



**REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS JULY 22, 2014 1:30 P.M.**

CONSENT AGENDA

- * Approval of minutes – July 15, 2014
- * Confirmation of committee appointments
- A) Approve a three year contract with Cigna for Basic Life and Accidental Death and Dismemberment (AD&D), Supplemental Life and Accidental Death and Dismemberment (AD&D) and Dependent Life Insurance effective January 1, 2015
- B) Approve a change order to the contract with Insituform Technologies, LLC. related to the Karen Street Sanitary Sewer Rehabilitation
- C) Authorize the City Manager to execute an Agreement for Transfer of Entitlements to the Texas Department of Transportation, Aviation Division, for FY2013 and FY2014



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Laura Clark, Chief Financial Officer *LC*

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution approving a three year contract with Cigna for Basic Life and Accidental Death and Dismemberment (AD&D), Supplemental Life and Accidental Death and Dismemberment (AD&D) and Dependent Life Insurance effective January 1, 2015 for an estimated annual amount of \$98,918.

BACKGROUND

The City provides basic life and accidental death and dismemberment (AD&D) insurance for approximately 1263 employees. The City-sponsored basic life and accidental death and dismemberment (life/AD&D) insurance is provided at no cost to the employee. The amount of the insurance is 100% of the employee's annual base salary rounded to the next highest \$1000 to a maximum benefit of \$50,000. Employees may elect to purchase supplemental life and accidental death and dismemberment and dependent life at a group rate. The supplemental insurance is offered to all employees with approximately 947 currently participating.

In June 2014, City staff began analyzing the City's life insurance cost. Staff also began working with the City's benefit consultant, Holmes Murphy & Associates to solicit bid proposals on the City's behalf. The City received a total of seven (7) proposals from the following companies: Cigna, Aetna, Dearborn National, Guardian Life, Met Life, Minnesota Life and The Standard.

Upon receipt and review of the proposals, six bidding carriers were eliminated from consideration because their proposed rates were higher for basic and supplemental life coverage or they were not able to match the City's current benefits. Cigna, the incumbent carrier, offered the same coverage of benefits currently provided to employees and dependents at the current rate of \$0.155 per \$1000. The estimated annual premium of \$98,918 is based on salary volume of \$53,181,760 times rate of \$0.155 divided by 1000 times 12 months.

Basic Life/AD&D and Supplemental Life/AD&D/Dependent Life

July 22, 2014

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FUNDING SOURCE

Employee Benefits Fund.

RECOMMENDATION

Approval of resolution.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF BEAUMONT:

THAT the City Manager be and he is hereby authorized to execute a three (3) year contract with CIGNA in the estimated annual amount of \$98,918 for Basic Life and Accidental Death and Dismemberment (AD&D), Supplemental Life and Accidental Death and Dismemberment and Dependent Life Insurance effective January 1, 2015.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July, 2014.

- Mayor Becky Ames -



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Dr. Hani J. Tohme, P.E., Director of City Utilities

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution approving a change order to the contract with Insituform Technologies, LLC, related to the Karen Street Sanitary Sewer Rehabilitation.

BACKGROUND

The City Council approved a contract with Insituform Technologies, LLC, on November 19, 2013, in the amount of \$55,996.50. The contract was to reconstruct the existing 6-inch and 8-inch sanitary sewer lines and reconnect eleven (11) services from 1710 to 1890 Karen Lane. The work will use Insituform's patented system for cured-in-place pipe (CIPP) to prevent unnecessary damage to existing nearby improvements since the existing line could not be rehabilitated by traditional methods.

The proposed change order in the amount of \$16,720.00 will furnish all labor, materials, equipment, and services necessary to make four (4) point repairs to the existing sanitary sewer main as discovered during the cleaning and televising of the existing lines.

Original contract pricing was obtained through the Texas Association of School Boards (BuyBoard) Contract No. 354-10. BuyBoard is a cooperative purchasing association providing cities and political subdivisions with the means to purchase specialized services at volume pricing. BuyBoard complies with State of Texas procurement statutes.

Previous actions include:

Resolution 13-258 in the amount of \$55,996.50 was passed by the City Council on November 19, 2013.

FUNDING SOURCE

Capital Program.

RECOMMENDATION

Approval of resolution.



11702-B Grant Rd., Suite 127
Cypress, TX 77429
Phone: (281) 467-2865
Fax: (866) 575-8422

June 2, 2014

Ms. Molly Villarreal
City of Beaumont, TX
1350 Langham Road
Beaumont, TX 77707

Change Order

Sent by Email to: mvillarreal@ci.beaumont.tx.us

Reference: **Beaumont, TX * Karen Street * 2013 Sanitary Sewer Rehabilitation Project**

Here is the Change Order Pricing for the above referenced Project.

Bid Item #	Bid Item	Unit of Measure	Quantity	Unit Price	Total
CO1 1	Mobilization - excavation crew	EA	1	\$1 000 00	\$1 000 00
CO1 2	Point repair 6" up to 10' long	EA	4	\$3 000 00	\$12 000 00
CO1 3	Extra length point repair	LF	5	\$60 00	\$300 00
CO1 4	Hand excavation (if needed)	EA	2	\$550 00	\$1 100 00
CO1 5	Mobilization - CCTV crew	EA	1	\$1 000 00	\$1 000 00
CO1 6	Reclean and TV 6" after point repair	LF	480	\$2 75	\$1 320 00
					\$16 720 00

Let me know if you have any questions. Your business is sincerely appreciated.

Regards,

INSITUFORM TECHNOLOGIES, LLC

JERRY L. BROWN, BUSINESS DEVELOPMENT MANAGER

APPROVED BY ANDY OZMENT 6/2/14

CC: KEVIN GABRYSCH

RESOLUTION NO.

WHEREAS, on November 19, 2013, the City Council of the City of Beaumont, Texas passed Resolution No. 13-258 awarding a contract in the amount of \$55,996.50 through the Texas Association of School Boards (BuyBoard) Cooperative Purchasing Program to Insituform Technologies, LLC, of Cypress, Texas, to furnish all labor, materials, equipment and services necessary to reconstruct the existing 6-inch and 8-inch sanitary sewer lines and reconnect eleven (11) services related to the Karen Lane Sanitary Sewer Rehabilitation Project; and,

WHEREAS, Change Order No. 1, in the amount of \$16,720, is required to furnish all labor, materials, equipment, and services necessary to make four (4) point repairs to the existing sanitary sewer main as discovered during the cleaning and televising of the existing lines, thereby increasing the contract amount to \$72,716.50;

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

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the City Manager be and he is hereby authorized to execute Change Order No. 1 for additional work described above, thereby increasing the contract amount by \$16,720 for a total contract amount of \$72,716.50 for the Karen Street Sanitary Sewer Rehabilitation Project; and,

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July, 2014.

- Mayor Becky Ames -



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Dr. Joseph Majdalani, P.E., Public Works Director *JM*

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution authorizing the City Manager to execute an Agreement for Transfer of Entitlements to the Texas Department of Transportation (TxDOT), Aviation Division, for FY2013 and FY2014.

BACKGROUND

The Federal Aviation Administration (FAA) designates Non-Primary Entitlement (NPE) funds annually to airports listed in TxDOT's Capital Improvement Plan. These funds are managed by TxDOT's Aviation Division and are applied to major construction projects at airports receiving FAA funds.

In fiscal years 2013 and 2014, the Beaumont Municipal Airport was not programmed for any capital improvement projects through TxDOT's Aviation Division. Since the funds were earmarked for Beaumont, TxDOT is unable to use the funds without authorization from the City.

TxDOT is requesting that these funds in the amount of \$300,000 be released for use on other airport projects. If the funds are not released, they will be forfeited to the FAA.

FUNDING SOURCE

Not Applicable.

RECOMMENDATION

Approval of resolution.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL

OF THE CITY OF BEAUMONT:

WHEREAS, the Federal Aviation Administration (FAA) designates Non-Primary Entitlement (NPE) funds annually to airports listed in the Texas Department of Transportation (TxDOT) Capital Improvement Plan; and,

WHEREAS, the funds are managed by TxDOT's Aviation Division and are applied to major construction projects at airports receiving FAA funds; and,

WHEREAS, in fiscal years 2013 and 2014, Beaumont Municipal Airport was not programmed for capital improvement projects through TxDOT's Aviation Division; and,

WHEREAS, since the funds were earmarked for Beaumont, TxDOT is unable to use the funds without authorization from the City of Beaumont; and,

WHEREAS, TxDOT is requesting that these funds, in the amount of \$300,000, be released for use on other airport projects;

NOW, THEREFORE, BE IT RESOLVED BY THE

CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the City Manager be and he is hereby authorized to execute an Agreement for Transfer of Entitlements with the Federal Aviation Administration (FAA) through the Texas Department of Transportation (TxDOT), Aviation Division to waive receipt of Non - Primary Entitlement (NPE) funds apportioned to the City of Beaumont for fiscal years 2013 and 2014. The agreement is substantially in the form attached hereto as Exhibit "A" and

made a part hereof for all purposes.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July,
2014.

- Mayor Becky Ames -

Appendix 1. ENTITLEMENT TRANSFER AGREEMENT



U.S. Department
of Transportation
Federal Aviation
Administration

AGREEMENT FOR TRANSFER OF ENTITLEMENTS

In accordance with section 47117(c)(2) of Title 49 U.S.C. (hereinafter called the "Act).

City of Beaumont, Texas

Hereby waives receipt of the following amount of funds apportioned to it for each fiscal year specified under section 47114(c)(1) of the Act.

	<u>Amount</u>	<u>Fiscal Year</u>
	\$ 150,000	2013
	\$ 150,000	2014
TOTAL	\$ <u>300,000</u>	

On the condition that the Federal Aviation Administration makes the waived amount available to:

TxDOT

for eligible projects under section 47104(a) Act. This waiver shall expire on earlier of 9-30-14 (date) or when the availability of apportioned funds would lapse under section 47117(b) of the Act.

**FOR THE UNITED STATES OF
AMERICA, FEDERAL AVIATION
ADMINISTRATION through TxDOT**

FOR City of Beaumont, Texas

(Signature)
David Fulton

(Typed Name)
Director, Aviation Division

(Title)

(Date)

(Signature)

(Typed Name)

(Title)

(Date)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____ acting as Attorney for the Sponsor do hereby certify:

That I have examined the foregoing Agreement and find that the Sponsor has been duly authorized to make such transfer and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Texas and the Act

Dated at _____ this _____ day of _____, 20____.

By _____
(Signature of Sponsor's Attorney)



**REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS JULY 22, 2014 1:30 P.M.**

AGENDA

CALL TO ORDER

- * Invocation Pledge Roll Call
- * Presentations and Recognition
- * Public Comment: Persons may speak on scheduled agenda items 1-4/Consent Agenda
- * Consent Agenda

GENERAL BUSINESS

1. Consider an ordinance authorizing the issuance of City of Beaumont, Texas, Waterworks and Sewer System Revenue and Refunding Bonds, Series 2014A, the issuance of City of Beaumont, Texas Waterworks and Sewer System Refunding Bonds, Taxable Series 2014B, and authorizing the City Manager and Chief Financial Officer to approve the amounts, interest rates, prices, and terms thereof for both series and to execute all documents related to the sale of the Bonds
2. Consider a resolution authorizing the City Manager to execute an Earnest Money Contract for the sale of the Hotel Beaumont
3. Consider a resolution authorizing the award of a bid to G & G Enterprises of Beaumont for the construction of the Hike & Bike Trail-Phase II
4. Consider a resolution authorizing the City Manager to enter into a five-year agreement with Express Scripts, Inc., for Pharmacy Benefit Manager Services

COMMENTS

- * Councilmembers/City Manager comment on various matters
- * Public Comment (Persons are limited to 3 minutes)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Mitchell Normand at 880-3777 three days prior to the meeting.

July 22, 2014

Consider an ordinance authorizing the issuance of City of Beaumont, Texas, Waterworks and Sewer System Revenue and Refunding Bonds, Series 2014A, the issuance of City of Beaumont, Texas Waterworks and Sewer System Refunding Bonds, Taxable Series 2014B, and authorizing the City Manager and Chief Financial Officer to approve the amounts, interest rates, prices, and terms thereof for both series and to execute all documents related to the sale of the Bonds



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Laura Clark, Chief Financial Officer 

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider an ordinance authorizing the issuance of City of Beaumont, Texas, Waterworks and Sewer System Revenue and Refunding Bonds, Series 2014A, the issuance of City of Beaumont, Texas Waterworks and Sewer System Refunding Bonds, Taxable Series 2014B, and authorizing the City Manager and Chief Financial Officer to approve the amounts, interest rates, prices, and terms thereof for both series and to execute all documents related to the sale of the Bonds.

BACKGROUND

As presented in a work session on June 17, 2014, \$15.5 million is required to complete projects related to water and sewer infrastructure improvements that are currently under construction and design and \$3.5 million is needed to fund new clarifiers at the sewer treatment plant. In addition, there is an estimated \$63.9 million of outstanding revenue bonds that can be refunded in order to achieve a lower interest rate and savings.

Historically, when the City issued or refunded revenue bonds, the sale would take place on a Monday in order to bring the transactions forward at the City Council meeting the following day. With the quickly changing financial markets, the most favorable time to enter the market may not be the day before a City Council meeting. Instead the ability of a local government to time its entry into the financial markets and thereby obtain the best borrowing terms can significantly impact the borrowing costs. Section 1207.007 Texas Government Code allows a City to enter into the bond market at any time in accordance with parameters established and approved by the City Council. Through a parameter bond ordinance, a Council delegates final pricing authority to a Pricing Officer, usually the City Manager and/or City Manager's Designee, and establishes and approves bond sale parameters such as maximum interest rate, minimum savings threshold for refunding, maximum aggregate principal amount of issue, final maturity date and expiration of delegated authority which is normally six (6) months. The Pricing Officer can only approve the sale if all parameters are met. This results in flexibility such that the bond issue may

be priced at any time and in an interest rate environment that is advantageous to the City rather than being locked into pricing on the date of the Council meeting.

The proposed parameters included in Section 5 of the proposed ordinance for Series 2014A and Series 2014B, as described above, includes:

Delegated Pricing Officers: City Manager and Chief Financial Officer

Maximum Principal Amount Series 2014A: \$75 million

Maximum Principal Amount Series 2014B: \$10 million

Interest Rate: Not greater than 6% per annum (Chapter 1204, Texas Government Code allows a rate of up to 15%)

Minimum Savings Threshold: 3% present value savings

Expiration of Parameter Authority: January 22, 2015

Interest will be payable semiannually in March and September.

FUNDING SOURCE

Principal and interest is paid from the Water Utilities Fund which is supported by water and sewer revenues.

RECOMMENDATION

Approval of ordinance.

system; and,

WHEREAS, the City Council (the "Council") of the City has previously issued, sold, and delivered, and there is currently outstanding, obligations identified in Schedule I, attached hereto (the "Refunded Bonds"); and,

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended, the City is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Bonds, or other authorized depository, and such deposit, when made in accordance with said statute, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Bonds; and,

WHEREAS, the City shall by this Ordinance, in accordance with the provisions of Sections 1207.007, 1371 and 1502, Texas Government Code, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of Bonds to be issued and negotiate the terms of sale thereof and to select the specific maturities, in whole or in part, of the Refunded Bonds to be refunded; and,

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the City to (1) issue the Bonds with such terms to be included in a pricing certificate (the "Officer's Pricing Certificate") to be executed by the Pricing Officer, and (2) refund the Refunded Bonds in order to achieve a net present value debt service savings and that such benefit is sufficient consideration for the refunding of the Refunded Bonds, with such savings, among other information and terms to be included in the Officer's Pricing Certificate, all in accordance with the provisions of Sections 1207, 1371 and 1502, Texas Government Code, as amended; and,

WHEREAS, the Council hereby finds that it may purchase a credit agreement in the form of a municipal bond insurance policy or policies with respect to the Bonds if it deems such purchase is cost effective; and,

WHEREAS, the City hereby finds and determines that the manner in which the refunding is being executed does not make it practicable to make the determination described by Section 1207.008(a)(2) of Chapter 1207; and,

WHEREAS, the bonds to be issued pursuant to the terms and provisions of this Ordinance will be secured by a pledge of and lien on the Net Revenues (as hereinafter defined) which is subordinate to the pledge of and lien on such Net Revenues associated with the Prior Lien Bonds (as hereinafter defined); and,

WHEREAS, the City is a home-rule municipality that: (i) adopted its charter under Section 5, Article XI, Texas Constitution; (ii) has a population of more than 50,000 and (iii) has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term obligation;

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

1. Findings and Determinations. It is hereby found and determined that the matters and facts contained in the preamble to this Ordinance are hereby found to be true and correct.

