

BUSINESS

Special Use Permit/ Variance APPROVAL/DISAPPROVAL FORM

REQUESTOR: Mike Davenport

ADDRESS OF PREMISES AFFECTED: 30406 Second Street.
Fulshear, TX 77441

PLANNING AND ZONING COMMISSION REVIEW

GRANTED

DENIED

RETURNED FOR ADDITIONAL DATA

VARIANCE APPROVED FOR RELOCATION OF ACCESSORY BUILDING TO 5' OFF
PROPERTY LINE. VARIANCE NOT NECESSARY FOR FENCE. NO PUBLIC
COMMENTS WERE MADE REGARDING VARIANCE REQUEST

BY: [Signature]

DATE: 1-6-17

COMMENTS WERE
MADE REGARDING
VARIANCE REQUEST

CITY COUNCIL REVIEW

GRANTED

DENIED

BY: _____ DATE: _____

See Attachment "A"

ATTACHMENT "A"

"The Planning and Zoning Commission finds that granting the Special Use Permit will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood."

RESOLUTION NO. 2017-337

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS AUTHORIZING THE ASSISTANT CITY MANAGER, PAULA RYAN AS A SIGNATORY ON THE CITY'S ACCOUNTS

WHEREAS, the City Council of the City of Fulshear, Texas is desirous of ensuring a smooth flow of business transactions; and

WHEREAS, the City of Fulshear has recently promoted Paula Ryan to the position of Assistant City Manager and wishes to confer such authority thereto.

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

Paula Ryan, Assistant City Manager is hereby authorized to serve as a signatory on the City's financial accounts.

This Resolution duly passed this 24th day of January, 2017.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF:	January 24, 2017	AGENDA ITEM:
DATE SUBMITTED:	January 19, 2017	DEPARTMENT Planning and Development
PREPARED BY:	Sharon Valiante Director of Public Works	PRESENTER: Sharon Valiante, Director of Public Works
SUBJECT:	Infrastructure Acceptance and Conveyance – MUD’s 169, 172 (the “Districts) – Streets, Sanitary Sewer, Drainage, and Bridge	
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Acceptance Packets that include: District Engineer’s Certificate of Substantial Completion Affidavit of All Bills Paid Warranties of the contractor and subcontractor City Engineer’s Statement of approval 2. Street Acceptance-Fulshear Bend Extension No. 1 and Creek Cove at Cross Creek Ranch, Section Eight (8) 3. Utility Conveyance and Security Agreement- Fulshear Bend Drive Extension No. 1 4. Bridge Acceptance – Cross Creek Ranch; Cross Creek Bend Lane Extension No. 1 5. Utility Conveyance and Security Agreement – MUD 172; Cross Creek Cove at Cross Creek Ranch, Section Eight (8) 	
EXPENDITURE REQUIRED:	N/A	
AMOUNT BUDGETED:	N/A	
FUNDING ACCOUNT:	N/A	
ADDITIONAL APPROPRIATION REQUIRED:	N/A	
FUNDING ACCOUNT:		

EXECUTIVE SUMMARY

As each Phase of development are acquired and constructed, the Districts prepare documents that are submitted to the City with a request for consideration for transfer of ownership, which is considered and approved by City Council. The Districts, in accordance with the Development Agreement and Utility Agreements in place, have complied with Section 2.10 – As construction of each Phase is completed, the City shall inspect and if the City finds that the Phase has been completed in accordance with the final plans and specifications approved by the City, or any modifications approved by the City, the City will accept the Phase for ownership, operation and maintenance.

The infrastructure is valued at:

1. Fulshear Bend Drive Extension No. 1 Pavement (November 30, 2015) = \$ 393,541.19
2. Fulshear Bend Drive Extension No.1 Utilities (November 30, 2015) = \$ 294,728.01
3. Flewellen Bridge (February 1, 2016) = \$ 398,656.04
4. Creek Cove @ CCR, Section 8 Pavement (November 19, 2017) = \$ 541,589.37
5. Creek Cove @ CCR, Section 8 Utilities (November 11, 2015) = \$ 637,798.49

RECOMMENDATION

Staff recommends that council accept the infrastructure constructed and completed for Fulshear Drive Extension No.1, Flewellen Bridge, and Creek Cove at Cross Creek Ranch Section 8 and authorize the Mayor to execute the following:

1. Street Acceptance for Fulshear Bend Drive Extension No. 1 and Creek Cove at Cross Creek Ranch, Section Eight (8)
2. Utility Conveyance and Security Agreement for Fulshear Bend Drive Extension No. 1;
3. Bridge Acceptance for Cross Creek Ranch Cross Creek Bend Lane Extension No. 1; and
4. Utility Conveyance and Security Agreement for Creek Cove at Cross Creek Ranch, Section Eight (8).

ENGINEER'S CERTIFICATE OF COMPLETION

City of Fulshear
c/o Clay & Leyendecker, Inc.
1350 Avenue D
Katy, Texas 77493

Attention: Mr. David Leyendecker, PE

Fulshear Bend Drive Extension No. One – Reinforced Concrete Paving

Name and Address of Contractor: Gonzales Construction Enterprise, Inc.; 3114 Blackwood Road;
Rosenberg, Texas 77471

Name and Address of Consulting Engineer: Brown & Gay Engineers, Inc.; 10777 Westheimer, Suite
400; Houston, Texas 77042

I certify this Project was completed on or about November 30, 2015; that the Project was under periodic inspection during construction; that all inspection was under the supervision of Mr. Gary L. Goessler, Licensed Professional Engineer; that to the best of my knowledge, the completed items were constructed in accordance with and includes all items outlined in the construction drawings and specifications as approved by the governing agencies.



Gary L. Goessler, PE

Brown & Gay Engineers, Inc.
TBPE Registration No. F-1046



ENGINEER'S CERTIFICATE OF COMPLETION

City of Fulshear
C/o Clay & Leyendecker, Inc.
1350 Avenue D
Katy, Texas 77493

Attention: Mr. David Leyendecker, PE

Fulshear Bend Drive Extension No. 1 (From Riverwood Park Lane to Cross Creek Bend Lane) – Water,
Sanitary Sewer and Storm Sewer Facilities

Name and Address of Contractor: Canyon Construction Co., 3307 Redwood Grove St.; Pearland, TX
77581

Name and Address of Consulting Engineer: Brown & Gay Engineers, Inc.; 10777 Westheimer, Suite
400; Houston, Texas 77042

I certify this Project was completed on or about November 30, 2015; that the Project was under periodic observation; that all observation of the work was under the supervision of Mr. Gary L. Goessler, Licensed Professional Engineer; that to the best of my knowledge, the project was in accordance with and includes all items in plans and specifications approved by all authorities having jurisdiction; and "record drawings" will be furnished to the District.


