Cabling Service shall provide written verification from Coming verifying they are a Coming Cable System Preferred Installer.

##### 7. Indemnity

To the extent provided by law the City shall indemnify and hold NCS, its officers, employees, affiliates, agents and contractors harmless against, and will reimburse NCS for any and all claims, liabilities, judgments, settlements, damages, payments, losses costs or expenses (including reasonable attorneys' fees) incurred under this agreement or the Scope of Work, regardless of the cause, including active or passive negligence of NCS, to the fullest extent of the law or asserted against NCS or such parties at any time after the effective date to the extent of the claim.

To the extent provided by law NCS shall indemnify and hold the City, its officers, employees, affiliates, agents and contractors harmless against, and will reimburse the City for any and all claims, liabilities, judgments, settlements, damages, payments, losses costs or expenses (including reasonable attorneys' fees) incurred under this agreement or the Scope of Work, regardless of the cause, including active or passive negligence of City to the fullest extent of the law or asserted against the City or such parties at any time after the effective date to the extent of the claim.

##### 8. Attorneys Fees

If Network Cabling Services is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse Network Cabling Services for all attorneys' fees, expert fees and other legal expenses that it may incur to collect such amount.

##### 9. Incorporation by Reference

Unless expressly agreed in writing otherwise, these Standard Terms and Conditions are a part of and hereby incorporated by reference, all proposals submitted by Network Cabling Services to the customer and any Credit Agreement signed by the customer, and all terms and conditions of any such proposals or Credit Agreements.

By signing this proposal, the signatures of this agreement warrant that they have the authority to enter into this contract and that they have read the above Standard Terms and Conditions and agree to abide by them.

ACCEPTED BY: \_\_\_\_\_

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**4.1 TERMS:**

The STANDARD TERMS AND CONDITIONS of this proposal apply and are incorporated by reference. The parties agree that all disputes in anyway related to, arising out of, or connected with the sale of goods and/or services provided by Network Cabling Services shall be litigated if at all, exclusively in Walker County, Texas. Furthermore, the parties also agree that Texas law shall govern all such disputes.

The Customer agrees to pay:

<u>10%</u>	Down (For Material Procurement & Mobilization)
<u>80%</u>	Monthly Progress Billing
<u>Remaining Balance</u>	at Completion

Service charges listed below become effective on all accounts 30 days after the invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

**Notice to Buyer:** Do not sign this agreement before you read it in its entirety, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

Respectfully Submitted By:  
Network Cabling Services, Inc.

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

Authorized Signature:  
*Anthony Hernandez*

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

Print Name:  
Anthony Hernandez, Estimator

Print Name:  
\_\_\_\_\_

Date:  
April 21, 2016

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

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