2. Definitions. Throughout this ordinance the following terms and expressions as used herein shall have the meanings set forth below:

The term "Additional Parity Bonds" shall mean the additional parity revenue bonds permitted to be issued by the City pursuant to Section 22(b) of this Ordinance.

The term "Blanket Issuer Letter of Representations" means the Blanket Issuer Letter of Representations between the City and DTC.

The term "Bond Insurer" shall mean, if any, a third party financial institution that provides a credit agreement in the form of a municipal bond insurance policy, as determined in the Officer's Pricing Certificate.

The term "Bond Register" shall mean the books of registration kept by the Registrar in which are maintained the names and addresses of, and the principal amounts of the Bonds registered to, each Owner.

The terms "Bonds" shall mean the Series 2014A Bonds and Series 2014B Bonds.

The term "Business Day" shall mean any day which is not a Saturday, Sunday, a day on which banking institutions in the city where the principal corporate trust office of the Registrar or Bond Insurer, if any, is located are authorized by law or executive order to close, or a legal holiday.

The term "City" shall mean The City of Beaumont, Texas.

The term "Closing Date" means the date of the initial delivery of and payment for the Bonds.

The term "Code" means the Internal Revenue Code of 1986, as heretofore and hereafter amended.

The term "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

The term "DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

The term "DTC Participant" means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities

to facilitate the clearance and settlement of securities transactions among DTC Participants.

The term "Gross Revenues" shall mean all revenues, income and receipts of every nature derived or received by the City from the operation and ownership of the System (but excluding any utility deposits) and the interest income from the investment or deposit of money in the Revenue Fund, the Interest and Sinking Fund. Gross Revenues shall not include any federal credit subsidy payments received by the City as a result of the election to designate the City's Waterworks and Sewer System Revenue Bonds, Taxable Series 2010B (Build America Bonds – Direct Payment to Issuer) as Build America Bonds.

The term "Interest Payment Date", when used in connection with any Bond, shall mean September 1, 2014 and each March 1 and September 1 thereafter until maturity or earlier redemption of such Bond.

The term "Issuer" shall mean the City.

The term "Maintenance and Operation Expenses" shall mean the reasonable and necessary expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, and all payments under contracts, now or hereafter defined as operating expenses by the Legislature of the State of Texas. Depreciation shall never be considered as a Maintenance and Operation Expense.

The term "MSRB" shall mean the Municipal Securities Rulemaking Board.

The term "Net Revenues" shall mean all Gross Revenues remaining after deducting the Maintenance and Operation Expenses. For purposes of any reimbursement agreement authorized pursuant to any Ordinance authorized in connection with the issuance of any Prior Lien Bonds, agreements to make payments out of Net Revenues, in all cases Net Revenues for such purpose, shall mean only Net Revenues available after satisfaction of obligations to holders of current and future Prior Lien Bonds.

The term "Officer's Pricing Certificates" shall mean a certificate or certificates to be signed by the City Manager and the City Chief Financial Officer pursuant to Section 5 hereof and delivered to the City Clerk, in substantially the forms attached hereto as Exhibit D.

The term "Ordinance" as used herein and in the Bonds shall mean this ordinance authorizing the Bonds and all amendments and supplements hereto.

The term "Owner" shall mean any person who shall be the registered owner of any outstanding Bonds.

The term "Parity Bonds" shall mean the Bonds and any Additional Parity Bonds.

The term "Prior Lien Bonds" shall mean the Bonds, and the City's outstanding **Waterworks and Sewer System Revenue Bonds, Series 2004**, and the City's outstanding **Waterworks and Sewer System Revenue Refunding Bonds, Series 2005**, and the City's outstanding **Waterworks and Sewer System Revenue Bonds, Series 2005**, and the City's

outstanding **Waterworks and Sewer System Revenue Refunding Bonds, Series 2006**, and the City's outstanding **Waterworks and Sewer System Revenue Bonds, Series 2006A**, and the City's outstanding **Waterworks and Sewer System Revenue Bonds, Series 2008**, and the City's outstanding **Waterworks and Sewer System Revenue Refunding Bonds, Series 2010**, and the City's outstanding **Waterworks and Sewer Revenue, Series 2010A**, and the City's outstanding **Waterworks and Sewer Revenue Bonds, Taxable Series 2010B** (Build America Bonds – Direct Payment to Issuer), and the City's outstanding **Waterworks and Sewer System Revenue Bonds, Series 2012**, but only to the extent such Prior Lien Bonds remain outstanding within the meaning of this Ordinance.

The term "Paying Agent" for the Bonds shall mean the Registrar.

The term "Record Date" shall mean, for any Interest Payment Date, the fifteenth (15th) calendar day of the month next preceding each Interest Payment Date.

The term "Registrar" shall mean The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, and its successors in that capacity.

The term "Report" shall mean the verification report provided by Grant Thornton LLP, certified public accountants, with respect to the Bonds and the adequacy of the amounts deposited pursuant to the Escrow Agreement to pay, when due, the principal of, and interest on the Refunded Bonds and certain other calculations.

The term "Reserve Fund Requirement" shall mean an amount equal to the average annual principal and interest requirement on the Parity Bonds, which may be determined and redetermined each year by the City but in no event less frequently than upon the issuance of each series of Parity Bonds.

The term "Rule" shall mean SEC Rule 15c-12, as amended from time to time.

The term "SEC" shall mean the United States Securities and Exchange Commission.

The term "Series 2014A Bonds" shall mean The City of Beaumont, Texas Waterworks and Sewer System Revenue and Refunding Bonds, Series 2014A.

The term "Series 2014B Bonds" shall mean The City of Beaumont, Texas Waterworks and Sewer System Refunding Bonds, Taxable Series 2014B.

The term "Special Project" shall mean, to the extent permitted by law, any property, improvement or facility declared by the City not to be part of the System and substantially all of the costs of the acquisition, construction and installation of which is paid from proceeds of a financing transaction other than the issuance of bonds payable from ad valorem taxes or Net Revenues of the System, and for which all maintenance and operation expenses are payable from sources other than revenues of the System, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

The term "System" shall mean all properties, facilities, improvements, equipment, interests and rights constituting the waterworks and sewer system of the City, including all future extensions, replacements, betterments, additions, improvements, enlargements, acquisitions, purchases and repairs to the System, but excluding all Special Projects.

The term "Underwriter" shall mean, collectively, Wells Fargo Securities, Inc., as senior underwriter, Estrada Hinojosa & Co., Inc. as co-senior underwriter, R.W. Baird, Inc., BOSC, Inc., and Coastal Securities, Inc. as co-managers.

3. Authorization. The Series 2014A Bonds shall be issued in fully registered form in the total authorized aggregate principal amount not to exceed SEVENTY-FIVE MILLION AND NO/100 DOLLARS (\$75,000,000) for the purpose of providing funds to (i) finance capital expenditures acquisition, purchase, construction, reconstruction, improvement, renovation, expansion, or equipping of property, buildings, structures, facilities, or related infrastructure for the City's waterworks and sewer system (the "Project"), (ii) discharge and make final payment of certain obligations of the City, as set forth in Schedule I, attached hereto (the "Refunded Bonds"), and (iii) paying costs of issuance of the Bonds and refunding the Refunded Bonds. The Series 2014B Bonds shall be issued in fully registered form in the total authorized aggregate principal amount of TEN MILLION AND NO/100 DOLLARS (\$10,000,000) for the purpose of providing funds to (i) discharge and make final payment of certain of the Refunded Bonds not refunded by the Series 2014A Bonds, and (ii) paying costs of issuance of the Bonds and refunding the Refunded Bonds.

4. Designation, Date, and Interest Payment Dates. The Series 2014A Bonds shall be designated as "THE CITY OF BEAUMONT, TEXAS, WATERWORKS AND SEWER SYSTEM REVENUE AND REFUNDING BONDS, SERIES 2014A." The Series 2014B Bonds shall be designated as "THE CITY OF BEAUMONT, TEXAS, WATERWORKS AND SEWER SYSTEM REFUNDING BONDS, SERIES 2014B." The Bonds shall be dated, mature, bear interest from the dates and at the rates per annum, and be payable on the dates and in the principal amounts as set forth in the Officer's Pricing Certificate.

5. Sale of Bonds. As authorized by Chapters 1207, 1371 and 1502, Texas Government Code, as amended, the City Manager and the Chief Financial Officer are hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including any additional designation or title by which the Bonds shall be known, the number of subseries of Bonds to be issued and the principal amount of each subseries, the price at which each series of the Bonds will be sold, the date or dates (which may be different dates for each series of the Bonds) on which the Bonds shall be sold, the form in which the Bonds shall be issued whether as current interest bonds, as compound interest bonds, or as a combination of current interest bonds and compound interest bonds, any additional designation or title by which the Bonds shall be known, the year or years in which each series of the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of each series of the Bonds, the rate of interest to be borne by each such maturity, the first interest payment date or compounding date, as the case may be, the dates, prices, and terms, if any, upon and at which each series of the Bonds shall be subject to

redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, or make-whole provisions, and such officers are also hereby authorized to act on behalf of the City in approving all other matters relating to the issuance, sale and delivery of the Bonds, including the refunding of the Refunded Bonds and the purchase of a bond insurance policy or policies for all or any portion of the Bonds, all of which shall be specified in the Officer's Pricing Certificate for each series of the Bonds provided that:

(a) the price to be paid for each series of the Bonds shall not be less than 90% of the aggregate original principal amount of the current interest bonds plus accrued interest, if any, thereon from their date to their delivery,

(b) none of the Bonds shall bear interest at a rate greater than 6% per annum or in excess of the maximum rate allowed by Chapter 1204, Texas Government Code,

(c) the aggregate principal amount of each subseries of the Bonds shall not exceed the maximum amount authorized in Section 3, and the sum of the principal amount of each series, plus net premium generated, plus any available funds of the City, if any, shall equal an amount sufficient to provide for the redemption of the Refunded Bonds as identified on the Officer's Pricing Certificate, to pay costs of issuance of the Bonds, and (if necessary) a deposit to the reserve fund,

(d) each series of the Bonds to be issued, prior to delivery, must have been rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations, and

(e) the refunding of the Refunded Bonds shall produce a net present value debt service savings of at least 3%, as shown by a calculation prepared by the Municipal Advisors, and attached to the Officer's Pricing Certificate.

Any finding by the City Manager or the Chief Financial Officer relating to the sale and delivery of the Bonds and the purchase of bond insurance shall have the same force and effect as a finding or determination made by the City Council.

6. Bond Numbers and Denominations. The Bonds shall be numbered from R-1 and upward (except the Initial Bond, which shall each be numbered T-1), and may be transferred and exchanged as set out in this Ordinance. Such Bonds shall mature on September 1 in each of the years and in the amounts set forth in such schedule. The Bonds delivered in transfer of or in exchange for other Bonds shall be numbered in order of their authentication by the Registrar, shall be in the denomination of \$5,000 or integral multiples thereof, and shall mature on the same date and bear interest at the same rate as the Bonds or Bonds in lieu of which they are delivered.

7. Execution of Bonds; Seal. The Bonds shall be signed by the Mayor or Mayor Pro Tem and countersigned by the City Clerk or Deputy City Clerk, by their manual, lithographed, or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal

on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds. If any officer of the City whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds or before the delivery of such Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

8. Approval by Attorney General; Registration by Comptroller. The Bonds to be initially issued shall be delivered to the Attorney General of Texas for approval and shall be registered by the Comptroller of Public Accounts of the State of Texas. The manually executed registration Bond of the Comptroller of Public Accounts substantially in the form provided in Section 18 of this Ordinance shall be attached or affixed to the Bonds to be initially issued.

9. Authentication. Except for the Bonds to be initially issued, which need not be authenticated by the Registrar, only such Bonds which bear thereon a certificate of authentication, substantially in the form provided in Section 19 of this Ordinance, manually executed by an authorized representative of the Registrar, shall be entitled to the benefits of this Ordinance or shall be valid or obligatory for any purpose. Such duly executed certificate of authentication shall be conclusive evidence that the Bonds so authenticated were delivered by the Registrar hereunder.

10. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent for the Bonds. The principal of and premium, if any, on the Bonds shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they respectively become due and payable, whether at maturity or by prior redemption, at the principal corporate trust office of the Registrar. The interest on each Bond shall be payable by check on the Interest Payment Date, mailed by the Registrar on or before each Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Bond Register. Any accrued interest payable at maturity on a Bond shall be paid upon presentation and surrender of such Bond at the principal corporate trust office of the Registrar.

If the date for payment of the principal of or interest on any Bond is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date such payment was due.

11. Successor Registrars. The City covenants that at all times while any Bonds are outstanding it will provide a legally qualified bank, trust company, financial institution or other agency to act as Registrar for the Bonds. The City reserves the right to change the Registrar for the Bonds on not less than 60 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or interest payment date on the Bonds. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Bond Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States mail, first class postage prepaid, of such change and of

the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

12. Special Record Date. If interest on any Bond is not paid on any Interest Payment Date and continues unpaid for thirty (30) days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the City. Such Special Record Date shall be fifteen (15) days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first class, postage prepaid, not later than five (5) days prior to the Special Record Date, to each affected Owner of record as of the close of business on the day prior to the mailing of such notice.

13. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of principal of and premium, if any, or interest on such Bond, and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the owner of any Bond in accordance with this Section 12 shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Bond to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Bonds remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable shall be reported and disposed of by the Registrar in accordance with the applicable provisions of Texas law, including Title 6 of the Texas Property Code, as amended.

14. Registration, Transfer, and Exchange. So long as any Bonds remain outstanding, the Registrar shall keep the Bond Register at its principal corporate trust office and, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of this Ordinance. If the Registrar does not maintain its principal offices in the State of Texas, the City agrees to keep a Bond Register at its offices which is identical to the Bond Register maintained by the Registrar and the Registrar will notify the City as to any changes in the Bond Register within 1 business day.

Each Bond shall be transferable only upon the presentation and surrender thereof at the principal corporate trust office of the Registrar, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Bond in proper form for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three (3) business days after such presentation, a new Bond or Bonds, registered in the name of the transferee or transferees, in authorized denominations and of the same type, maturity and aggregate principal amount and bearing interest at the same rate as the Bond or Bonds so presented.

All Bonds shall be exchangeable upon presentation and surrender thereof at the principal corporate trust office of the Registrar for a Bond or Bonds of the same type, maturity and interest rate and in any authorized denomination, in an aggregate amount equal to the unpaid principal amount of the Bond or Bonds presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Bonds in accordance with the provisions of this Section 13. Each Bond delivered in accordance with this Section 13 shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such Bond is delivered.

The City or the Registrar may require the Owner of any Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Bond. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

Neither the City nor the Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for redemption; provided, however, such limitation on transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

15. Mutilated, Lost, or Stolen Bonds. Upon the presentation and surrender to the Registrar of a mutilated Bond, the Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Bond is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall execute and the Registrar shall authenticate and deliver a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding.

The City or the Registrar may require the Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Bond, before any replacement Bond is issued, to:

- (1) furnish to the City and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Bond;
- (2) furnish such security or indemnity as may be required by the Registrar and the City to save them harmless;
- (3) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (4) meet any other reasonable requirements of the City and the Registrar.