Gary L. Goessler, PE

Brown & Gay Engineers, Inc.
TBPE Registration No. F-1046



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared Maria Gonzalez the Vice President of Gonzalez Construction Enterprise, Inc. ("CONTRACTOR"), party to that certain Contract entered into on the 30th day of July, 2015 between Fort Bend County MUD No. 169 and CONTRACTOR for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

"Construction of Fulshear Bend Drive Extension No. One (from Riverwood Park Lane to Cross Creek Bend Lane) and Creek Cove at Cross Creek Ranch, Section Eight Reinforced Concrete Paving for Fort Bend County MUD No. 169, Fort Bend County, Texas"

Said party being by me duly sworn states upon oath that the said improvements (and the labor and materials supplied in connection therewith) have been erected and completed in a good and workmanlike manner and in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or claims for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

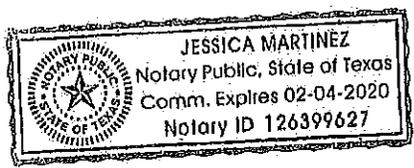
THIS AFFIDAVIT IS BEING MADE BY THE UNDERSIGNED REALIZING THAT IT IS IN RELIANCE UPON THE TRUTHFULNESS OF THE STATEMENTS CONTAINED HEREIN THAT FINAL AND FULL SETTLEMENT OF THE BALANCE DUE ON SAID CONTRACT IS BEING MADE, AND IN CONSIDERATION OF THE DISBURSEMENT OF FUNDS BY OWNER, DEPONENT EXPRESSLY WAIVES AND RELEASES LIENS, CLAIMS, AND RIGHTS TO ASSERT A LIEN ON SAID PREMISES AND AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES, ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIAL USED OR ASSOCIATED WITH CONSTRUCTION OF IMPROVEMENTS ON THE ABOVE-DESCRIBED PREMISES.

GONZALEZ CONSTRUCTION ENTERPRISE, INC.

Manu Gonzalez
By: *Manu Gonzalez*

Subscribed and sworn to before me, the undersigned authority, on this the 5th day of July, 2016.

Jessica Martinez
Notary Public in and for Fort Bend County, Texas



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared Sam M^s Cleary
the President of Canyon Construction Company, Inc.
("CONTRACTOR"). CONTRACTOR has performed labor and furnished materials pursuant to
that certain Contract entered into on the 16th day of April
20 15, by and between CONTRACTOR and Fort Bend County MUD No. 169, for the
erection, construction, and completion of certain improvements and/or additions upon the
following described premises, to wit:

**"Construction of Fulshear Bend Drive Extension No. 1 (from Riverwood Park Lane to
Cross Creek Bend Lane) Water, Sanitary Sewer, and Storm Sewer Facilities for Fort Bend
County MUD No. 169, Fort Bend County, Texas."**

Said party being by me duly sworn states upon oath that the said improvements (and the labor
and materials supplied in connection therewith) have been erected and completed in a good
and workmanlike manner and in full compliance with the above referred to Contract and the
agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished
and labor performed on said Contract and that there are no outstanding unpaid bills or claims
for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is
duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the
provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and
assigns and shall inure to the benefit of OWNER, and its legal representatives, successors,
assigns.

THIS AFFIDAVIT IS BEING MADE BY THE UNDERSIGNED REALIZING THAT IT IS IN RELIANCE UPON THE TRUTHFULNESS OF THE STATEMENTS CONTAINED HEREIN THAT FINAL AND FULL SETTLEMENT OF THE BALANCE DUE ON SAID CONTRACT IS BEING MADE, AND IN CONSIDERATION OF THE DISBURSEMENT OF FUNDS BY OWNER, DEPONENT EXPRESSLY WAIVES AND RELEASES LIENS, CLAIMS, AND RIGHTS TO ASSERT A LIEN ON SAID PREMISES AND AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES, ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIAL USED OR ASSOCIATED WITH CONSTRUCTION OF IMPROVEMENTS ON THE ABOVE-DESCRIBED PREMISES.

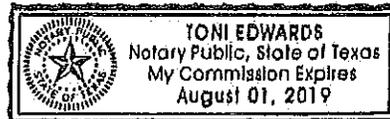
CANYON CONSTRUCTION COMPANY, INC.

By:

[Signature]

Subscribed and sworn to before me, the undersigned authority, on this the 17th day of December, 2015, to certify which, witness my hand and seal of office.

[Signature]
Notary Public in and for Brown county, Texas



BOND NO. TXC607351
FORT BEND COUNTY MUD NO. 169

MAINTENANCE BOND

MAINTENANCE BOND

STATE OF TEXAS

Contract Date 7.30.15

COUNTY OF FORT BEND

Date Bond Executed 7.30.15

PRINCIPAL GONZALEZ CONSTRUCTION ENTERPRISE, INC.

SURETY Merchants Bonding Company (Mutual)

OWNER FORT BEND COUNTY MUD NO. 169 and THE CITY OF FULSHEAR

PENAL SUM OF BOND (in words and figures) One Million Seventy Four Thousand Nine Hundred Dollars and fifty five cents (\$1,074,900.55), being 100 percent of the Contract Price.

CONTRACT for "Construction of Fulshear Bend Drive Extension No. One (from Riverwood Park Lane to Cross Creek Bend Lane) and Creek Cove at Cross Creek Ranch, Section Eight Reinforced Concrete Paving for Fort Bend County MUD No. 169, Fort Bend County, Texas" (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

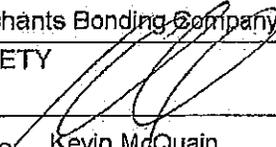
The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

Gonzalez Construction Enterprise Inc.
 PRINCIPAL
 By 
 Name Javier Gonzalez
 Title President
 Address 3114 Blackwood Road
Rosenberg, Texas 77471

ATTEST
 By 
 Name Maria Gonzalez
 Title Vice President
 (SEAL)

Merchants Bonding Company (Mutual)
 SURETY
 By 
 Name Kevin McQuain
 Title Attorney-in-Fact
 (SEAL)

ATTEST
 By 
 Name Kim Stanley
 Title Surety Witness

Physical Address:
9500 Arboretum Blvd., Ste. 100
Austin, TX 78759
 Mailing Address:
PO Box 26720
Austin, TX 78785-9931
 Telephone: 512-241-4500