If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Bond, authorize the Registrar to pay such Bond.

Each replacement Bond delivered in accordance with this Section 14 shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

16. Cancellation of Bonds. All Bonds paid in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance herewith, shall be cancelled and destroyed upon the making of proper records regarding such payment. The Registrar shall furnish the City with appropriate Bonds of destruction of such Bonds.

17. Book-Entry System. (a) Notwithstanding any other provision hereof, upon initial issuance of the Bonds but at the sole election of the Underwriter, the ownership of the Bonds shall be registered in the name of Cede & Co., as nominee of DTC, and except as otherwise provided in this Section, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Bonds shall be initially issued in the form of a single separate Bond for each of the maturities thereof. If the Underwriter shall elect to invoke the provisions of this Section, then the following provisions shall take effect with respect to the Bonds.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner of a Bond, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner of a Bond, as shown in the Register, of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds, for the purpose of all matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the

respective Owners, as shown in the Register as provided in this Order, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner as shown in the Register, shall receive a Bond evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Order shall refer to such new nominee of DTC.

(c) In the event that the City in its sole discretion determines that the beneficial owners of the Bonds be able to obtain Bonds, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, and notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC, as identified by DTC. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

(d) The execution and delivery of the Blanket Letter of Representations is hereby ratified and approved and the Mayor is hereby authorized and directed to execute a new Blanket Letter of Representations, if required, with such changes as may be approved by the Mayor or City Manager of the City.

(e) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Blanket Letter of Representations.

18. Redemption and Defeasance.

(a) Optional Redemption. The Series 2014A Bonds shall be subject to redemption prior to the Stated Maturity, at the option of the City at such times, in such amounts, in such manner and at such redemption prices as may be designated and provided for in the Officer's Pricing Certificate. The Series 2014B Bonds shall be not be subject to optional redemption prior to the Stated Maturity.

(b) Mandatory Redemption. The Series 2014A Bonds designated as "Term Bonds" in the Officer's Pricing Certificate ("Term Bonds"), if any, are subject to scheduled mandatory redemption and will be redeemed by the City, in part, at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the interest and sinking fund, on the dates and in the respective

principal amounts as set forth in the Officer's Pricing Certificate.

Prior to each scheduled mandatory redemption date, the Paying Agent/Registrar shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Term Bonds equal to the aggregate principal amount of such Term Bonds to be redeemed, shall call such Term Bonds for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in this Section.

The principal amount of the Term Bonds required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section shall be reduced, at the option of the City, by the principal amount of any Term Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

Series 2014A Bonds may be redeemed only in integral multiples of \$5,000. If a Series 2014A Bond subject to redemption is in a denomination larger than \$5,000, a portion of such Series 2014A Bond may be redeemed, but only in integral multiples of \$5,000. Upon surrender of any Series 2014A Bond for redemption in part, the Registrar, in accordance with Section 13 hereof, shall authenticate and deliver in exchange therefor a Series 2014A Bond or Series 2014A Bonds of like maturity and interest rate in an aggregate principal amount equal to the unredeemed portion of the Series 2014A Bond so surrendered.

The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Series 2014A Bonds to be redeemed.

Not less than thirty (30) days prior to a redemption date for the Series 2014A Bonds, the City shall cause a notice of redemption to be sent by United States mail, first class, postage prepaid, to each Owner of each Series 2014A Bond to be redeemed in whole or in part, at the address of the Owner appearing on the Register at the close of business on the Business Day next preceding the date of the mailing of such notice. Such notice shall state the redemption date, the redemption price, the place at which Series 2014A Bonds are to be surrendered for payment and, if less than all the Series 2014A Bonds are to be redeemed, the numbers of the Series 2014A Bonds or portions thereof to be redeemed. Any notice of redemption so mailed shall be conclusively presumed to have been duly given whether or not the Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Registrar for payment of the redemption price of the Series 2014A Bonds or portions thereof to be redeemed. When Series 2014A Bonds have been called for redemption in whole or in part and due provision made to redeem the same as herein provided, the Series 2014A Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of being paid solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Series 2014A Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

With respect to any optional redemption of the Series 2014A Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Series 2014A Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Series 2014A Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Series 2014A Bonds have not been redeemed.

(c) The City may defease the provisions of this Ordinance or any ordinance applicable to any Parity Bonds being defeased and discharge its obligation to the Owners of any or all of the Series 2014A Bonds, or any or all Parity Bonds to pay principal, interest and redemption premium, if any, thereon in any manner permitted by law, including by depositing with the Paying Agent/Registrar, or if authorized by Texas law, with any national or state bank having trust powers and having combined capital and surplus of at least \$50 million, or with the State Treasurer of the State of Texas either: (a) cash in an amount equal to the principal amount and redemption premium, if any, of such bonds being defeased plus interest thereon to the date of maturity or redemption; or (b) pursuant to an escrow or trust agreement, cash and/or direct bonds of, or bonds the principal of and interest on which are guaranteed by or secured by the pledge of direct bonds of the United States of America, in principal amounts and maturities and bearing interest at rates sufficient to provide for the timely payment of the principal amount and redemption premium, if any, of such bonds being defeased plus interest thereon to the date of maturity or redemption; provided, however, that if any of such bonds being defeased are to be redeemed prior to their respective dates of maturity, provision shall have been made for giving notice of redemption as provided in this Ordinance or ordinance applicable to the Parity Bonds being defeased. Upon such deposit, such bonds being defeased shall no longer be regarded to be outstanding or unpaid. Any surplus amounts not required to accomplish such defeasance shall be returned to the City.

19. Form. The Form of Bond as set forth in Exhibit A to the Officer's Pricing Certificate is hereby approved and supercedes the Form of Bond set forth in this Ordinance The form of the Bonds, including the form of the Registrar's Authentication Certificate, the form of Assignment, and the form of Registration Bond of the Comptroller of Public Accounts of the State of Texas which shall be attached or affixed to the Bonds initially issued shall be, respectively, substantially as follows, with such additions, deletions and variations as may be necessary or desirable and not prohibited by this Ordinance:

FORM OF BOND OF THE BONDS

UNITED STATES OF AMERICA

STATE OF TEXAS

COUNTY OF JEFFERSON

NUMBER

DENOMINATION

Subject to satisfying the terms and conditions prescribed therefor, the City has reserved the right to issue additional revenue obligations payable from and equally and ratably secured by a parity lien on and pledge of the Net Revenues in the same manner and to the same extent as the Bonds.

As provided in this Ordinance, the Bonds, together with additional obligations hereafter issued on a parity therewith, will become obligations equally secured by a first lien on and pledge of the Net Revenues of the System at such time as the principal of and interest on the Prior Lien Bonds have been fully paid or provision for the payment of said Prior Lien Bonds has been made in accordance with applicable law.

THE CITY RESERVES THE RIGHT, at its option, to redeem the Bonds having stated maturities on or after _____ 1, 20___, in whole or in part, on _____ 1, 20___, or any date thereafter, in integral multiples of \$5,000, at a price of par plus accrued interest to the date fixed for redemption. Reference is made to the Ordinance for complete details concerning the manner of redeeming the Bonds.

[THE BONDS maturing in the years _____ (the "Term Bonds") are also subject to mandatory redemption prior to maturity in the amounts and on the dates set out below, at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date:

TERM BONDS DUE

Date

Amount

TERM BONDS DUE _____]

The Paying Agent shall select for redemption by lot, or by any other customary method that results in random selection, a principal amount of Term Bonds equal to the aggregate principal amount of such Term Bonds to be redeemed, shall call such Term Bonds for redemption on the scheduled mandatory redemption date, and shall give notice of such redemption in accordance with the Ordinance authorizing the Bonds. The principal amount of Term Bonds required to be mandatorily redeemed shall be reduced by the principal amount of Term Bonds which, at least 45 days prior to the mandatory redemption date, shall have been delivered to the Registrar for cancellation or shall have been optionally redeemed and not previously credited against a mandatory redemption requirement.

The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

NOTICE OF ANY REDEMPTION shall be given at least thirty (30) days prior the date fixed for redemption by first class mail, addressed to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the books of registration kept by the Registrar. When Bonds or portions thereof have been called for redemption and due provision has been made to redeem the same, the principal amounts so redeemed shall be payable solely from the funds provided for redemption and interest which would otherwise accrue on the amounts called for

redemption shall terminate on the date fixed for redemption.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds may be defeased as provided in the Ordinance authorizing the Bonds.

THIS BOND is transferable only upon presentation and surrender at the principal corporate trust office of the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his authorized representative, subject to the terms and conditions of the Ordinance.

THE BONDS are exchangeable at the principal corporate trust office of the Registrar for Bonds in the principal amount of \$5,000 or any integral multiple thereof, subject to the terms and conditions of this Ordinance.

NEITHER THE CITY NOR THE REGISTRAR shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for redemption; provided, however, such limitation on transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

THIS BOND shall not be valid or obligatory for any purpose or be entitled to any benefit under the Ordinance unless this Bond either (i) is registered by the Comptroller of Public Accounts of the State of Texas by registration certificate attached or affixed hereto or (ii) authenticated by the Registrar by due execution of the authentication certificate endorsed hereon.

THE REGISTERED OWNER of this Bond, by acceptance hereof, acknowledges and agrees to be bound by all the terms and conditions of the Ordinance.

THE CITY has covenanted in the Ordinance that it will at all times provide a legally qualified registrar for the Bonds and will cause notice of any change of registrar to be mailed to each registered owner.

IT IS HEREBY certified, recited and covenanted that this Bond has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Bond have been performed, exist and have been done in accordance with law; that the bonds of this series do not exceed any statutory limitation; and that provision has been made for the payment of principal and interest on this bond and all of the bonds of this series by the aforesaid lien on and pledge of the Net Revenues of the System.

IN WITNESS WHEREOF, this Bond has been signed with the manual or facsimile signature of the Mayor of the City and countersigned with the manual or facsimile signature of the City Clerk of the City and the official seal of the City has been duly impressed, or placed in facsimile, on this Bond.

THE CITY OF BEAUMONT, TEXAS

Mayor

(SEAL)

City Clerk

FORM OF REGISTRATION CERTIFICATE
OF COMPTROLLER OF PUBLIC ACCOUNTS

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL this _____ day of _____, 2014.

XXXXXXXXXX

Comptroller of Public Accounts

(Seal)

of the State of Texas

FORM OF REGISTRAR'S AUTHENTICATION CERTIFICATE

**REGISTRAR'S
AUTHENTICATION CERTIFICATE**

It is hereby certified that this Bond has been delivered pursuant to the Ordinance described in the text of this Bond.

The Bank of New York Mellon Trust Company, N.A.

Dallas, Texas, as Registrar

By: _____

Authorized Signature

Date of Authentication: _____

FORM OF ASSIGNMENT

ASSIGNMENT

For value received, the undersigned hereby sells, assigns, and transfers unto

(Please print or type name, address, and zip code of Transferee)

(Please insert Social Security or Taxpayer Identification Number of Transferee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____

attorney to transfer said bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature Guaranteed: _____

NOTICE: The signature above must correspond to the name of the registered owner as shown on the face of this bond in every particular, without any alteration, enlargement or change whatsoever.

NOTICE: Signature must be guaranteed by a member firm of the New York Stock Exchange

or a commercial bank or trust
company.

END OF FORM OF BOND OF THE BONDS

20. Legal Opinion; CUSIP Numbers. The approving opinion of Bracewell & Giuliani LLP, Houston, Texas, Bond Counsel, and CUSIP Numbers may be printed on the Bonds, but errors or omissions in the printing of such opinion or such numbers shall have no effect on the validity of the Bonds.

21. (a) Pledge and Source of Payment. The City hereby covenants and agrees that, subject only to the prior lien on and pledge of the Net Revenues of the System to the payment and security of the Prior Lien Bonds (including the establishment and maintenance of the special funds created for the payment and security thereof) under the terms and conditions of the ordinances and proceedings pertaining to their authorization, all Gross Revenues of the System shall, as collected and received by the City, be deposited and paid into the special funds established in this Ordinance, and shall be applied in the manner hereinafter set forth, in order to provide for (i) the payment of all Maintenance and Operation Expenses and (ii) the payment of principal, interest and any redemption premiums on the Bonds, and all expenses of paying, securing and insuring the same.

The Bonds are special obligations of the City payable solely from and secured by a lien on and pledge of the Net Revenues of the System, such lien and pledge, however, being junior and subordinate to the lien on and pledge of such Net Revenues to the payment and security of the Prior Lien Bonds. The Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or the System, except with respect to the Net Revenues. **THE HOLDER OF THIS OBLIGATION IS NOT ENTITLED TO DEMAND PAYMENT OF THIS OBLIGATION OUT OF ANY MONEY RAISED BY TAXATION.**

IT IS ORDERED AND DIRECTED that this Ordinance pledging Net Revenues for the payment of the Bonds to the extent provided herein be filed and recorded in the records of the City as necessary to cause the pledge to be valid under Section 1201.44 of the Government Code of Texas. At any time while any of the Bonds are outstanding, if it is determined by the City or demanded by the holder of any Bonds that further action by the City is required to make the pledge valid or maintain the validity of the pledge, the City covenants and hereby directs the officers of the City to make such filings, including but not limited to appropriate filings under Chapter 9 of the Business and Commerce Code of Texas as are necessary to make the pledge valid or continue its validity.

(b) Construction Fund. There is hereby created and there shall be established on the books of the City a separate account to be entitled the "City of Beaumont, Texas, Waterworks and Sewer System Revenue Bonds, Series 2014A, Construction Fund". Immediately after the sale and delivery of the Series 2014A Bonds, that portion of the proceeds of the Series 2014A Bonds to be used for the cost of the Project and the cost of issuance of the Series 2014A Bonds shall be deposited into such Construction Fund and disbursed for such purposes. Pending completion of construction of the Project, interest earned on such proceeds may be used, at the

City's discretion, for the Project and shall be accounted for, maintained, deposited and expended as permitted by the provisions of Section 1201.043 of the Government Code of Texas, as from time to time in effect, or as otherwise required by applicable law. Thereafter, such interest shall be deposited in the Interest and Sinking Fund. Upon completion of the Project, the monies, if any, remaining in such Construction Fund shall be transferred and deposited by the City into the Interest and Sinking Fund.

(c) Rates and Charges. So long as any Parity Bonds remain outstanding, there shall be fixed, charged and collected rates and charges for the use and services of the System, which may be fully sufficient at all times:

(i) to pay all Maintenance and Operation Expenses; and

(ii) to produce Net Revenues in each fiscal year at least equal to 110 percent of the principal and interest requirements scheduled to occur in such fiscal year on all Prior Lien Bonds (including the Reserve Fund Requirement) and Parity Bonds then outstanding, but in no event less than the amount required to establish and maintain the Interest and Sinking Fund, and, to the extent that funds for such purpose are not otherwise available, to pay all other outstanding obligations payable from the Net Revenues of the System as and when the same become due.

The City covenants that it will not grant or permit any free service from the System except for public buildings and institutions operated by the City.

(d) Special Funds. The following special funds shall be maintained and accounted for as hereinafter provided so long as any of the Parity Bonds remain outstanding:

(i) Waterworks and Sewer System Revenue Fund (the "Revenue Fund");

(ii) Waterworks and Sewer System Revenue Bond Interest and Sinking Fund (the "Interest and Sinking Fund");

(iii) Waterworks and Sewer System Bond Reserve Fund (the "Reserve Fund"); and

(iv) Waterworks and Sewer System Prior Lien Bond Reserve Fund (the "Prior Lien Reserve Fund").

The Revenue Fund shall be maintained as a separate account on the books of the City. The Interest and Sinking Fund, the Reserve Fund and the Prior Lien Reserve Fund shall be maintained at an official depository bank of the City, separate and apart from all other funds and accounts of the City, and shall constitute trust funds which shall be held in trust for the benefit of the holders of the Parity Bonds, and the proceeds of which (except for interest income, which shall be transferred to the Revenue Fund) shall be and are hereby pledged to the payment of the Parity Bonds. All of the Funds named above shall be used solely as provided in this Ordinance

so long as any Parity Bonds remain outstanding.

(e) Flow of Funds. All Gross Revenues of the System shall be deposited as collected into the Revenue Fund. Moneys from time to time on deposit to the credit of the Revenue Fund shall be applied as follows in the following order of priority:

- (i) First, to pay Maintenance and Operation Expenses and to provide by encumbrance for the payment of all obligations incurred by the City for Maintenance and Operation Expenses which may include an operating reserve equal to one month's estimated Maintenance and Operation Expenses.
- (ii) Second, To the payment of the amounts required to be deposited in the Prior Lien Reserve Fund, Special Funds or accounts created and established for the payment and security of the Prior Lien Bonds in accordance with the ordinances authorizing the issuance thereof.
- (iii) Third, to make all deposits into the Interest and Sinking Fund required by this Ordinance and any ordinance authorizing the issuance of any outstanding Parity Bonds.
- (iv) Fourth, to make all deposits into the Reserve Fund required by this Ordinance and any ordinance authorizing the issuance of any outstanding Parity Bonds and any ordinance authorizing the issuance of Additional Parity Bonds.
- (v) Fifth, for any lawful purpose, including transfers to the General Fund as permitted by law. Such permitted transfers to the General Fund are hereby expressly authorized by this Ordinance and the purposes for which such surplus revenues may be used shall include, but not be limited to, payment of any other debt, expense, or obligation of the City.

Whenever the total amounts on deposit to the credit of the Interest and Sinking Fund, Reserve Fund and the Prior Lien Reserve Fund shall be equivalent to the sum of the aggregate principal amount of all outstanding Parity Bonds plus the aggregate amount of all interest accrued and to accrue thereon, no further payments need be made into the Interest and Sinking Fund, Reserve Fund and the Prior Lien Reserve Fund.

(f) Interest and Sinking Fund. On or before the last Business Day of each month so long as any Parity Bonds remain outstanding, after making all required payments and provision for payment of Maintenance and Operation Expenses, there shall be transferred into the Interest and Sinking Fund from the Revenue Fund the following amounts:

- (i) Such amounts, in approximately equal monthly installments, as will be sufficient to pay the interest scheduled to become due on the Parity Bonds on the next interest payment date; and

(ii) Such amounts, in approximately equal monthly installments, as will be sufficient to pay the next maturing principal of the Parity Bonds, including the principal amounts of, and any redemption premiums on, any Parity Bonds payable as a result of the exercise or operation of any redemption provision contained in this Ordinance or in any ordinance authorizing the issuance of Parity Bonds.

Moneys deposited to the credit of the Interest and Sinking Fund (except for interest income, which shall be transferred to the Revenue Fund) shall be used solely for the purpose of paying principal (either at maturity or prior redemption or to purchase Parity Bonds in the open market to be credited against mandatory redemption requirements), interest and redemption premiums on the Parity Bonds, plus all bank charges and other costs and expenses relating to such payment, on a pro rata basis among all series of Parity Bonds. On or before each principal and/or interest payment date for the Parity Bonds, the City shall transfer from the Interest and Sinking Fund to the paying agents for the Parity Bonds an amount equal to the principal, interest and redemption premiums payable on the Parity Bonds on such date, together with an amount equal to all bank charges and other costs and expenses relating to such payment. The paying agents for the Parity Bonds shall totally destroy all paid Parity Bonds and coupons (if any) and shall provide the City with an appropriate Bond of destruction.

(g) Reserve Fund.

Unless the Reserve Fund is fully funded, on or before the last Business Day of each month so long as any Parity Bonds remain outstanding, after making all required payments and provision for payment of Maintenance and Operation Expenses, and after making the transfers into the Interest and Sinking Fund required in the preceding Section, there shall be transferred into the Reserve Fund from the Revenue Fund an amount at least equal to one-sixtieth (1/60th) of the average annual principal and interest requirements on the Parity Bonds, so that the Reserve Fund shall contain, in no more than 60 months after the issuance of each such issue of Parity Bonds, money and investments in an aggregate amount at least equal to the average annual principal and interest requirements on all Parity Bonds then outstanding. After such amount has accumulated in the Reserve Fund and so long thereafter as such Fund contains such amount, no further deposits shall be required to be made into the Reserve Fund, and any excess amounts may be transferred to the Revenue Fund. But if and whenever the balance in the Reserve Fund is reduced below such amount, monthly deposits into such Fund shall be resumed and continued in amounts at least equal to one-sixtieth (1/60th) of the average annual principal and interest requirements on the Parity Bonds until the Reserve Fund has been restored to such amount; provided however, if a Reserve Fund Surety Policy has been obtained by the City pursuant to the next paragraph below, then the provisions of such next paragraph shall govern and control with respect to replenishment of amounts drawn under the Reserve Fund Surety Policy. The Reserve Fund shall be used to pay the principal of and interest on the Parity Bonds at any time when there is not sufficient money available in the Interest and Sinking Fund for such purpose and it may be used finally to pay and retire the last Parity Bonds to mature or be redeemed.

To the extent permitted by law, the City expressly reserves the right at any time to satisfy

all or any part of the amounts required to be on deposit in the Reserve Fund (the “Reserve Fund Requirement”) by obtaining for the benefit of the Reserve Fund one or more Reserve Fund Surety Policies (a “Reserve Fund Surety Policy”). The purchase of such Reserve Fund Surety Policy is approved, and the Mayor, Mayor Pro-Tem, City Manager, Chief Financial Officer, City Clerk, Deputy City Clerk, and all other appropriate officers and agents of the City are each authorized to execute such documents, including but not limited to a reimbursement agreement, to grant a subordinated pledge and lien on the Net Revenues as security for the payment of amounts due under the reimbursement agreement (which grant if made is hereby approved), and to do any and all things necessary or desirable to obtain such a Policy if in the discretion of the acting official deems its acquisition in the best interests of the City. In the event the City elects to substitute at any time a Reserve Fund Surety Policy for any funded amounts in the Reserve Fund, it may apply any bond proceeds thereby released, to the greatest extent permitted by law, to any purposes for which the bonds were issued, and if all such purposes have been satisfied, to the payment of debt service on such bonds, and it may apply any other funds thereby released to any of the purposes for which such funds may lawfully be applied including the payment of debt service on the Parity Bonds. A Reserve Fund Surety Policy shall be an insurance policy or other similar guarantee in a principal amount equal to the portion of the Reserve Fund Requirement to be satisfied which is issued by a financial institution or insurance company with a rating for its long term unsecured debt or claims paying ability in the highest letter category by two major municipal securities evaluation sources. The premium for any such policy shall be paid from bond proceeds or other funds of the City lawfully available for such purpose. The City reserves the right to fund any increase in the Reserve Fund Requirement caused by the issuance of Additional Parity Bonds by the purchase of a Reserve Fund Surety Policy in the amount of such increase or by making transfers from the Revenue Fund to the Reserve Fund, in approximately equal monthly installments, in amounts sufficient to accumulate the increase in the Reserve Fund Requirement within sixty (60) months of the issuance of such Additional Parity Bonds. If the Reserve Fund contains only cash and the balance in the Reserve Fund is reduced below the Reserve Fund Requirement at any time, the City shall make monthly transfers from the Revenue Fund to the Reserve Fund, in approximately equal monthly installments, in amounts sufficient to restore the balance in the Reserve Fund to the Reserve Fund Requirement within twelve (12) months of the date on which the balance in the Reserve Fund was so reduced. If the Reserve Fund contains a Reserve Fund Surety Policy (and no cash) and a draw is made against such policy, the City shall make monthly transfers from the Revenue Fund, in approximately equal monthly installments, in amounts sufficient to reimburse the amount drawn under such policy within twelve (12) months. If the Reserve Fund contains a combination of cash and a Reserve Fund Surety Policy, and the balance in the Reserve Fund is reduced below the Reserve Fund Requirement by a combination of cash withdrawals and draws against the Reserve Fund Surety Policy, the City shall make monthly transfers from the Revenue Fund, in approximately equal monthly installments, in amounts sufficient to restore the cash balance in the Reserve Fund and reimburse the amount drawn under such policy within twelve (12) months, with reimbursement to be made for all amounts drawn under such policy before any cash deposits are made into the Reserve Fund. Any reimbursement of amounts drawn against a Reserve Fund Surety Policy shall be limited to the amounts actually paid under such policy, and the City shall have no obligation to make any reimbursement payment with respect to any such policy except as provided herein.

Notwithstanding anything to the contrary contained herein, the requirement set forth above in this subsection to maintain the Reserve Fund Requirement in the Reserve Fund shall be suspended for such time as the Net Revenues for each Fiscal Year are equal to at least 1.30 times the Average Annual Debt Service Requirements. In the event that the Net Revenues for any Fiscal Year are less than 1.30 times the Average Annual Debt Service Requirements, the City will be required to commence making Required Reserve Fund Deposits, as provided above, and to continue such Required Reserve Fund Deposits until the earlier of (i) such time as the Reserve Fund contains the Reserve Fund Requirement or (ii) the Net Revenues in each of two consecutive years have been equal to not less than 1.30 times the Average Annual Debt Service Requirements.

During such time as the Reserve Fund contains the Reserve Fund Requirement or the obligation to maintain the Reserve Fund Requirement has been suspended pursuant to the paragraph above, the City may, at its option, withdraw all surplus funds in the Reserve Fund and deposit such surplus in the Interest and Sinking Fund or otherwise use such amount in any manner permitted by law.

(h) Prior Lien Reserve Fund. The City shall fully fund the reserve fund as provided in the ordinances in connection with the Prior Lien Bonds.

(i) Deficiencies in Funds. If in any month there shall not be deposited into any Fund maintained pursuant to this Section 20 the full amounts required herein, amounts equivalent to such deficiency shall be set apart and paid into such Fund or Funds from the first available and unallocated money in the Revenue Fund, and such payment shall be in addition to the amounts otherwise required to be paid into such Funds during the succeeding month or months. To the extent necessary, the rates and charges for the System shall be increased to make up for any such deficiencies.

(j) Investment of Funds; Transfer of Investment Income. Money in each Fund maintained pursuant to this Section of this Ordinance may, at the option of the City, be invested as permitted by law, provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund will be available at the proper time or times. Any obligation in which money is so invested shall be kept and held in the Fund from which the investment was made. All such investments shall be promptly sold when necessary to prevent any default in connection with the Parity Bonds. All interest and income derived from such deposits and investments shall be transferred or credited as received to the Revenue Fund, and shall constitute Gross Revenues of the System; provided, however, to the extent such interest and income is derived from bond proceeds, such interest and income shall not constitute Gross Revenues of the System and shall only be used for the purposes for which the bond proceeds may be used.

22. Additional Bonds.

(a) Additional Obligations to be Issued on a Parity with the Prior Lien Bonds - Obligations of Inferior Lien and Pledge. The City may hereafter issue any additional obligations on a parity with the Prior Lien Bonds or create or issue evidences of indebtedness for

any purpose possessing a lien on the Net Revenues of the System superior to that to be possessed by the Parity Bonds.

(b) Additional Parity Bonds. In addition to the right to issue bonds of inferior lien as authorized by law, the City reserves the right to issue, for any lawful purpose, including the refunding of any previously issued Prior Lien Bonds, Parity Bonds or any other bonds or obligations of the City issued in connection with the System, one or more series of Additional Parity Bonds payable from, and secured by a junior lien on and pledge of, the Net Revenues of the System, on a parity with the Bonds and any other Additional Parity Bonds then outstanding; provided, however, that no Additional Parity Bonds may be issued unless:

(i) The Interest and Sinking Fund contain the amount of money then required to be on deposit therein;

(ii) For either the preceding Fiscal Year or any consecutive 12-month calendar period ending no more than 90 days prior to adoption of the ordinance authorizing such Additional Parity Bonds, Net Revenues were equal to at least 125% of the average annual principal and interest requirements on all Prior Lien Bonds and Parity Bonds that will be outstanding after the issuance of the series of Additional Parity Bonds then proposed to be issued, as certified by the City's Finance Officer or by an independent certified public accountant or firm of independent certified public accountants; or

(iii) If the City cannot meet the test described in (ii) above, but a change in the rates and charges applicable to the System becomes effective at least sixty (60) days prior to the adoption of the ordinance authorizing Additional Parity Bonds and the City's Finance Officer certifies that, had such change in rates and charges been effective for the preceding fiscal year or 12 consecutive calendar month period ending no more than 90 days prior to adoption of said ordinance, the Net Revenues for such period would have met the test described in (iii) above.

(c) Subordinate Lien Obligations. The City reserves the right to issue, for any lawful purpose, bonds, notes or other obligations (including but not limited to reimbursement agreements undertaken to obtain reserve fund security policies) secured in whole or in part by liens on and pledges of the Net Revenues that are junior and subordinate to the lien on and pledge of Net Revenues securing payment of the Parity Bonds. Such subordinate lien obligations may be further secured by any other source of payment lawfully available for such purposes.

(d) Special Project Bonds. The City reserves the right to issue revenue bonds secured by liens on and pledges of revenues and proceeds derived from Special Projects.

23. Covenants and Provisions Relating to all Parity Bonds.

(a) Punctual Payment of Parity Bonds. The City will punctually pay or cause to be paid the interest on and principal of all Parity Bonds according to the terms thereof and will faithfully do and perform, and at all times fully observe, any and all covenants, undertakings,

stipulations and provisions contained in this Ordinance and in any ordinance authorizing the issuance of Additional Parity Bonds.

(b) Maintenance of System. So long as any Parity Bonds remain outstanding, the City covenants that it will at all times maintain the System, or within the limits of its authority cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. In operating and maintaining the System, the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or order of any governmental, administrative or judicial body promulgating same, noncompliance with which would materially and adversely affect the operation of the System.

(c) Sale or Encumbrance of System. So long as any Parity Bond remain outstanding, the City will not sell, dispose of or, except as permitted in this Ordinance, further encumber the System; provided, however, that this provision shall not prevent the City from disposing of any portion of the System which is being replaced or is deemed by the City to be obsolete, worn out, surplus or no longer needed for the proper operation of the System. Any agreement pursuant to which the City contracts with a person, corporation, municipal corporation or political subdivision to operate the System or to lease and/or operate all or part of the System shall not be considered as an encumbrance of the System.

(d) Insurance. The City further covenants and agrees that it will keep the System insured with insurers of good standing against risks, accidents or casualties against which and to the extent insurance is customarily carried by political subdivisions of the State of Texas operating similar properties, to the extent that such insurance is available. The cost of all such insurance, together with any additional insurance, shall be a part of the Maintenance and Operation Expenses. All net proceeds of such insurance shall be applied to repair or replace the insured property that is damaged or destroyed, or to make other capital improvements to the System, or to redeem Parity Bonds.

(e) Accounts, Records and Audits. So long as any Parity Bonds remain outstanding, the City covenants and agrees that it will maintain a proper and complete system of records and accounts pertaining to the operation of the System in which full, true and proper entries will be made of all dealings, transactions, business and affairs which in any way affect or pertain to the System or the Gross Revenues or the Net Revenues thereof. The City shall after the close of each of its Fiscal Years cause an audit report of such records and accounts to be prepared by an independent certified public accountant or independent firm of certified public accountants. Each year promptly after such audit report is prepared, the City shall furnish a copy thereof without cost to the Municipal Advisory Council of Texas and any holders of Parity Bonds who shall request same. All expenses incurred in preparing such audits shall be Maintenance and Operation Expenses.

(f) Competition. To the extent it legally may, the City will not grant any franchise or allow for the acquisition, construction or operation of any competing facilities which might be used as a substitute for the System and will prohibit the operation of any such

competing facilities.