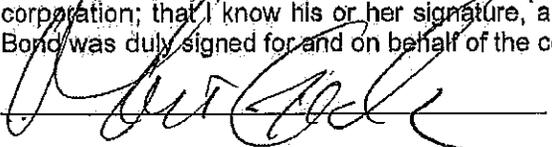
Local Recording Agent Personal Identification Number:
648145

Agency Name: CHS Insurance Services, LLC dba CHS Surety
 Agency Address 25025 N I 45 Frwy., Ste. 525, The Woodlands, TX 77380
 Agency Telephone 832-482-4730

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Maria Gonzalez, certify that I am the secretary of the corporation named as Principal in the Bond; that Javier Gonzalez, who signed the bond on behalf of Principal, was then President of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

 (Corporate Seal)

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

Barbara K Sachi; Debra L Buckner; Elaine Lewis; Jeanne M Buchan; Justin McQuain; Keith M Illa;
Kevin McQuain; Nancy J Portugal; Pamela C Martinson; Rosalyn D Hassell; Scott D Chapman

of The Woodlands and State of Texas their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TEN MILLION (\$10,000,000.00) DOLLARS

and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of August, 2014.



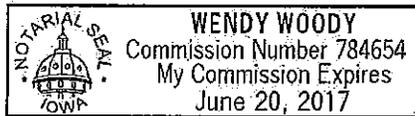
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 5th day of August, 2014, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Wendy Woody

Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 30 day of July, 2015.



William Warner Jr.
Secretary

MERCHANTS
BONDING COMPANY™

MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
2100 FLEUR DRIVE • DES MOINES, IOWA 50321-1158 • (800) 678-8171 • (515) 243-3854 FAX

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company (Mutual) toll-free telephone number for information or to make a complaint at:

1-800-678-8171

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM AND CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

BOND NO. 457196P
FORT BEND COUNTY MUD NO. 169

MAINTENANCE BOND

MAINTENANCE BOND

STATE OF TEXAS

Contract Date 4-16-15

COUNTY OF FORT BEND

Date Bond Executed 4-16-15

PRINCIPAL CANYON CONSTRUCTION COMPANY, INC.

SURETY Developers Surety and Indemnity Company

OWNER FORT BEND COUNTY MUD NO. 169 and CITY OF FULSHEAR

PENAL SUM OF BOND (in words and figures) Three Hundred Fourteen Thousand Eight Hundred Ninety Four Dollars and fourteen cents (\$314,894.14) being 100 percent of the Contract Price.

CONTRACT for "Construction of Fulshear Bend Drive Extension No. 1 (from Riverwood Park Lane to Cross Creek Bend Lane) Water, Sanitary Sewer, and Storm Sewer Facilities for Fort Bend County MUD No. 169, Fort Bend County, Texas" (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

Canyon Construction Company, Inc.
PRINCIPAL

ATTEST

By [Signature]
Name Sam McVeety
Title President

By [Signature]
Name Carrie McVeety
Title Secretary

Address:
3307 Redwood Grove St.
Pearland, Texas 77581

(SEAL)

Developers Surety and Indemnity Company
SURETY

ATTEST

By [Signature]
Name Sharon Cavanaugh
Title Attorney-in-Fact

By [Signature]
Name Sue Kohler
Title Witness

(SEAL)

Physical Address:

650 N. Sam Houston Pkwy. E., Ste 541
Houston, Texas 77060

Mailing Address:

650 N. Sam Houston Pkwy. E., Ste 541
Houston, Texas 77060

Telephone: 281-447-1107

Local Recording Agent Personal Identification Number:
193638

Agency Name: Marsh & McLennan Agency
Agency Address: 2500 City West Blvd., #2400
Agency Telephone: Houston, TX 77042

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Carrie McVeety, certify that I am the secretary of the corporation named as Principal in the Bond; that Sam McVeety, who signed the bond on behalf of Principal, was then President of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

[Signature]

(Corporate Seal)

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO Box 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

Andrew J. Janda, C.W. Adams, Sue Kohler, Leland L. Rauch, Sharon Cavanaugh, Cheryl R. Colson, Michael Cole, James Wynne Tomforde, Kurt A. Risk, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this May 23, 2013.

By: *Daniel Young*
Daniel Young, Senior Vice-President

By: *Gregg N. Okura*
Gregg N. Okura, Vice-President



State of California
County of Orange

On May 23, 2013 before me, Gina L. Garner, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Gregg N. Okura
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Gina L. Garner*
Gina L. Garner, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 16 day of April 2015

By: *Mark J. Lansdon*
Mark J. Lansdon, Assistant Secretary

IMPORTANT NOTICE

AVISO IMPORTANCE

To obtain information or make a complaint:

Para obtener informacion o para someter una queja:

You may call the Surety's toll free telephone number for information or to make a complaint at:

Usted puede llamar al numero de telefono gratis de para informacion o para someter una queja al:

1-800-782-1546

1-800-782-1546

You may also write to the Surety at:

Usted tambien puede escribir a Surety at:

P.O. Box 19725
Irvine, CA 92623-9725

P.O. Box 19725
Irvine, CA 92623-9725

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at:

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

1-800-252-3439

You may write the Texas Department of Insurance at:

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771

P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771

web: <http://www.tdi.state.tx.us>

web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Surety primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



InscO Insurance Services, Inc.
Underwriting Manager for:
Developers Surety and Indemnity Company • Indemnity Company of California
17771 Cowan, Suite 100
Irvine, CA 92614
1-800-782-1546
www.InscODico.com

Fulshear Bend Drive Extension No. 1
(from Riverwood Park Lane to Cross Creek Bend Lane)
and Creek Cove at Cross Creek Ranch, Section Eight
Reinforced Concrete Paving

Owner: Fort Bend County MUD No. 169
C/o CCR Loan Subsidiary 1, L.P.
6450 Cross Creek Bend Lane
Fulshear, Texas 77441

Contractor: Gonzalez Construction Enterprise, Inc.
3114 Blackwood Road
Rosenberg, Texas 77471

Attention: Todd Hamilton

Attention: Maria Gonzalez

Pay Estimate No. 6-Final
Original Contract Amount: \$ 1,074,900.55
Change Orders: \$ (34,679.48)
Current Contract Amount: \$ 1,040,221.07
Completed to Date: \$ 1,040,221.07
Retainage 0% \$ -
Balance: \$ 1,040,221.07
Less Previous Payments: \$ 923,183.77
Current Payment Due: \$ 117,037.30

BGE Job No. 2115-10
Completion Date: 11/30/2015
Contract Date: July 30, 2015
Notice to Proceed: July 31, 2015
Contract Time: 45 Calendar Days
Time Charged: 108 Calendar Days
Approved Extensions: 29 Calendar Days
Time Remaining: -34 Calendar Days