(g) Pledge and Encumbrance of Net Revenues. The City covenants and represents that it has the lawful power to pledge the Net Revenues to the payment of the Parity Bonds and has lawfully exercised such power under the Constitution and laws of the State of Texas. The City further covenants and represents that, other than to the payment of the Parity Bonds, the Net Revenues are not and will not be pledged to the payment of any debt or obligation of the City, or in any other manner encumbered unless such pledge or encumbrance is junior and subordinate to the lien and pledge securing payment of the Parity Bonds.

(h) Remedies. This Ordinance shall constitute a contract between the City and the holders of the Parity Bonds from time to time outstanding, and shall remain in effect until the Parity Bonds and the interest thereon shall be fully paid or discharged or provision therefor shall have been made as provided herein. In the event of a default in the payment of the principal of or interest on any of the Parity Bonds or a default in the performance of any duty or covenant provided by law or in this Ordinance, the holder or holders of any of the Parity Bonds, as appropriate, may pursue all legal remedies afforded by the Constitution and laws of the State of Texas to compel the City to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the foregoing, it is expressly provided that any holder of any of the Parity Bonds may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City under this Ordinance, including the making and collection of reasonable and sufficient rates and charges for the use and services of the System, the deposit of the Gross Revenues thereof into the special funds as herein provided, and the application of such Gross Revenues and Net Revenues in the manner required in this Ordinance.

(i) Legal Holidays. In any case where the date fixed for payment of interest on or principal of the Parity Bonds or the date fixed for redemption of any Parity Bonds shall be a legal holiday or a day on which a paying agent for the Parity Bonds is authorized by law to close, then payment of interest or principal by such paying agent need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date fixed for such payment and no interest shall accrue for the period from such date to the date of actual payment.

(j) Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Ordinance shall be given in such other manner and at such time or times as in the judgment of the City shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirements for publication thereof.

24. Further Proceedings. After the Bonds to be initially issued shall have been executed, it shall be the duty of the Mayor and other appropriate officials and agents of the City to deliver the Bonds to be initially issued and all pertinent records and proceedings to the Attorney General of the State of Texas, for examination and approval. After the Bonds to be

initially issued shall have been approved by the Attorney General, they shall be delivered to the Comptroller of Public Accounts of the State of Texas for registration. Upon registration of the Bonds to be initially issued, the Comptroller of Public Accounts (or the Comptroller's bond clerk or an assistant bond clerk lawfully designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate prescribed herein and the seal of said Comptroller shall be impressed or placed in facsimile, thereon.

25. Sale of Bonds. The Bonds are hereby sold and shall be delivered to the Underwriter at a price and upon the terms as set forth in the Officers Pricing Certificate.

26. Tax Exemption.

(a) The City intends that the interest on the Series 2014A Bonds shall be excludable from gross income for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Code, and the applicable Treasury Regulations promulgated thereunder (the "Regulations"). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would (i) cause the interest on the Series 2014A Bonds to be includable in gross income, as defined in Section 61 of the Code, for federal income tax purposes or (ii) result in the violation or failure to satisfy any provision of Section 103 and 141 through 150 of the Code and the applicable Regulations. In particular, the City covenants and agrees to comply with each requirement of this Section 26; provided, however, that the City shall not be required to comply with any particular requirement of this Section 26 if the City has received an opinion of nationally recognized bond counsel (a "Counsel's Opinion") that (i) such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2014A Bonds or (ii) compliance with some other requirement set forth in this Section 25 will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other requirement specified in such Counsel's Opinion shall constitute compliance with the corresponding requirement specified in this Section 26.

(b) No Private Use or Payment and No Private Loan Financing. The City covenants and agrees that it will make such use of the proceeds of the Series 2014A Bonds, including interest or other investment income derived from Series 2014A Bond proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Series 2014A Bonds will not be "private activity bonds" within the meaning of Section 141 of the Code and the Regulations promulgated thereunder. Moreover, the City shall certify, through an authorized officer, employee or agent that based upon all facts and circumstances known or reasonably expected to be in existence on the date the Series 2014A Bonds are delivered, that the proceeds of the outstanding Parity Bonds have not been and the proceeds of the Series 2014A Bonds will not be used in a manner that would cause the Series 2014A Bonds to be "private activity bonds" within the meaning of Section 141 of the Code and the Regulations promulgated thereunder.

(c) No Federal Guaranty. The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Series 2014A Bonds to be "federally guaranteed" within the

meaning of Section 149(b) of the Code and the applicable Regulations thereunder, except as permitted by Section 149(b)(3) of the Code and such Regulations.

(d) No Hedge Bonds. The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the Series 2014A Bonds to be "hedge bonds" within the meaning of section 149(g) of the Code and the applicable Regulations thereunder. Moreover, the City will certify, through an authorized officer, employee or agent, based upon all facts and estimates known or reasonably expected to be in existence on the date the Series 2014A Bonds are delivered, that the proceeds of the Refunded Bonds have not been used in a manner that would cause the Refunded Bonds or the Series 2014A Bonds to be "hedge bonds" within the meaning of section 149(g) of the Code and the Regulations promulgated thereunder.

(e) No-Arbitrage. The City covenants and agrees that it will make such use of the proceeds of the Series 2014A Bonds, including interest or other investment income derived therefrom, regulate investments of such proceeds and amounts, and take such other and further action as may be required so that the Series 2014A Bonds will not be "arbitrage bonds" within the meaning of Section 148(a) of the Code and the applicable Regulations promulgated thereunder. Moreover, the City shall certify, through an authorized officer, employee or agent, that based upon all facts and estimates known or reasonably expected to be in existence on the date the Series 2014A Bonds are delivered, that the proceeds of the Series 2014A Bonds will not be used in a manner that would cause the Series 2014A Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and applicable Regulations promulgated thereunder.

(f) Arbitrage Rebate. If the City does not qualify for an exception to the requirements of Section 148(f) of the Code relating to rebate to the United States, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the "gross proceeds" of the Series 2014A Bonds (within the meaning of Section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Bonds as may be required to calculate the amount earned on the investment of the gross proceeds of the Series 2014A Bonds separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issues of the City or moneys which do not represent gross proceeds of any bonds of the City, (ii) determine at such times as are required by applicable regulations, the amount earned from the investment of the gross proceeds of the Series 2014A Bonds which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Series 2014A Bonds, or on such other date as may be permitted under applicable Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into an investment arrangement with respect to the gross proceeds of the Series 2014A Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

(g) Information Reporting. The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Series 2014A Bonds are issued, an information statement concerning the Series 2014A Bonds, all under and in accordance with Section 149(e) of the Code and applicable Regulations promulgated thereunder.

(h) Record Retention. The City will retain all pertinent and material records relating to the use and expenditure of the proceeds of the Refunded Bonds and the Series 2014A Bonds until three years after the last Series 2014A Bond is redeemed, or such shorter period as authorized by subsequent guidance issued by the Department of Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the City to retrieve and reproduce such books and records in the event of an examination of the Series 2014A Bonds by the Internal Revenue Service.

(i) Registration. The Series 2014A Bonds will be issued in registered form.

(j) Deliberate Actions. The City will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes the Series 2014A Bonds to fail to meet any requirement of section 141 of the Code after the issue date of the Series 2014A Bonds unless an appropriate remedial action is permitted by section 1.141-12 of the Regulations and an opinion of Bond Counsel is obtained that such remedial action cures any failure to meet the requirements of section 141 of the Code.

(k) Continuing Obligation. Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of this Section shall survive the defeasance and discharge of the Series 2014A Bonds for so long as such matters are relevant to the exclusion from gross income of interest on the Series 2014A Bonds for federal income tax purposes.

27. Escrow Agreements. The form of the escrow agreements (both the "Escrow Agreement") by and between the City and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Escrow Agent"), attached hereto as Exhibit B and incorporated herein by reference as a part of this Ordinance for all purposes, is hereby approved as to form and content, and such Escrow Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the City, is hereby authorized to be executed by the Mayor or Mayor Pro Tem and City Clerk for and on behalf of the City.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Underwriter for deposit to the credit of the "2014 CITY OF BEAUMONT, TEXAS, WATER AND SEWER SYSTEM REVENUE REFUNDING BOND ESCROW FUND" (the "Escrow Fund"); all as contemplated and provided in Texas Government Code, Chapter 1207, as amended, this Ordinance and the Escrow Agreement.

28. Refunded Bonds. (a) In order to provide for the refunding, discharge and retirement of the Refunded Bonds, the Refunded Bonds are called for redemption on September 1 of 2014, 2015 and 2016 at the price of par plus accrued interest to the redemption date, and notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by the Council, which authorized the issuance of the Refunded Bonds. The City Clerk is hereby authorized and directed to file a copy of this Ordinance, together with a suggested form of notice of redemption to be sent to bondholders, with The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, in accordance with the redemption provisions applicable to the Refunded Bonds.

(b) The redemption of the Refunded Bonds described above being associated with the refunding of such Refunded Bonds, the approval, authorization and arrangements herein given and provided for the redemption of such Refunded Bonds on the redemption date designated therefor and in the manner provided shall be irrevocable upon the issuance and delivery of the Bonds; and the City Clerk is hereby authorized and directed to make all arrangements necessary to notify the holders of such Refunded Bonds of the City's decision to redeem such Refunded Bonds on the date and in the manner herein provided and in accordance with the ordinance authorizing the issuance of the Refunded Bonds and this Ordinance.

29. Engagement of Professionals. The City Council hereby confirms the engagement of (i) RBC Capital Markets, LLC, as Municipal Advisor, to the City and (ii) Wells Fargo Securities, Inc., as the senior underwriter, Estrada Hinojosa & Co., Inc. as co-senior underwriter, R.W. Baird, Inc., BOSCO, Inc., and Coastal Securities, Inc. as co-managers (together, the "Underwriter") in connection with the issuance and sale of the Bonds.

30. Proceeds of Sale. Proceeds from the sale of the Bonds, together with other funds of the City, if any, shall, promptly upon receipt by the City, be applied as set forth in the Officer's Pricing Certificate. Any proceeds remaining after the accomplishment of such purposes, including interest earnings on the investment of such proceeds, shall be deposited to the Interest and Sinking Fund.

31. Bond Insurance. In order to obtain the lowest attainable interest rates on the Bonds, the City Manager or the Director of Finance are authorized to enter into a credit agreement with one or more Bond Insurers to obtain one or more bond insurance policies with respect to all or a portion of the Bonds. The City Manager or the Director of Finance are authorized to execute and the City Secretary is authorized to attest and affix the City's seal to any documents required in connection with the purchase of any such policy or policies.

32. Paying Agent/Registrar Agreement. The paying agent/registrar agreement (the "Paying Agent Agreement") by and between the City and Paying Agent, a form of which is attached hereto as Exhibit B and incorporated herein by reference as a part of this Ordinance for all purposes, is hereby approved, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the City, is hereby authorized to be executed by the Mayor or Mayor Pro Tem and City Clerk for and on behalf of the City.

33. Official Statement. The Preliminary Official Statement and the Official Statement prepared in the initial offering and sale of the Bonds have been and are hereby authorized, approved and ratified as to form and content. The use of the Preliminary Official Statement and the Official

Statement in the reoffering of the Bonds by the Underwriter is hereby approved, authorized and ratified. The proper officials of the City are hereby authorized to execute and deliver a Bond pertaining to the Preliminary Official Statement and the Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

34. No Personal Liability. No recourse shall be had for payment of the principal of or interest on any Bonds or for any claim based thereon, or on this Ordinance, against any official or employee of the City or any person executing any Bonds.

35. Continuing Disclosure Undertaking. (a) Annual Reports. The City undertakes and agrees for the benefit of the Bond holders to provide annually to the MSRB, within six months after the end of each fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized in this Ordinance (i) under the headings “CITY WATERWORKS AND SEWER SYSTEM REVENUE DEBT”, “ADMINISTRATION OF THE CITY”, “THE SYSTEM-WATER AND SEWER RATES” and in APPENDIX B. The information to be provided shall include the financial statements of the City prepared in accordance with the accounting principles the City may be required to employ from time to time pursuant to State law or regulation and audited, if the audit is completed within the period during which they must be provided. If the audit of such financial statements is not completed within such period, then the City shall provide unaudited financial statements for the applicable fiscal year to the MSRB within such six month period, and audited financial statements when the audit report on such statement becomes available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

(b) Material Event Notices. The City shall notify the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- i. Principal and interest payment delinquencies;
- ii. Non-payment related defaults, if material;
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;
- v. Substitution of credit or liquidity providers, or their failure to perform;

- vi. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determination of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- vii. Modifications to rights of Bondholders, if material;
- viii. Bond calls, if material, and tender offers;
- ix. Defeasances;
- x. Release, substitution or sale of property securing repayment of the securities, if material;
- xi. Rating changes;
- xii. Bankruptcy, insolvency, or receivership, or similar event of the obligated person;
- xiii. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement or undertake such action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with section (a) above. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

(c) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Texas law that causes Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any

other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION OR FROM ANY STATEMENT MADE PURSUANT TO THIS SECTION. HOLDERS OR BENEFICIAL OWNERS OF BONDS MAY SEEK AS THEIR SOLE REMEDY A WRIT OF MANDAMUS TO COMPEL THE CITY TO COMPLY WITH ITS AGREEMENT.

No default by the City with respect to its continuing disclosure agreement shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status or type of operations of the City, if (i) the agreement, as amended, would have permitted the Underwriter to purchase or sell the Bonds in the initial primary offering in compliance with the Rule, taking into account any amendments or interpretations of such rule to the date of such amendment, as well as such changed circumstances, and (ii) either (a) the holders of a majority in aggregate principal amount of the outstanding Bonds consent to such amendment, or (b) any person unaffiliated with the City (such as nationally recognized bond counsel) determines the amendment will not materially impair the interests of the holders and beneficial owners of the Bonds. The City may also amend or repeal the obligations and agreement in this Section if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, and the City may amend the agreement in its discretion in any other circumstance or manner, but in either case only to the extent that its right to do so would not prevent an underwriter from lawfully purchasing or reselling the Bonds in the primary offering of the Bonds in compliance with the Rule. If the City amends its agreement, it must include with the next financial information and operating data provided in accordance with its agreement an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of information and operating data so provided.

The City's continuing obligation to provide annual financial information and operating data and notices of events will terminate if and when the City no longer remains an "obligated person" (as such term is defined in SEC Rule 15C2-12) with respect to the Bonds.

36. Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public, and public notice of the time, place

and purpose of said meeting was given, all as required by Chapter 551 of the Texas Government Code.

37. Interpretations. All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Parity Bonds and the validity of the lien on and pledge of the Net Revenues to secure the payment of the Parity Bonds.

38. Repealer. All orders, resolutions, and ordinances, and parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

39. Effective Date. This Ordinance shall be in force and effect from and after its final passage, and it is so ordered.

40. Amendment of Ordinance.

(a) If and to the extent permitted by this Ordinance, the owners of the Bonds aggregating in the principal amount of 51% of the aggregate principal amount of the outstanding Bonds shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City provided, however, that without the consent of the owners of all of the Bonds at the time outstanding, nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Bonds so as to:

- (1) Make any change in the maturity of the outstanding Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Bonds;
- (3) Reduce the amount of the principal payable on the outstanding Bonds;
- (4) Modify the terms of payment of principal of or interest on the outstanding Bonds, or impose any conditions with respect to such payment;
- (5) Affect the owners of less than all of the outstanding Bonds then outstanding;

(6) Change the percentage of the principal amount of outstanding Bonds, necessary for consent to such amendment.

(b) If at any time the City shall desire to amend this Ordinance under this Section, the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in The City of New York, New York, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent for inspection by all owners of the Bonds. Such publication is not required, however, if notice in writing is given to each owner of the outstanding Bonds. Not less than thirty (30) days' notice of the proposed amendment shall also be given by the City to the Underwriter.

(c) Whenever at any time not less than thirty (30) days, and within one (1) year, from the date of the publication of said notice or other service of written notice the City shall receive an instrument or instruments executed by the owners of at least 51% in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file with the Paying Agent, the City Council may adopt the amendatory resolution in substantially the same form.

(d) Upon adoption of any amendatory resolution pursuant to the provision of this Section, this Ordinance shall be deemed to be amended in accordance with such amendatory resolution, and the respective rights, duties and Bonds under this Ordinance of the City and all the owners of then outstanding Bonds, shall thereafter be determined, exercised and enforced hereunder, subject in all respect to such amendments.

(e) Any consent given by the owner of the outstanding Bonds pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the first publication of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Bonds, during such period. Such consent may be revoked at any time after six months from the date of the first publication of such notice by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent and the City, but such revocation shall not be effective if the owners of 51% in aggregate principal amount of the then outstanding Bonds, as in this Section defined have, prior to the attempted revocation, consented to and approved the amendment.

(f) For the purpose of this Section, the fact of the owning of Bonds, by any owner of Bonds, and the amount and number of such Bonds, and the date of their owning same shall be determined by the Registration Books of the Paying Agent/Registrar.

(g) The foregoing provisions of this Section notwithstanding, the City by action of the City Council (or as item (2) by the City Council or by the Mayor, Mayor Pro Tem, City Manager or Chief Financial Officer as to changes prior to issuance to comply

with requirements by the Attorney General of Texas or Underwriter) may amend this Ordinance for any one or more of the following purposes:

(1) To add to the covenants and agreements of the City in this Ordinance contained, other covenants and agreements thereafter to be observed, grant additional rights or remedies to the owners of bonds or to surrender, restrict or limit any right or power herein reserved to or conferred upon the City.

(2) To make such provisions for the purpose of clarifying matters or questions arising under this Ordinance, as are required by the Attorney General of Texas to obtain the Attorney General's approval of the issuance of the Bonds or required by the Underwriter before their issuance or for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained in this Ordinance, or at any time before or after issuance as are necessary or desirable and not contrary to or inconsistent with this Ordinance, and in all events which shall not adversely affect the interests of the owners of the Bonds.

(3) To modify any of the provisions of this Ordinance in any other respect whatever, provided that: (i) such modification shall be, and be expressed to be, effective only after all Bonds outstanding at the date of the adoption of such modification shall cease to be outstanding, and (ii) such modification shall be specifically referred to in the text of all Bonds issued after the date of the adoption of such modification.

41. Related Matters. To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor or Mayor Pro Tem, City Manager, Chief Financial Officer, City Clerk or any Deputy City Clerk, and all other appropriate officers and agents of the City are hereby authorized and directed to take all other actions that are reasonably necessary to provide for the issuance of the Bonds, including without limitation, executing and delivering on behalf of the City all Bonds, consents, receipts, requests, and other documents as may be reasonably necessary to satisfy the City's obligations under this Ordinance and to direct the application of funds of the City consistent with the provisions of this Ordinance.

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

43. Interpretations. All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the

Parity Bonds and the validity of the lien on and pledge of the Net Revenues to secure the payment of the Parity Bonds.

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PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July,
2014.

- Mayor Becky Ames -

ATTEST:

City Clerk

The City of Beaumont

(SEAL)

SCHEDULE I
REFUNDED BONDS

EXHIBIT "A"

ESCROW AGREEMENT

EXHIBIT "B"
PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT "C"
BOND PURCHASE AGREEMENT

EXHIBIT D
OFFICER'S PRICING CERTIFICATE

July 22, 2014

Consider a resolution authorizing the City Manager to execute an Earnest Money Contract for the sale of the Hotel Beaumont



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Dr. Joseph Majdalani, P.E., Public Works Director *JM*

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution authorizing the City Manager to execute an Earnest Money Contract for the sale of the Hotel Beaumont.

BACKGROUND

On February 25, 2014, City Council passed Resolution No. 14-043 accepting the bid submitted by NAI Wheeler for an annual contract for real estate broker services to list and sell City-owned property.

NAI Wheeler has secured two potential buyers who are interested in purchasing the Hotel Beaumont located at 625 Orleans Street. However, after reviewing both Earnest Money Contracts, it is in the best interest of the City of Beaumont to execute the Earnest Money Contract with Garden Street Holdings, LLC with a cash offer in the amount of \$1,175,000.00.

Garden Street Holding, LLC will deposit \$15,000.00 as earnest money to Texas Regional Title for a feasibility period of 30 days. Garden Street Holding, LLC will have the right to extend the feasibility period for one (1) additional 30 day period by paying directly to the City of Beaumont an additional \$10,000 in earnest money at least five (5) days prior to the expiration of the initial feasibility period. The initial \$15,000 and the additional \$10,000 earnest money will become applicable to the purchase price but non-refundable.

FUNDING SOURCE

Not Applicable.

RECOMMENDATION

Approval of resolution.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL

OF THE CITY OF BEAUMONT:

THAT the City Manager be and he is hereby authorized to execute an Earnest Money Contract with Garden Street Holdings, LLC for the sale of the Hotel Beaumont. The contract is substantially in the form attached hereto as Exhibit "1" and made a part hereof for all purposes.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July, 2014.

- Mayor Becky Ames -



**TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY**

NO REAL ESTATE BROKER OR BROKERAGE WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS ARE NOT AUTHORIZED TO USE THIS CONTRACT.
©Texas Association of REALTORS®, Inc. 2014

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Ray, JR, Beaumont

Address: 914 North Main Street, Beaumont, TX 77705

Phone: _____ E-mail: _____

Fax: _____ Other: _____

Buyer: Barbara Stephens Holdings, LLC

Address: 1000 Garden Street, Box 270, Baytown, Texas, TX 77520

Phone: 713-525-6511 E-mail: mar41@stephensholdings.com

Fax: _____ Other: _____

2. **PROPERTY:**

A. "Property" means that real property situated in Orange County, Texas at 625 Colleen Street (address) and that is legally described on the attached Exhibit _____ or as follows:

- B. Seller will sell and convey the Property together with:
- (1) all buildings, improvements, and fixtures;
 - (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
 - (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
 - (4) Seller's interest in all licenses and permits related to the Property;
 - (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
 - (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
 - (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____
- Any personal property not included in the sale must be removed by Seller prior to closing.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
(If mineral rights are to be reserved an appropriate addendum should be attached.)
(If the Property is a condominium, attach Commercial Contract Condominium Addendum (TAR 1930).)*

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

- A. Cash portion payable by Buyer at closing: \$ 2,075,000.00
- B. Sum of all financing described in Paragraph 4: \$ _____
- C. Sales price (sum of 3A and 3B): \$ 2,075,000.00

TAR 9014 1/14 Initialed for identification by Seller _____ and Buyer JS Page 1 of 14

5411 West Loop, Suite 100, Dallas, Texas 75240
Phone: 409.390.3300 Fax: 409.390.3311 Email: contracts@texasrealtors.com Website: www.texasrealtors.com

Revised Commercial Contract, effective 12/12/14. See the full text of the contract at www.texasrealtors.com

EXHIBIT "1"

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ _____. This contract:
 - (1) is not contingent upon Buyer obtaining third party financing.
 - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931)
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____.

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 15,000.00 as earnest money with Energy Regions Title Company (title company) at 5115 Dowlen Rd., Ste 100, Beaumont, TX (address) Robb Miller (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:
 - (i) _____ days after Buyer's right to terminate under Paragraph 7B expires, or
 - (ii) _____
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. **TITLE POLICY, SURVEY, AND UCC SEARCH:**

- A. Title Policy
 - (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
 - (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
 - (3) Within 45 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within _____ days after the effective date

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer _____ (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller: _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within _____ days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: _____

B. Feasibility Period: Buyer may terminate this contract for any reason within _____ days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 15,000.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within _____ days after the effective date, Seller will deliver to Buyer. (Check all that apply.)

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;
- (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- (g) copies of all current warranties and guaranties relating to all or part of the Property;
- (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (i) copies of all leasing or commission agreements that currently relate to the tenants of all or part of the Property;
- (j) a copy of the "as-built" plans and specifications and plat of the Property;
- (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- (l) a copy of Seller's income and expense statement for the Property from _____ to _____;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from _____ to _____; and
- (p) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date, *(Check all that apply)*:

- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;

- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form: 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: <u>RealQuest, Inc. dba MLD</u> Telephone: _____ Agent: <u>Joe W. Brandon, III</u> Address: <u>470 Calhoun Street, 19th Floor</u> <u>Houston, TX 77002</u> Phone & Fax: <u>(713) 318-3333 (713) 666-1333</u> E-mail: <u>joeb@realquest.com</u> License No.: <u>51961-3</u>	Cooperating Broker: _____ _____ Agent: _____ Address: _____ _____ Phone & Fax: _____ E-mail: _____ License No.: _____
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Principal Broker: *(Check only one box.)* Cooperating Broker represents Buyer.
 represents Seller only.
 represents Buyer only.
 is an intermediary between Seller and Buyer.

B. Fees: *(Check only (1) or (2) below.)*
(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay

Principal Broker a total cash fee of: <input checked="" type="checkbox"/> <u>3.000</u> % of the sales price. <input type="checkbox"/> _____	Cooperating Broker a total cash fee of: <input type="checkbox"/> _____ % of the sales price. <input type="checkbox"/> _____
---	---

The cash fees will be paid in Jefferson County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

- C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The date of the closing of the sale (closing date) will be on or before the later of:
 - (1) _____ days after the expiration of the feasibility period.
 - _____ (specific date).
 - _____
 - (2) 7 days after objections made under Paragraph 6D have been cured or waived.
- E. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
 - (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
 - (1) tax statements showing no delinquent taxes on the Property;
 - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
 - (3) an assignment of all leases to or on the Property;
 - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
 - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
 - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (7) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
 - (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.
- E. At closing, Buyer will:
 - (1) pay the sales price in good funds acceptable to the title company;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;

- (4) sign an assumption of all leases then in effect; and
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. **SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

Buyer will have the right to extend the rescinding period for one (1) additional 30 day period by paying directly to the Seller an additional \$10,000 in earnest money no less than 7 days prior to the expiration of the initial feasibility period. This additional earnest money will become applicable to the purchase price but not refundable immediately.

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed and any bill of sale;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
 - (2) preparation fees of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee; and
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(4) which Seller may pursue, or

(Check if applicable)

enforce specific performance, or seek such other relief as may be provided by law.

B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) enforce specific performance, or seek such other relief as may be provided by law, or both, **as Buyers sole remedy.**

16. CASUALTY LOSS AND CONDEMNATION:

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:

- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
- (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
- (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

- B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
 - (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
 - (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.
- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursal of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent

feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief, ~~(Check any one box.)~~

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR 1498);
- B. Except as otherwise provided in this contract, Seller is not aware of:
 - (1) any subsurface structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos-containing materials, urea formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

~~(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)~~

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

- D. Addenda which are part of this contract are: (Check all that apply.)
- (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Condominium Addendum (TAR-1930);
 - (3) Commercial Contract Financing Addendum (TAR-1931);
 - (4) Commercial Property Condition Statement (TAR-1408);
 - (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
 - (6) Addendum for Seller's Disclosure of Information on Lead Based Paint and Lead-Based Paint Hazards (TAR-1906);
 - (7) Notice to Purchaser of Real Property in a Water District (MUD);
 - (8) Addendum for Coastal Area Property (TAR-1915);
 - (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
 - (10) Information About Brokerage Services (TAR-2501); and
 - (11) Addendum, Can _____

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: The real property described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property. The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.

- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §81.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.

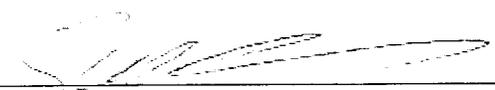
26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m. in the time zone in which the Property is located, on _____, the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Seller: City of Houston

Buyer: George Robert Holzner, III

By: _____
 By (signature): _____
 Printed Name: By: [Signature]
 Title: Mayor

By: 
 By (signature): _____
 Printed Name: George Robert Holzner, III
 Title: Buyer

By: _____
 By (signature): _____
 Printed Name: _____
 Title: _____

By: _____
 By (signature): _____
 Printed Name: _____
 Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ _____, or
- _____ % of the sales price, or
- _____ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: _____ Cooperating Broker: _____

By: _____ By: _____

ATTORNEYS

Seller's attorney: _____ Buyer's attorney: _____

Address: _____ Address: _____

Phone & Fax: _____ Phone & Fax: _____

E-mail: _____ E-mail: _____

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller,
- Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer
- Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:

- A. the contract on this day _____ (effective date);
- B. earnest money in the amount of \$ _____ in the form of _____ on _____.

Title company: _____ Address: _____

By: _____ Phone & Fax: _____

Assigned file number (GF#): _____ E-mail: _____

EXHIBIT "A"

BEING a 26,700 square foot tract of land out of Block 40 of the Original Town of Beaumont in the Noah Tevis Survey, Abstract 52, Beaumont, Jefferson County, Texas, said tract being all of Lot 201 and 202 and part of Lots 198, 199, 200 and 206 of said Block 40, and being all of the property conveyed to Harvey E. Miller by Deed dated May 17, 1981, and recorded in Vol. 2317 page 400 of the Deed Records of Jefferson County, Texas.

BEGINNING at the most Westerly or Northwest corner of Lot 201 of Block 40, of the Original Town of Beaumont, said corner being located at the point of intersection of the Northeasterly right of way line of Orleans Street and the Southeasterly right of way line of Fannin Street,

THENCE North 49° 26' East (reference bearing) along the Southeasterly right of way line of Fannin Street and along the Northwesterly line of Lots 201 and 202 of Block 40, a distance of 120.0 feet to the Northeast or most Northerly corner of Lot 202, and the most westerly corner of Lot 203 and being the most westerly or northwest corner of that certain tract conveyed to Jefferson Theatre Preservation Society by Deed dated November 11, 1976 and recorded in Vol. 2036 page 442 of the Deed Records of Jefferson County, Texas.

THENCE South 40° 34' East along the common line of Lots 202 and 203 and along the Southwesterly line of the said Jefferson Theatre Tract, a distance of 160.0 feet to the most Southerly or Southwest corner of said Jefferson Theatre Tract located in Lot 206,

THENCE North 49° 26' East along the Southeasterly line of the Jefferson Theatre Tract, a distance of 30.00 feet to a point for corner located in the dividing line between Lots 206 and 207;

THENCE South 40° 34' East along the common line between Lots 206 and 207, a distance of 50.00 feet to a point for corner located in Lot 198,

THENCE South 49° 26' West along the Northwesterly line of a tract conveyed to Rogers Brothers by Deed dated April 13, 1964 and recorded in Vol. 1384 page 175 of the Deed Records of Jefferson County, Texas, said line being parallel to and 90.00 feet Northwesterly of the Northwesterly right of way line of Forsythe Street, a distance of 150.0 feet to the most Westerly or Northwest corner of said Rogers Brothers tract, said corner being located in the Northeasterly right of way line of Orleans Street and being 90.00 feet from the Southwest corner of Lot 200,

THENCE North 40° 34' West along the Northeasterly right of way line of Orleans Street and along the Southwesterly line of Lots 200, 206 and 201 of Block 40, a distance of 210.0 feet to the PLACE OF BEGINNING and containing in area 26,700 square feet of land, more or less.



ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS AS REQUIRED BY FEDERAL LAW

CONCERNING THE PROPERTY AT 501 Orleans Street, Beaumont, (Street Address and City)

A. LEAD WARNING STATEMENT: Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase.

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

- 1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check one box only):
(a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain:)
(b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.
2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):
(a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents):
(b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

- (x) 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.
2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

- (x) 1. Buyer has received copies of all information listed above.
2. Buyer has received the pamphlet, Protect Your Family from Lead in Your Home.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852c to: (a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer [Signature] Date 7-7-11 Seller [Signature] Date
501 Orleans Street, Beaumont, TX 77705 2101 05 Beaumont
Buyer _____ Date _____ Seller _____ Date _____
Other Broker _____ Date _____ Listing Broker [Signature] Date [Signature] Date

The form of this addendum has been approved by the Texas Real Estate Commission for use and, with similarly approved or promulgated forms of contracts, such approval related to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-856-5000 (http://www.trec.texas.gov)

NOTICE TO PURCHASERS

The real property described below, which you are about to purchase, is located in Jefferson County Drainage District No. 6. The District has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the District on real property located in the District is 22.0587 cents on each \$100 of assessed valuation.