Recommended for Approval:

Brent Fields 7/31/16
Brent Fields, PE
Project Manager, Construction Management
BGE
TBPE Registration No. F-1046

Acknowledged for Gonzalez Construction Enterprise, Inc.:

By: Maria Gonzalez
Title: Vice President
Date: 7/30/2016

Fulshear Bend Drive Extension No. 1
(from Riverwood Park Lane to Cross Creek Bend Lane)
Water, Sanitary Sewer and Storm Sewer Facilities

Owner: Fort Bend County MUD No. 189
C/o CCR Loan Subsidiary 1, L.P.
6450 Cross Creek Bend Lane
Fulshear, Texas 77441

Attention: Todd Hamilton

Contractor: Canyon Construction Co., Inc.
3307 Redwood Grove St.
Pearland, Texas 77581

Attention: Sam McCleery

Pay Estimate No. 3-Final
Original Contract Amount: \$ 314,894.14
Change Orders: \$ (20,166.13)
Current Contract Amount: \$ 294,728.01
Completed to Date: \$ 294,728.01
Retainage 0% \$ -
Balance: \$ 294,728.01
Less Previous Payments: \$ 265,721.18
Current Payment Due: \$ 29,006.83

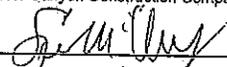
BGE Job No. 2115-00
Estimate Period: 06/26/15 - 11/30/15
Contract Date: April 16, 2015
Notice to Proceed: April 27, 2015
Contract Time: 40 Calendar Days
Time Charged: 218 Calendar Days
Approved Extensions: 23 Calendar Days
Time Remaining: -155 Calendar Days

Recommended for Approval:

 1/4/16

Gary L. Goessler, PE
Project Manager, Construction Management
BGE
TBPE Registration No. F-1046

Acknowledged for Canyon Construction Company, Inc.:

By:  _____
Title: President
Date: 1/8/16

ENGINEER'S CERTIFICATE OF COMPLETION

City of Fulshear
C/o Clay & Leyendecker, Inc.
1350 Avenue D
Katy, Texas 77493

Attention: Mr. David Leyendecker, PE

Flewellen Creek Bridge – Phase Two

Name and Address of Contractor: Harris Construction Co., LTD; 6602 Guhn Road; Houston, TX 77040

Name and Address of Consulting Engineer: Brown & Gay Engineers, Inc.; 10777 Westheimer, Suite 400; Houston, Texas 77042

I certify this Project was completed on or about February 1, 2016; that the Project was under periodic observation; that all observation of the work was under the supervision of Mr. Gary L. Goessler, Licensed Professional Engineer; that to the best of my knowledge, the project was in accordance with and includes all items in plans and specifications approved by all authorities having jurisdiction; and "record drawings" will be furnished to the District.



Gary L. Goessler, PE

Brown & Gay Engineers, Inc.
TBPE Registration No.F-1046



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared GLENN S. HARRIS
the PRESIDENT of
Harris Construction Company, Ltd. ("CONTRACTOR"), party to that certain Contract entered into on the
21ST day of JULY, 2014, between Fort Bend County MUD No. 169 and
CONTRACTOR for the erection, construction, and completion of certain improvements and/or additions
upon the following described premises, to wit:

"Construction of Flewellen Creek Bridge Phase Two for Fort Bend County MUD No. 169, Fort Bend County, Texas."

Said party being by me duly sworn states upon oath that the said improvements (and the labor and materials supplied in connection therewith) have been erected and completed in a good and workmanlike manner and in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or claims for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

MAINTENANCE BOND

BOND NO. 58S206761

KNOW ALL MEN BY THESE PRESENTS:

That **Harris Construction Company, Ltd.**, as Principal, hereinafter called Contractor, and **Liberty Mutual Insurance Company**, as Surety, hereinafter called Surety, are held and firmly bound unto **Fort Bend County MUD No. 169** as Obligee, hereinafter called Owner, in the penal sum **Three Hundred Ninety Eight Thousand Six Hundred Fifty Six and 04/100 Dollars (\$398,656.04)**, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated ____ of _____, ____ entered into a contract with Owner for **Flewellen Creek Bridge Phase 2** in accordance with the General Conditions, the Drawings and Specifications, which contract is by reference incorporated herein, and made a part hereof, and is referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall remedy any defects due to faulty materials or workmanship which shall appear within a period of **Two Year** from the date of substantial completion of the work provided for in the Contract, then this obligation to be void, otherwise to remain in full force and effect.

Any and all claims must be submitted to Liberty Mutual Insurance Company prior to the expiration date of this bond.

Signed and sealed this **18th** day of **November**, **2015**.



Witness

Harris Construction Company, Ltd.

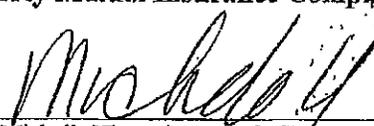
Principal

By: 



Sheila Fink, Secretary
Witness

Liberty Mutual Insurance Company

By: 

Michelle Ulery, Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6939781

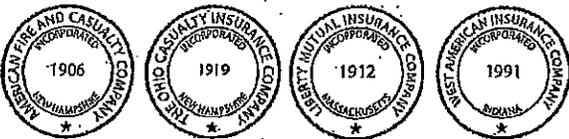
American Fire and Casualty Company Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, C.A. McClure; Kelly J. Brooks; Kenneth L. Meyer; Michelle Ulory

all of the city of CYPRESS, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surely and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of April, 2015



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 7th day of April, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - SECTION 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact; as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 18th day of November, 20 15



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



**TEXAS
IMPORTANT NOTICE**

To obtain information or make a complaint:

You may call toll-free for information or to make a complaint at
1-877-751-2641

You may also write to:

Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 79462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at
1-800-252-3439

You may write the Texas Department of Insurance Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the agent or call 1-800-843-6446. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

NP 70 68 09 01

**TEXAS
AVISO IMPORTANTE**

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis para informacion o para someter una queja al
1-877-751-2641

Usted tambien puede escribir a:

Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 79462-8284

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al
1-800-252-3439

Puede escribir al Departamento de Seguros de Texas Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX # (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI)

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Flewellen Creek Bridge - Phase Two

Owner: Fort Bend County Municipal Utility District No. 169
C/o CCR Loan Subsidiary 1, LP
6450 Cross Creek Bend Lane
Fulshear, Texas 77441

Attention: Todd Hamilton

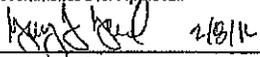
Contractor: Harris Construction Company, LTD
6602 Guhn Road
Houston, Texas 77040

Attention: Glenn Harris

Pay Estimate No. 4-Final
Original Contract Amount: \$ 396,014.59
Change Orders: \$ 2,641.45
Current Contract Amount: \$ 398,656.04
Completed to Date: \$ 398,656.04
Retainage 0% \$ -
Balance: \$ 398,656.04
Less Previous Payments: \$ 381,687.41
Current Payment Due: \$ 16,968.63

BGE Job No. 1717-00
Estimate Period: 05/01/15 - 02/01/16
Contract Date: July 21, 2014
Notice to Proceed: August 18, 2014
Contract Time: 180 Calendar Days
Time Charged: 528 Calendar Days
Approved Extensions: 0 Calendar Days
Time Remaining: -348 Calendar Days

Recommended for Approval:



Gary L. Goessler, PE
Project Manager, Construction Management
BGE
TBPE Registration No. F-1046

Acknowledged for Harris Construction Co., LTD:

By: _____

Title: _____

Date: _____

ENGINEER'S CERTIFICATE OF COMPLETION

City of Fulshear
c/o Clay & Leyendecker, Inc.
1350 Avenue D
Katy, Texas 77493

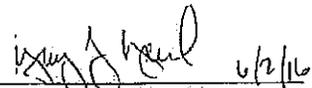
Attention: Mr. David Leyendecker, PE

Creek Cove at Cross Creek Ranch, Section Eight – Reinforced Concrete Paving

Name and Address of Contractor: Gonzales Construction Enterprise, Inc.; 3114 Blackwood Road;
Rosenberg, Texas 77471

Name and Address of Consulting Engineer: Brown & Gay Engineers, Inc.; 10777 Westheimer, Suite
400; Houston, Texas 77042

I certify this Project was completed on or about November 19, 2015; that the Project was under periodic inspection during construction; that all inspection was under the supervision of Mr. Gary L. Goessler, Licensed Professional Engineer; that to the best of my knowledge, the completed items were constructed in accordance with and includes all items outlined in the construction drawings and specifications as approved by the governing agencies.


Gary L. Goessler, PE

Brown & Gay Engineers, Inc.
TBPE Registration No. F-1046



ENGINEER'S CERTIFICATE OF COMPLETION

City of Fulshear
C/o Clay & Leyendecker, Inc.
1350 Avenue D
Katy, Texas 77493

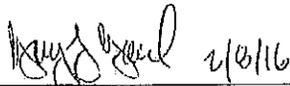
Attention: Mr. David Leyendecker, PE

Creek Cove at Cross Creek Ranch, Section Eight – Water Distribution, Sanitary Sewer and Storm Sewer
Utilities

Name and Address of Contractor: Hurtado Construction Co.; 2115 Center Street; Richmond, Texas,
77469

Name and Address of Consulting Engineer: Brown & Gay Engineers, Inc.; 10777 Westheimer, Suite
400; Houston, Texas 77042

I certify this Project was completed on or about November 11, 2015; that the Project was under periodic inspection during construction; that all inspection was under the supervision of Mr. Gary L. Goessler, Licensed Professional Engineer; that to the best of my knowledge, the completed items were constructed in accordance with and includes all items outlined in the construction drawings and specifications as approved by the governing agencies.

 1/6/16

Gary L. Goessler, PE

Brown & Gay Engineers, Inc.
TBPE Registration No. F-1046



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared Maria Gonzalez the Vice President of Gonzalez Construction Enterprise, Inc. ("CONTRACTOR"), party to that certain Contract entered into on the 30th day of July, 2015 between Fort Bend County MUD No. 169 and CONTRACTOR for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

"Construction of Fulshear Bend Drive Extension No. One (from Riverwood Park Lane to Cross Creek Bend Lane) and Creek Cove at Cross Creek Ranch, Section Eight Reinforced Concrete Paving for Fort Bend County MUD No. 169, Fort Bend County, Texas"

Said party being by me duly sworn states upon oath that the said Improvements (and the labor and materials supplied in connection therewith) have been erected and completed in a good and workmanlike manner and in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or claims for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

THIS AFFIDAVIT IS BEING MADE BY THE UNDERSIGNED REALIZING THAT IT IS IN RELIANCE UPON THE TRUTHFULNESS OF THE STATEMENTS CONTAINED HEREIN THAT FINAL AND FULL SETTLEMENT OF THE BALANCE DUE ON SAID CONTRACT IS BEING MADE, AND IN CONSIDERATION OF THE DISBURSEMENT OF FUNDS BY OWNER, DEPONENT EXPRESSLY WAIVES AND RELEASES LIENS, CLAIMS, AND RIGHTS TO ASSERT A LIEN ON SAID PREMISES AND AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES, ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIAL USED OR ASSOCIATED WITH CONSTRUCTION OF IMPROVEMENTS ON THE ABOVE-DESCRIBED PREMISES.

GONZALEZ CONSTRUCTION ENTERPRISE,
INC.

Maria Gonzalez
By: Maria Gonzalez

Subscribed and sworn to before me, the undersigned authority, on this the 5th day of July, 2016.

Jessica Martinez
Notary Public in and for Ft. Bend County, Texas



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared BENJAMIN C. UASQUEZ the GM of Hurtado Construction Company ("CONTRACTOR"). CONTRACTOR has performed labor and furnished materials pursuant to that certain Contract entered into on the 19th day of JUNE 2015, by and between CONTRACTOR and Fort Bend County MUD No. 172, for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

"Construction of Creek Cove at Cross Creek Ranch, Section Eight Water, Sanitary Sewer, and Storm Sewer Facilities for Fort Bend County MUD No. 172, Fort Bend County, Texas".

Said party being by me duly sworn states upon oath that the said Improvements (and the labor and materials supplied in connection therewith) have been erected and completed in a good and workmanlike manner and in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or claims for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

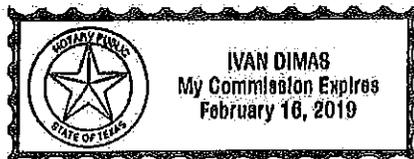
THIS AFFIDAVIT IS BEING MADE BY THE UNDERSIGNED REALIZING THAT IT IS IN RELIANCE UPON THE TRUTHFULNESS OF THE STATEMENTS CONTAINED HEREIN THAT FINAL AND FULL SETTLEMENT OF THE BALANCE DUE ON SAID CONTRACT IS BEING MADE, AND IN CONSIDERATION OF THE DISBURSEMENT OF FUNDS BY OWNER, DEPONENT EXPRESSLY WAIVES AND RELEASES LIENS, CLAIMS, AND RIGHTS TO ASSERT A LIEN ON SAID PREMISES AND AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES, ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIAL USED OR ASSOCIATED WITH CONSTRUCTION OF IMPROVEMENTS ON THE ABOVE-DESCRIBED PREMISES.