The total amount of bonds that have been approved by the voters and which may be issued by the District (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) is \$0; however, contract revenue refunding bonds have been approved by the District's Board in the following original amounts: Series 2003 - \$4,995,000. The aggregate initial principal amount of all bonds of the District payable in whole or part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) that have been previously issued is \$0; however, the current principal amounts of contract revenue refunding bonds outstanding are as follows: Series 2003 Contract Revenue Refunding Bonds - \$950,000. The contract revenue refunding bonds are serviced through taxes collected for maintenance and operating. Funds from maintenance and operating are transferred to debt service for annual installments toward payment of the contract revenue refunding bonds. No separate tax is collected for contract revenue refunding bonds.

The District does not impose a standby fee.

The purpose of this District is to provide drainage or flood control facilities and services within the District through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the District.

The legal description of the property which you are acquiring is as follows:

See Exhibit A

Date

(Seller)

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

7-17-14
Date


(Buyer)

THE STATE OF TEXAS *
COUNTY OF *

This instrument was acknowledged before me on _____, by

Notary Public, State of Texas

THE STATE OF TEXAS *
COUNTY OF *

This instrument was acknowledged before me on _____, by

Notary Public, State of Texas

After recording, return to:



Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

(1) shall treat all parties honestly;

(2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;

(3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and

(4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant

Garden Street Holdings, LLC

Date

7-17-14

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188 . 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

NAI Wheeler, 470 Orleans Street, 12th Floor, Beaumont, TX 77701

Phone: 409-899-3300

Fax: 409-899-3301

Erica Goss

Garden Street

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant
City of **Beaumont**

Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

NAI Wheelert, 470 Orleans Street, 12th Floor, Beaumont, TX 77701

Phone: 409-899-3300

Fax: 409-899-3301

Erica Goss

Garden Street

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**ADDENDUM ONE TO
COMMERCIAL CONTRACT-IMPROVED PROPERTY**

This ADDENDUM ONE TO COMMERCIAL CONTRACT-IMPROVED PROPERTY is incorporated into and made a part of that certain Commercial Contract-Improved Property (the "Contract") between **The City of Beaumont** ("Seller"), and **Garden Street Holdings, LLC** ("Buyer"), regarding the sale and purchase of the Property described in Exhibit A of the Contract commonly referred to as "Hotel Beaumont" and located at 625 Orleans, Beaumont, Texas (the "Property"). In the event of any conflict between this Addendum One and those of the Contract, this Addendum One shall govern and control.

1. SELLER AND BUYER AGREE THAT THE PROPERTY IS BEING SOLD TO BUYER AND WILL BE CONVEYED BY SELLER TO BUYER IN ITS "AS-IS" "WHERE-IS" CONDITION, WITH ALL FAULTS AND SUBJECT TO ALL RISKS ASSOCIATED WITH OWNERSHIP OF THE PROPERTY, AND WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT FOR THE SELLER'S SPECIAL WARRANTY OF TITLE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, THE SALE OF THE PROPERTY WILL BE WITHOUT ANY WARRANTY REGARDING THE CONDITION, SUITABILITY, FITNESS OR QUALITY OF THE PROPERTY, OR THE PRESENCE OF ANY DEFECTS OR CONDITIONS, WHETHER KNOWN OR UNKNOWN TO SELLER, AND SELLER AND SELLER'S AGENTS, EMPLOYEES, ATTORNEYS, CONTRACTORS AND AFFILIATES (COLLECTIVELY, "SELLER'S RELATED PARTIES") EXPRESSLY DISCLAIM ANY WARRANTY, OF OR RELATING TO: (I) THE USE, INCOME POTENTIAL, EXPENSES, OPERATION, CHARACTERISTICS OR CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE CONSTRUCTION; (II) THE ENVIRONMENTAL CONDITION OF THE PROPERTY AND THE PRESENCE OR ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS OR THE COMPLIANCE OF THE PROPERTY WITH ALL REGULATIONS OR LAWS RELATING TO HEALTH OR THE ENVIRONMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED, 42 U.S.C. § 9601 ET SEQ., THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, 42 U.S.C. § 6901 ET SEQ., THE OIL POLLUTION ACT 33 U.S.C. § 2701 ET SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT TEX. HEALTH & SAFETY CODE ANN. § 361 ET SEQ.,

EACH AS MAY BE AMENDED FROM TIME TO TIME, AND INCLUDING ANY AND ALL REGULATIONS, RULES OR POLICIES PROMULGATED THEREUNDER ("ENVIRONMENTAL LAWS"); AND (III) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN OR ON THE PROPERTY; AND (IV) THE AVAILABILITY OF PARKING OR THE ABILITY TO GET ANY REQUIRED APPROVAL FROM ANY GOVERNMENTAL AUTHORITY REGARDING BUYER'S INTENDED DEVELOPMENT PLANS FOR THE PROPERTY. BUYER HEREBY AGREES TO ACCEPT THE PROPERTY SUBJECT TO ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS, INCLUDING ANY LIABILITY WITH RESPECT TO ENVIRONMENTAL LAWS (AND AGREES SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE PROPERTY OR THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION THEREOF. IN CONSUMMATING THE PURCHASE OF THE PROPERTY, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY SELLER OR SELLER'S RELATED PARTIES, AND IS RELYING SOLELY UPON BUYER'S OR BUYER'S REPRESENTATIVES' OWN PHYSICAL INSPECTION OF THE PROPERTY. BUYER EXPRESSLY WAIVES, TO THE EXTENT ALLOWED BY LAW, ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW (INCLUDING, BUT NOT LIMITED TO COMMON LAW, WHETHER SOUNDING IN CONTRACT OR TORT, AND ANY AND ALL ENVIRONMENTAL LAWS) THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE CONDITION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT TO SELLER TO CONSUMMATE THE PURCHASE AND SALE OF THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING. BUYER AGREES THAT THE FOREGOING DISCLAIMER OR SIMILAR DISACLAIMER MAY BE INCLUDED IN THE DEED DELIVERED BY SELLER TO BUYER AT CLOSING AND SHALL ALSO BE INCLUDED IN A CERTIFICATE DATED AS OF THE CLOSING AND REFLECTING THE FOREGOING, AND TO BE EXECUTED BY BUYER AT CLOSING.

2. The form of Special Warranty Deed to be delivered by Seller to Buyer at Closing shall be in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference.

5. If Buyer elects to terminate the Contract and not close, then Buyer shall provide Seller at the time Buyer terminates the Contract copies of any new Survey of the Property obtained by Buyer and any environmental reports, inspection reports, feasibility studies, title opinions, assessments, appraisals and similar due diligence reports obtained by Buyer from any third party in connection with Buyer's due diligence investigation and examination of the Property.

4 A copy of any notice given by Buyer to Seller shall simultaneously be sent to Seller's attorney, as follows:

Lance Fox
Creighton, Fox, Johnson & Mills, PLLC
3535 Calder, Suite 310
Beaumont, TX 77706
Phone: (409) 833-0067
Fax: (409) 833-0084
Email: lcf@cfjmlaw.com

[Signature page follows this page.]

SIGNED by Seller on this _____ day of _____, 2014

SELLER: **The City of Beaumont**

By: _____
Kyle Hayes, City Manager

SIGNED by Buyer on this _____ day of _____, 2014

BUYER: **Garden Street Holdings, LLC**

By: _____
Name: S. Edward McLaughlin
Title: Manager

EXHIBIT "A"

FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: _____ 2014

Grantor: **THE CITY OF BEAUMONT, TEXAS**, a municipal home rule city and political subdivision of the State of Texas

Grantor's Mailing Address: 801 Main Street
Beaumont, TX 77701

Grantee: _____

Grantee's Mailing Address: _____

Consideration: \$10.00 cash and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property: All of Grantor's interest in that certain tract of land containing approximately 26,700 square feet, more or less, out of Block 40 of the Original Townsite of Beaumont in the Noah Tevis Survey, Abstract 52, Beaumont, Jefferson County, Texas, as more particularly described on Exhibit "1" attached hereto, together with all improvements, fixtures, and personal property, and all of Grantor's rights, titles, interests, licenses, privileges, hereditaments and appurtenances, if any inuring to the benefit of the Property including, without limitation, all right title and interest of Grantor and to all adjacent streets, alleys, rights of way, and easements, if any, benefiting and/or burdening the Property.

Reservations from and Exceptions to Conveyance and Warranty:

1. Permitted Encumbrances: This Special Warranty Deed is subject to (i) any and all valid and subsisting easements, rights-of-way, conditions, covenants, restrictions, reservations, exceptions and other encumbrances and matters filed of record, (ii) all building and land use ordinances, laws, regulations and restrictions by municipal or other governmental authority applicable to the Property, and (iii) any other rights in or encumbrances on the Property which are evident by a physical inspection or survey of the Property.
2. Taxes: Taxes and assessments for the current year are prorated as of the Effective Date above, and Grantee assumes the payment of such taxes and assessments after this Effective Date.

3. "AS-IS" Conveyance - No Warranties. As a material part of the Consideration for this Special Warranty Deed, Grantor and Grantee acknowledge and agree that Grantee is taking the Property **"AS IS, WHERE IS, WITH ALL FAULTS,"** with any and all latent and patent defects and that there is no warranty by Grantor that the Property has a particular financial value or is fit for a particular purpose. Grantee acknowledges and stipulates that Grantee is not relying on any representation, statement, agreement, inducement or other assertion with respect to the condition of the Property (to include, without limitation, the environmental, or physical condition) but is relying solely on Grantee's examination of the Property. Grantee takes the Property with the express understanding and stipulation that **there are no express or implied warranties or representations by Grantor of any kind.** Grantee's acceptance of the Property is at the sole risk and liability of Grantee with respect to i) the present status and condition of the Property, ii) the suitability, fitness or acceptability of the Property for Grantor's purposes and iii) the right of Grantee to access the Property or to ingress and egress to and from the Property. Further, Grantee acknowledges and stipulates that it has had access to the Property to conduct its own investigation and assessment and is well aware of the condition of the Property.
4. Release and Indemnity. Grantee, for itself and its successors and assigns: i) **agrees and covenants not to sue** Grantor's Related Parties (as defined below) for any and all Claims (as defined below); and ii) **agrees to acquit, release and forever discharge and to defend, indemnify and hold harmless** Grantor's Related Parties from any and all Claims, in both cases, that arise out of or relate to, in any way, the condition, ownership, use, maintenance or operation of the Property at any time, whether before, on or after the Date above no matter how or when caused, whether known or unknown, that are asserted or made by any person or entity, whether public or private, under any Law, provided, however, Grantee's obligation to defend, indemnify and hold harmless the Grantor Related Parties is limited to Claims arising from existence of and conditions that exist on the Property whether known or unknown, and Grantee is not obligated to defend, indemnify and hold harmless the Grantor Related Parties from their own, intentional acts, negligence, recklessness or other willful misconduct. As used herein, the term "Law" shall mean any statute, law, rule, regulation or ordinance, whether federal, state or local, whether at law or equity, whether by statute, common law, administrative or regulatory proceeding or otherwise, whether based on the negligence, gross negligence, strict liability, willful misconduct or other conduct of any party hereto or otherwise, to include without limitation and by way of example only, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resources Conservation and Recovery Act, the Clean Air Act, the Safe Drinking Water Act, and the Clean Water Act, or similar or counterpart state statutes. As used herein, the term "Claims" shall mean any and all losses, damages, claims, causes of action, cross-claims, counterclaims, rights of contribution or indemnity, rights of reimbursement, liens, suits, liabilities, demands, payments, expenses, costs and fees, to include without limitation and by way of example only, attorneys' and expert witness fees, court costs, civil or criminal penalties or fines, taxes and any other charges of any kind or nature whatsoever. The term "Grantor's Related Parties" shall include Grantor and its affiliates, subsidiaries, employees, officers, directors and agents and their respective representatives, successors and assigns. Any Claims not herein released or discharged by Grantee are irrevocably assigned by Grantee to Grantor.
5. Assumption of Responsibility. Grantee, for itself and its successors and assigns, **assumes, undertakes and accepts any and all responsibilities, obligations, risks and liabilities,** if any, for: i) the environmental, and/or physical condition of the Property whether existing, created or set in place before, on or after the Date above, whether known or unknown, no matter how or when caused, whether based on past, present or future conditions, operations, activities or events, arising under or related to any Law; and ii) the assessment, remediation, removal, transportation, disposal, treatment or other disposition of any and all pollutants, contaminants, wastes, materials and substances in, on or under the Property or which are related to or arising from the Property at any time, whether before, on or after the Date above, whether hazardous or not, that is or may be required under any Law.

The release, indemnity and assumption of responsibility obligations, as set forth in paragraphs 4 and 5, above, are hereinafter referred collectively as "Grantee Obligations."

Grantor, for the Consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, and subject to and conditioned upon Grantee's acceptance and agreement to undertake the Grantee Obligations as set forth above, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and its successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend title to the property unto Grantee. Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Reservations, subject to the Reservations from and Exceptions to Conveyance and Warranty and Grantee Obligation, when the claim is by, through, or under Grantor but not otherwise.

The parties acknowledge and agree that: i) any recitals set forth above are incorporated herein for all purposes; ii) the captions beside the numbered paragraphs of this instrument are for convenience only and will not limit, enlarge, modify, or otherwise affect this Special Warranty Deed; and iii) when the context requires, singular nouns and pronouns include the plural.

This Special Warranty Deed is made effective as of the Date above.

Grantee and Grantor acknowledge and agree that the reservations, covenants, restrictions and obligations contained in the Reservations from and Exceptions to Conveyance and Warranty, and in the Grantee Obligations, as set forth in this Special Warranty Deed: i) are reasonable in their purpose; ii) touch and concern the Property; iii) shall run with the land making up the Property; and iv) shall be binding on Grantee, and its successors and assigns, forever.

(Signature pages follow.)

Grantor:

The City of Beaumont, Texas

By: _____
Kyle Hayes, City Manager

STATE OF TEXAS

§
§
§

COUNTY OF JEFFERSON

This instrument was acknowledged before me on _____, 2014 by Kyle Hayes, City Manager of THE CITY OF BEAUMONT, TEXAS, a municipal home rule corporation and political subdivision of the State of Texas, as the act and deed and on behalf of said City.

Notary Public, State of Texas

[Signature page continues.]

[Special Warranty Deed Signature Page (cont.)]

Grantee:

By: _____

Name: _____

Title: _____

STATE OF TEXAS

§
§
§

COUNTY OF JEFFERSON

This instrument was acknowledged before me on this ____ day of _____, 2014 by _____ as _____ of _____ a _____, on behalf of and as the act and deed of said entity

Notary Public in and for the
State of Texas

EXHIBIT "E"
PROPERTY DESCRIPTION

EXHIBIT "A"

BEING a 26,700 square feet tract of land out of Block 40 of the Original Town of Beaumont in the Noah Tevis Survey, Abstract 52, Beaumont, Jefferson County, Texas, said tract being all of Lot 201 and 202 and part of Lots 198, 199, 200 and 206 of said Block 40, and being all of the property conveyed to Harvey E. Miller by Deed dated May 17, 1981, and recorded in Vol. 2317 page 400 of the Deed Records of Jefferson County, Texas

BEGINNING at the most Westerly or Northwest corner of Lot 201 of Block 40, of the Original Town of Beaumont, said corner being located at the point of intersection of the Northeasterly right of way line of Orleans Street and the Southeasterly right of way line of Fannin Street;

THENCE North 49° 26' East (reference bearing) along the Southeasterly right of way line of Fannin Street and along the Northwesterly line of Lots 201 and 202 of Block 40, a distance of 120.0 feet to the Northeast or most Northerly corner of Lot 202, and the most westerly corner of Lot 203 and being the most westerly or northwest corner of that certain tract conveyed to Jefferson Theatre Preservation Society by Deed dated November 11, 1976 and recorded in Vol. 2036 page 442 of the Deed Records of Jefferson County, Texas.

THENCE South 40° 34' East along the common line of Lots 202 and 203 and along the Southwesterly line of the said Jefferson Theatre Tract, a distance of 160.0 feet to the most Southerly or Southwest corner of said Jefferson Theatre Tract located in Lot 206,

THENCE North 49° 26' East along the Southeasterly line of the Jefferson Theatre Tract, a distance of 30.00 feet to a point for corner located in the dividing line between Lots 206 and 207;

THENCE South 40° 34' East along the common line between Lots 206 and 207, a distance of 50.00 feet to a point for corner located in Lot 198,

THENCE South 49° 26' West along the Northwesterly line of a tract conveyed to Rogers Brothers by Deed dated April 13, 1964 and recorded in Vol. 1384 page 173 of the Deed Records of Jefferson County, Texas, said line being parallel to and 90.00 feet Northwesterly of the Northwesterly right of way line of Patsy's Street, a distance of 150.0 feet to the most Westerly or Northwest corner of said Rogers Brothers tract, said corner being located in the Northeasterly right of way line of Orleans Street and being 90.00 feet from the Southwest corner of Lot 200,

THENCE North 40° 34' West along the Northeasterly right of way line of Orleans Street and along the Southwesterly line of Lots 200, 206 and 201 of Block 40, a distance of 210.0 feet to the PLACE OF BEGINNING and containing in area 26,700 square feet of land, more or less.

July 22, 2014

Consider a resolution authorizing the award of a bid to G & G Enterprises of Beaumont for the construction of the Hike & Bike Trail-Phase II



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Dr. Joseph Majdalani, PE, Public Works Director *JM*

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution authorizing the award of a bid to G & G Enterprises of Beaumont in the amount of \$724,200.01 for the construction of the Hike & Bike Trail – Phase II.

BACKGROUND

On July 26, 2011, City Council approved a resolution authorizing the City Manager to execute a Local Transportation Project Advanced Funding Agreement with the Texas Department of Transportation (TxDOT) for the Hike & Bike Trail – Phase II project. The ten (10) foot wide concrete trail will be constructed within Drainage District No. 6 property and will extend 1.436 miles along the Drainage District’s detention pond from Folsom to Metropolitan Drive. The trail will accommodate recreational activities such as walking, jogging, skating and cycling.

On Thursday, June 19, 2014 bids were solicited for furnishing all labor, materials, equipment and supplies for the construction of the Hike & Bike Trail – Phase II project.

Five (5) bids were received as follows:

Contractor	Bid Amount	Location
G & G Enterprises	\$724,200.01	Beaumont, TX
Bruce’s General Construction, Inc.	\$727,898.92	Beaumont, TX
Allco, Inc.	\$732,560.00	Beaumont, TX
McInnis Construction, Inc.	\$752,230.49	Silsbee, TX
L & L General Contractors	\$845,602.30	Beaumont, TX

To satisfy federal funding requirements, TxDOT will provide a letter of concurrence before final award is granted.

FUNDING SOURCE

The Federal Highway Administration (FHWA) awarded \$661,134.00 for the project. Funds are available in the Capital Program for the difference.

RECOMMENDATION

Approval of resolution.

NO	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL						
100	2002 002 PREPARING RIGHT OF WAY	75.82	STA	\$ 1,540.00	\$ 116,762.80	\$ 90.00	\$ 6,823.80	\$ 520.00	\$ 39,600.00	\$ 2,500.00	\$ 190,000.00
104	2021 REMOVE CONCRETE CURB	54.00	LF	\$ 33.34	\$ 1,800.36	\$ 20.00	\$ 1,080.00	\$ 15.60	\$ 842.40	\$ 15.60	\$ 842.40
110	2003 EXCAVATION (SPECIAL)	1,443.00	CY	\$ 18.00	\$ 25,974.00	\$ 45.00	\$ 64,935.00	\$ 23.00	\$ 33,189.00	\$ 23.00	\$ 33,189.00
132	C-1 EMBANKMENT (FINAL)(ORD COMP)(TYPE C-1)	232.00	CY	\$ 20.70	\$ 4,802.40	\$ 45.00	\$ 10,440.00	\$ 45.00	\$ 10,440.00	\$ 45.00	\$ 10,440.00
132	C-2 EMBANKMENT (FINAL)(ORD COMP)(TYPE C-2)	245.00	CY	\$ 20.70	\$ 5,071.50	\$ 45.00	\$ 11,025.00	\$ 46.00	\$ 11,230.00	\$ 46.00	\$ 11,230.00
132	D EMBANKMENT (FINAL)(ORD COMP)(TYPE D)	521.00	CY	\$ 20.70	\$ 10,784.70	\$ 45.00	\$ 23,445.00	\$ 27.00	\$ 14,067.00	\$ 27.00	\$ 14,067.00
162	2002 BLOCK SODDING	2,442.69	SY	\$ 4.09	\$ 9,990.60	\$ 4.00	\$ 9,770.76	\$ 7.00	\$ 17,098.83	\$ 7.00	\$ 17,098.83
164	2008 BROADCAST SEEDING (PERM)(URBAN)(CLAY)	3.30	AC	\$ 2,613.60	\$ 8,624.88	\$ 200.00	\$ 660.00	\$ 3,200.00	\$ 10,684.88	\$ 3,200.00	\$ 10,684.88
360	2024 003 CONC PAV (JOINT REINF) (7")	1,156.10	SY	\$ 45.00	\$ 52,024.50	\$ 50.00	\$ 57,805.00	\$ 56.50	\$ 65,305.00	\$ 56.50	\$ 65,305.00
432	2085 RIPRAP (CONC) (CL B) (6")	20.30	CY	\$ 487.69	\$ 9,900.11	\$ 200.00	\$ 4,060.00	\$ 473.00	\$ 9,633.00	\$ 473.00	\$ 9,633.00
450	B-1 RAILING (INSTALL)	80.00	LF	\$ 106.00	\$ 8,480.00	\$ 25.00	\$ 2,000.00	\$ 37.00	\$ 2,980.00	\$ 37.00	\$ 2,980.00
496	2007 REMOVE STR (PIPE)	30.22	LF	\$ 39.71	\$ 1,200.04	\$ 10.00	\$ 302.20	\$ 35.00	\$ 1,067.84	\$ 35.00	\$ 1,067.84
496	2018 REMOVE STR (CONC RIPRAP)	2.00	EA	\$ 400.00	\$ 800.00	\$ 1,200.00	\$ 2,400.00	\$ 1,150.00	\$ 2,300.00	\$ 1,150.00	\$ 2,300.00
496	2043 REMOVE STR (SMALL FENCE)	26.00	LF	\$ 10.00	\$ 260.00	\$ 20.00	\$ 520.00	\$ 25.00	\$ 650.00	\$ 25.00	\$ 650.00
500	2001 011 MOBILIZATION	1.00	LS	\$ 50,970.07	\$ 50,970.07	\$ 30,000.00	\$ 30,000.00	\$ 26,776.07	\$ 26,776.07	\$ 26,776.07	\$ 26,776.07
530	2010 006 DRIVEWAY (CONC) (6")	143.37	SY	\$ 38.37	\$ 5,501.11	\$ 50.00	\$ 7,168.50	\$ 63.00	\$ 9,045.69	\$ 63.00	\$ 9,045.69
531	2005 CURB RAMPS (TY 1)	1.00	EA	\$ 900.00	\$ 900.00	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
531	2024 CONC SIDEWALK (10'X5')	8,128.24	SY	\$ 41.83	\$ 340,004.28	\$ 54.00	\$ 438,924.96	\$ 52.75	\$ 428,000.00	\$ 52.75	\$ 428,000.00
531	2024 CONC SIDEWALK (10'X7')	174.46	SY	\$ 45.00	\$ 7,850.25	\$ 55.50	\$ 9,681.98	\$ 56.00	\$ 9,771.60	\$ 56.00	\$ 9,771.60
531	2024 CONC SIDEWALK (14'X5')	122.28	SY	\$ 36.85	\$ 4,506.02	\$ 55.50	\$ 6,786.54	\$ 52.75	\$ 6,451.29	\$ 52.75	\$ 6,451.29
550	2001 CHAIN LINK FENCE (INSTALL)(6)	476.00	LF	\$ 18.00	\$ 8,568.00	\$ 20.00	\$ 9,520.00	\$ 23.00	\$ 10,928.00	\$ 23.00	\$ 10,928.00
760	2001 DITCH CLEAN/RESHAPING (FOOT)	5,636.66	LF	\$ 7.25	\$ 40,865.79	\$ 3.00	\$ 16,909.98	\$ 1.60	\$ 9,018.66	\$ 1.60	\$ 9,018.66
1122	2013 001 BALED HAY	5.00	EA	\$ 30.00	\$ 150.00	\$ 10.00	\$ 50.00	\$ 214.00	\$ 428.00	\$ 214.00	\$ 428.00
1122	2037 001 TEMP SEDIM CONTROL FENCE	626.00	LF	\$ 2.25	\$ 1,408.50	\$ 2.20	\$ 1,377.20	\$ 3.70	\$ 2,316.40	\$ 3.70	\$ 2,316.40
4381	2001 THERMOPLASTIC PIPE (18") (HDPE)	1111.55	LF	\$ 35.86	\$ 40,000.18	\$ 60.00	\$ 66,930.00	\$ 45.00	\$ 50,063.25	\$ 45.00	\$ 50,063.25
4381	2002 THERMOPLASTIC PIPE (24") (HDPE)	44.00	LF	\$ 68.18	\$ 2,999.92	\$ 80.00	\$ 3,520.00	\$ 48.00	\$ 2,112.00	\$ 48.00	\$ 2,112.00
				TOTAL BID AMOUNT	\$ 724,200.01	TOTAL BID AMOUNT	\$ 727,898.92	TOTAL BID AMOUNT	\$ 732,500.00	TOTAL BID AMOUNT	\$ 732,500.00

* Bid Item Totals Calculated Using the Following Formula : =ROUND(\$Quantity*Unit bid, 2)

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE

CITY OF BEAUMONT:

THAT the City Council hereby approves the conditional award of a contract to G & G Enterprises, of Beaumont, Texas, in the amount of \$724,200.01 for furnishing all labor, materials, equipment and supplies for the construction of the Hike & Bike Trail - Phase II Project pending TxDOT's concurrence of the award of the contract to G & G Enterprises; and,

BE IT FURTHER RESOLVED THAT the City Manager be and he is hereby authorized to execute a contract with G & G Enterprises, of Beaumont, Texas, for the purposes described herein.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July, 2014.

- Mayor Becky Ames -

July 22, 2014

Consider a resolution authorizing the City Manager to enter into a five-year agreement with Express Scripts, Inc., for Pharmacy Benefit Manager Services



City Council Agenda Item

TO: City Council

FROM: Kyle Hayes, City Manager

PREPARED BY: Laura Clark, Chief Financial Officer *lc*

MEETING DATE: July 22, 2014

REQUESTED ACTION: Council consider a resolution authorizing the City Manager to enter into a five-year agreement with Express Scripts, Inc., for Pharmacy Benefit Manager Services.

BACKGROUND

The current Pharmacy Benefit Manager contract with CVS Caremark ends December 31, 2014. In March 2014, City Staff requested proposals from pharmacy benefit managers. Seven (7) proposals were received and evaluated by an independent team of experts in this industry from Action Pharmaceutical Consulting, the City’s benefits consultant, based on the following weighted qualitative criteria: Account Management, Adherence to the Request for Proposal, Customer Service, Implementation, Management Reports, Performance Guarantees, Price, and Value-Added Services. The three (3) finalist including CVS Caremark (incumbent), Express Scripts, Inc., and Script Care were interviewed by City Staff as well as representatives from Action Pharmaceutical Consulting and Holmes Murphy. Express Scripts offered the largest annual plan savings as compared to current pricing and scored the highest overall on the weighted qualitative evaluation.

VENDOR	PROJECTED 2015 ANNUAL PLAN COST	WEIGHTED QUALITATIVE SCORE
Express Scripts, Inc. St. Louis, Missouri	\$2,700,094	307.3
CVS Caremark (incumbent) Northbrook, Illinois	\$2,797,283	306.0
Script Care Beaumont, Texas	\$2,885,334	263.3

The City's healthcare plan includes medical and pharmacy benefits. From FY 2012 through the current fiscal year, the City's healthcare costs have risen significantly which has put a strain on the Employee Benefits Fund. As the cost for medical treatment and medications rise, the City faces a challenge in providing the same level of benefits as in the previous years. Prescription drug benefits are provided to employees and qualifying dependents or 3,618 covered lives. The City's annual prescription drug plan cost was \$2.6 million in 2013 and is projected to be \$2.7 million in 2014. Based on existing pricing and utilization, the cost would have been estimated at \$3.3 million in 2015. The pricing structure proposed by Express Scripts projects an annual plan cost in 2015 of \$2.7 million or more than \$600,000 in savings compared to the amount projected for 2015. This is compared to an estimated \$535,000 and \$448,000 in savings from CVS Caremark and Script Care, respectively. Savings is a result of discounts and rebates offered by the company. In addition, Express Scripts offers an allowance to be used over the five year contract for expenditures related to managing the pharmacy benefit. This allowance is five times that of Script Care. CVS Caremark as the incumbent does not have an allowance.

Specialty pharmacy drugs treat cancer, hepatitis, multiple sclerosis, rheumatoid arthritis, HIV, and major cardiovascular conditions and cost the City approximately \$500,000 each year for the last two years which equates to approximately 14% of overall pharmacy costs being generated by less than 1% of the total members. Industry projections indicate specialty medications will continue to rise and consume 40% of pharmacy costs by 2018. Due to the large number of lives serviced by Express Scripts, the company has buying power when negotiating pricing with specialty drug manufacturers ultimately reducing the costs incurred by the City's plan.

Employees will have access to Express Scripts' member website and mobile application as well as over 5900 experienced and highly trained patient care advocates in ten (10) call centers available 24/7 with 96.3% first-call resolution. In addition, pharmacists are available to members 24/7.

The drug plan design for City employees will remain the same in 2015. The pharmacy network will remain the same with Express Scripts with minimal disruption to members.

FUNDING SOURCE

Employee Benefits Fund.

RECOMMENDATION

Approval of resolution.

City of Beaumont
 Pharmacy Benefit Manager Services
 Weighted Criteria of Request for Proposals

CRITERIA	TOTAL POSSIBLE POINTS	CAREMARK	EXPRESS SCRIPTS	SCRIPT CARE
ACCOUNT MANAGEMENT	56.25	45.9	46.1	39.5
ADHERENCE TO RFP	56.25	45.9	46.1	39.5
CUSTOMER SERVICE	56.25	45.9	46.1	39.5
IMPLEMENTATION	18.75	15.3	15.4	13.2
MANAGEMENT REPORTS	37.5	30.6	30.7	26.3
PERFORMANCE GUARANTEES	18.75	15.3	15.4	13.2
PRICE	56.25	45.9	46.1	39.5
VALUE-ADDED SERVICES	75	61.2	61.4	52.6
WEIGHTED TOTAL POINTS	375.0	306.0	307.3	263.3

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL

OF THE CITY OF BEAUMONT:

THAT the City Manager be and he is hereby authorized to execute a five (5) year agreement with Express Scripts, Inc., of St. Louis, Missouri, as the City's Pharmacy Benefit Manager (PBM).

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 22nd day of July, 2014.

- Mayor Becky Ames -