HURTADO CONSTRUCTION COMPANY

By:



Subscribed and sworn to before me, the undersigned authority, on this the 3rd day of FEBRUARY, 2016, to certify which, witness my hand and seal of office.



Notary Public in and for _____ County, Texas

BOND NO. TXG607351

FORT BEND COUNTY MUD NO. 169

MAINTENANCE BOND

MAINTENANCE BOND

STATE OF TEXAS

Contract Date

7.30.15

COUNTY OF FORT BEND

Date Bond Executed

7.30.15

PRINCIPAL GONZALEZ CONSTRUCTION ENTERPRISE, INC.

SURETY Merchants Bonding Company (Mutual)

OWNER FORT BEND COUNTY MUD NO. 169 and THE CITY OF FULSHEAR

PENAL SUM OF BOND (in words and figures) One Million Seventy Four Thousand Nine Hundred Dollars and fifty five cents (\$1,074,900.55), being 100 percent of the Contract Price.

CONTRACT for "Construction of Fulshear Bend Drive Extension No. One (from Riverwood Park Lane to Cross Creek Bend Lane) and Creek Cove at Cross Creek Ranch, Section Eight Reinforced Concrete Paving for Fort Bend County MUD No. 169, Fort Bend County, Texas" (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

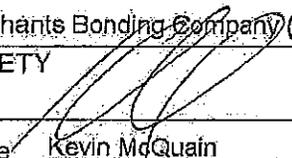
Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

Gonzalez Construction Enterprise, Inc.
 PRINCIPAL
 By 
 Name Javier Gonzalez
 Title President
 Address 3114 Blackwood Road
Rosenberg, Texas 77471

ATTEST
 By 
 Name Maria Gonzalez
 Title Vice President

(SEAL)

Merchants Bonding Company (Mutual)
 SURETY
 By 
 Name Kevin McQuain
 Title Attorney-in-Fact

ATTEST
 By 
 Name Kim Stanley
 Title Surety Witness

(SEAL)

Physical Address:
9500 Arboretum Blvd., Ste. 100
Austin, TX 78759

Mailing Address:
PO Box 26720
Austin, TX 78785-9931

Telephone: 512-241-4500

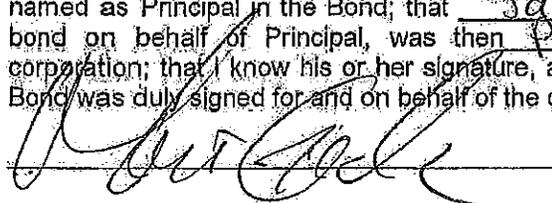
Local Recording Agent Personal Identification Number:
648145

Agency Name: CHS Insurance Services, LLC dba CHS Surety
 Agency Address: 25025 N I 45 Frwy, Ste. 525, The Woodlands, TX 77380
 Agency Telephone: 832-482-4730

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Maria Gonzalez, certify that I am the secretary of the corporation named as Principal in the Bond; that Javier Gonzalez, who signed the bond on behalf of Principal, was then President of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

 (Corporate Seal)

MERCHANTS
BONDING COMPANY,
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

Barbara K Sachi; Debra L Buckner; Elaine Lewis; Jeanne M Buchan; Justin McQuain; Keith M Illa;
 Kevin McQuain; Nancy J Portugal; Pamela C Martinson; Rosalyn D Hassell; Scott D Chapman

of The Woodlands and State of Texas their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TEN MILLION (\$10,000,000.00) DOLLARS

and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Authority is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc. on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of Indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of August, 2014.



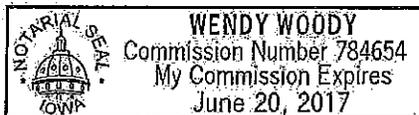
MERCHANTS BONDING COMPANY (MUTUAL)
 MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
 President

STATE OF IOWA
 COUNTY OF POLK ss.

On this 5th day of August, 2014, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Wendy Woody

Notary Public, Polk County, Iowa

STATE OF IOWA
 COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 30 day of July, 2015



William Warner Jr.
 Secretary

MERCHANTS
BONDING COMPANYTM

MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
2100 FLEUR DRIVE • DES MOINES, IOWA 50321-1158 • (800) 678-8171 • (515) 243-3854 FAX

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company (Mutual) toll-free telephone number for information or to make a complaint at:

1-800-678-8171

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM AND CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

BOND NO. 58S207199
FORT BEND COUNTY MUD NO. 172

MAINTENANCE BOND

MAINTENANCE BOND

STATE OF TEXAS

Contract Date June 19, 2015

COUNTY OF FORT BEND

Date Bond Executed June 19, 2015

PRINCIPAL HURTADO CONSTRUCTION COMPANY

SURETY Liberty Mutual Insurance Company

OWNER FORT BEND COUNTY MUD NO. 172 and CITY OF FULSHEAR

PENAL SUM OF BOND (in words and figures) Six Hundred Fifty Seven Thousands Nine Hundred Ninety Eight Dollars and ninety nine cents (\$657,998.99) being 100 percent of the Contract Price.

CONTRACT for "Construction of Creek Cove at Cross Creek Ranch, Section Eight Water, Sanitary Sewer, and Storm Sewer Facilities for Fort Bend County MUD No. 172, Fort Bend County, Texas" (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

Hurtado Construction Company
PRINCIPAL

ATTEST

By ~~Miguel Hurtado~~
Name Miguel Hurtado
Title president
Address:
2115 Center Street
Richmond, TX 77469

By Rosa Hurtado
Name Rosa Hurtado
Title SECRETARY

(SEAL)

Liberty Mutual Insurance Company
SURETY

ATTEST

By Mary Ann Garcia
Name Mary Ann Garcia
Title Attorney-in-fact

By Laura Sudduth
Name Laura Sudduth
Title Witness

(SEAL)

Physical Address:
13201 Northwest Freeway, Suite 810
Houston, Texas 77040

Mailing Address:
13201 Northwest Freeway, Suite 810
Houston, Texas 77040

Telephone: 713-744-1761

Local Recording Agent Personal Identification Number:
1174618

Agency Name: Willis of Texas, Inc.
Agency Address: 920 Memorial City Way, Suite 500, Houston, Texas 77040
Agency Telephone: 713-961-3800

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ROSA HURTADO, certify that I am the secretary of the corporation named as Principal in the Bond; that MIGUEL HURTADO, who signed the bond on behalf of Principal, was then PRESIDENT of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

Rosa Hurtado (Corporate Seal)

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6960416

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cynthia A. Peters; David A. Castillo; Jo Ann Parker; Judy M. Dold; Larry H. Senkel; Laura E. Sudduth; Mark H. Hilliard; Mary Ann Garcia

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surely and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed hereto this 4th day of February, 2015.



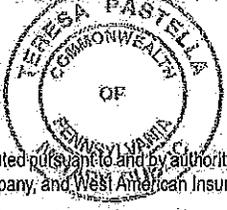
American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 4th day of February, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 23, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 19 day of June, 2015.



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Creek Cove at Cross Creek Ranch, Section Eight
Water, Sanitary Sewer and Storm Sewer Facilities

Owner: Fort Bend County MUD No. 172
C/o CCR Loan Subsidiary 1, L.P.
6450 Cross Creek Bend Lane
Fulshear, Texas 77441

Attention: Todd Hamilton

Pay Estimate No.	2-Final
Original Contract Amount:	\$ 657,998.99
Change Orders:	\$ (20,200.50)
Current Contract Amount:	\$ 637,798.49
Completed to Date:	\$ 637,798.49
Retainage 0%	\$ -
Balance:	\$ 637,798.49
Less Previous Payments:	\$ 544,440.14
Current Payment Due:	\$ 93,358.35

Recommended for Approval:



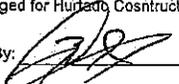
Gary L. Goessler, PE
Project Manager, Construction Management
BGE
TBPE Registration No. F-1046

Contractor: Hurtado Construction Co.
2115 Center Street
Richmond, Texas 77469

Attention: Benjamin Vasquez

BGE Job No.	2117-00
Estimate Period:	09/01/15 - 11/11/15
Contract Date:	June 19, 2015
Notice to Proceed:	June 22, 2015
Contract Time:	45 Calendar Days
Time Charged:	142 Calendar Days
Approved Extensions:	0 Calendar Days
Time Remaining:	-97 Calendar Days

Acknowledged for Hurtado Construction Company, Inc:

By: 

Title: CM
Date: 02-24-2016

STREET ACCEPTANCE

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF FORT BEND §

WHEREAS, plats for Fulshear Bend Drive Extension No. 1 and Creek Cove at Cross Creek Ranch, Section Eight have been recorded under Plat Nos. 20150235 and 20150236 in the Plat Records of Fort Bend County, Texas, and street(s) (and culvert facilities, if any) have been constructed within the land shown on such plat (collectively, the "Streets"); and

WHEREAS, the City desires to accept the Streets for operation and maintenance.

Now, Therefore, the City hereby accepts the Streets for operation and maintenance by the City.

CITY OF FULSHEAR, TEXAS

Mayor

ATTEST:

City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____ as Mayor of the City of Fulshear, Texas, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

City's obligations under the Utility Agreement. The District reserves said security interest under Texas law and the Utility Agreement.

The District hereby reserves the full capacity of the Facilities.

The District hereby assigns to the City all rights (including, without limitation, all rights under the Construction Contract, to the extent the Construction Contract allows assignment of such rights), maintenance bonds, warranties and manufacturer's warranties, if any, owned or acquired by the District for the Facilities. Notwithstanding any provision hereof, this Utility Conveyance and Security Agreement shall not be construed to limit or modify any indemnity obligations, or any other obligations, that Contractor, or its surety, may otherwise have to the District or to any other party under the Construction Contract.

The City hereby agrees by its acceptance of this conveyance to operate and maintain the Facilities in accordance with the terms of the Utility Agreement.

This Utility Conveyance and Security Agreement is effective as of the later of: (i) the date that the District executes this instrument; or (ii) the date that the City executes this instrument.

FORT BEND COUNTY MUNICIPAL UTILITIES
DISTRICT NO. 169

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

Secretary, Board of Directors

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, as President, of the Board of Directors of Fort Bend County Municipal Utility District No. 169, a political subdivision of the State of Texas, on behalf of said political subdivision.

Notary Public, State of Texas

(NOTARY SEAL)

In accordance with the Utility Agreement, as defined above, the City hereby accepts this Utility Conveyance and Security Agreement. Such City acceptance is effective as of the later of: (i) the date that the District executes this instrument; or (ii) the date that the City executes this instrument.

CITY OF FULSHEAR, TEXAS

By: _____
Name: _____
Title: Mayor
Date: _____

ATTEST:

City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____ as Mayor of the City of Fulshear, Texas, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

AFTER RECORDING RETURN TO: Linda Sotirake, Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, TX 77027.

BRIDGE ACCEPTANCE

THE STATE OF TEXAS §
COUNTY OF FORT BEND § KNOW ALL BY THESE PRESENTS:
§

WHEREAS, a plat for Cross Creek Ranch Cross Creek Bend Lane Extension No. 1 has been recorded under Plat No. 20100058 in the Plat Records of Fort Bend County, Texas, and the Flewellen Creek Bridge, Phase Two has been constructed within the land shown on such plat (the "Bridge"); and

WHEREAS, the City of Fulshear (the "City") desires to accept the Bridge for operation and maintenance.

Now, Therefore, the City hereby accepts the Bridge for operation and maintenance by the City.

CITY OF FULSHEAR, TEXAS

Mayor

ATTEST:

City Secretary

THE STATE OF TEXAS §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____ as Mayor of the City of Fulshear, Texas, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

The District hereby reserves the full capacity of the Facilities.

The District hereby assigns to the City all rights (including, without limitation, all rights under the Construction Contract, to the extent the Construction Contract allows assignment of such rights), maintenance bonds, warranties and manufacturer's warranties, if any, owned or acquired by the District for the Facilities. Notwithstanding any provision hereof, this Utility Conveyance and Security Agreement shall not be construed to limit or modify any indemnity obligations, or any other obligations, that Contractor, or its surety, may otherwise have to the District or to any other party under the Construction Contract.

The City hereby agrees by its acceptance of this conveyance to operate and maintain the Facilities in accordance with the terms of the Utility Agreement.

This Utility Conveyance and Security Agreement is effective as of the later of: (i) the date that the District executes this instrument; or (ii) the date that the City executes this instrument.

FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 172

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

Secretary, Board of Directors

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2016, by _____, as President, of the Board of Directors of Fort Bend County Municipal Utility District No. 172, a political subdivision of the State of Texas, on behalf of said political subdivision.

Notary Public, State of Texas

(NOTARY SEAL)

In accordance with the Utility Agreement, as defined above, the City hereby accepts this Utility Conveyance and Security Agreement. Such City acceptance is effective as of the later of: (i) the date that the District executes this instrument; or (ii) the date that the City executes this instrument.

CITY OF FULSHEAR, TEXAS

By: _____
Name: _____
Title: Mayor
Date: _____

ATTEST:

City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____ as Mayor of the City of Fulshear, Texas, on behalf of said City.

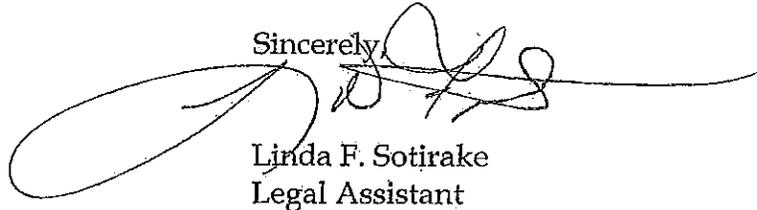
Notary Public, State of Texas

(NOTARY SEAL)

AFTER RECORDING RETURN TO: Linda Sotirake, Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, TX 77027.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda F. Sotirake', with a long horizontal flourish extending to the right.

Linda F. Sotirake
Legal Assistant

Enclosures

cc: Mr. Grady Randle (w/enc.) Via Federal Express

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF:	January 24, 2017	AGENDA ITEM:	
DATE SUBMITTED:	January 19, 2017	DEPARTMENT	Planning and Development
PREPARED BY:	Sharon Valiante Director of Public Works	PRESENTER:	Sharon Valiante, Director of Public Works
SUBJECT:	Infrastructure Acceptance and Conveyance – MUD 2 (the “District) – Water, Sanitary Sewer, Drainage and Paving – Fulshear Run Section 1 & 2		
ATTACHMENTS:	<ol style="list-style-type: none"> 1. District Engineer’s Certificates of Substantial Completion 2. Waivers of Lien & Affidavits of All Bills Paid 3. Warranties of the contractor and subcontractor 4. City Engineer’s Statements of approval 5. Street Acceptance 6. Utility Conveyance and Security Agreement 		
EXPENDITURE REQUIRED:			N/A
AMOUNT BUDGETED:			N/A
FUNDING ACCOUNT:			N/A
ADDITIONAL APPROPRIATION REQUIRED:			N/A
FUNDING ACCOUNT:			

EXECUTIVE SUMMARY

As each Phase of the development are acquired and constructed, the Districts prepare documents that are submitted to the City with a request for consideration for transfer of ownership, which is considered and approved by City Council. The Districts, in accordance with the Development Agreement and Utility Agreements in place, have complied with Section 2.10 – As construction of each Phase is completed, the City shall inspect and if the City finds that the Phase has been completed in accordance with the final plans and specifications approved by the City, or any modifications approved by the City, the City will accept the Phase for ownership, operation and maintenance.

The value of the infrastructure being considered is as follows:

1. Fulshear Run Section 1 - \$3,742,265.02
2. Fulshear Run Section 2 - \$1,656,618.92

RECOMMENDATION

Staff recommends that council accept the infrastructure constructed and completed for Fulshear Run Sections 1 and 2 and authorize the mayor to execute the following:

1. Street Acceptance for Fulshear Run Sections 1 and 2
2. Utility Conveyance and Security Agreement for Fulshear Run Sections 1 and 2

Memorandum

To: Fulshear Municipal Utility District No. 2
c/o Coats Rose, P.C. Attn: John Cannon (w/ enclosure)

From: Robert T. Deden, P.E. 

Copy: Mr. Doug Konopka (w/ enclosure)
City of Fulshear (w/ enclosure)

Date: June 25, 2016

Re: Certificate of Completion
Construction of the Water, Sanitary Sewer, Drainage and Paving Facilities to Serve
Fulshear Run Section 1
To Serve Fulshear Municipal Utility District No. 2
City of Fulshear, Fort Bend County, Texas
LJA Job No. 2145-3001 / Deden Services, LLC

Enclosed please find your copy of the Engineer's Certificate of Completion for the noted project.
If there are any questions, please do not hesitate to call me at 713.461.8822.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENGINEER'S CERTIFICATE OF COMPLETION

Name of Project: Construction of the Water, Sanitary Sewer, Drainage & Paving Facilities to
serve Fulshear Run Section 1

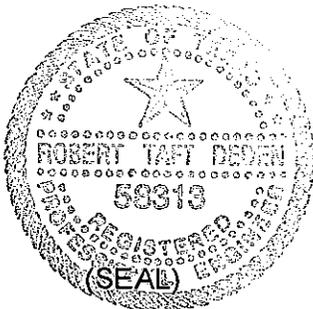
Owner of Project: Fort Bend County Municipal Utility District No. 2

Address of Owner: c/o John Cannon, Coats Rose, P.C
9 Greenway Plaza, Suite 1100, Houston, Texas 77046

Type of Facilities Constructed, Contract Identification and Name of Contractor: Water, Sanitary
Sewer, Drainage & Paving Facilities to Serve Fulshear Section 1, Fulshear MUD No. 2; LJA Job No.
2145-3001; Hurtado Construction Company

Consulting Engineer: Deden Services, LLC and LJA Engineering, Inc.

I certify this Project was completed on June 25, 2016, that the Project was under periodic observation during construction; that all observation of the work was performed by or under the supervision of Robert T. Deden, Licensed Professional Engineer; that to the best of my knowledge the Project was constructed in accordance with and includes all items in plans and specifications approved by all authorities having jurisdiction; and "Record Drawings" will be furnished to the District and the City.




(Signature)

Robert Taft Deden, P.E.,
(Name and Title)

6/25/16
(Date)

AFFIDAVIT OF BILLS PAID
(TO BE FILED WITH FINAL PAY ESTIMATE ONLY)

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared _____

BENJAMIN C. VASQUEZ

representing Contractor under the following Contract:

Owner: Fulshear Municipal Utility District No. 2
Contractor: Hurtado Construction Company
Date: 03-09-2015
Project: Construction of the Water, Sanitary Sewer, Drainage & Paving Facilities to Serve Fulshear Run Section 1
LJA Job No.: 2145-3001D & 2145-3001

The undersigned was by me duly sworn and now states upon oath:

1. The improvements required by the Contract have been erected and completed in full compliance with the Contract and the agreed plans and specifications for the Contract.
2. All bids and claims for materials furnished and labor performed on the Contract have been paid. There are no outstanding unpaid bills or legal claims for labor performed or materials furnished upon the job.
3. This Affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained in this Affidavit that final and full settlement of the balance due on the Contract is being made, and in consideration of the disbursement of funds by Owner, the undersigned expressly gives and releases all liens, claims and rights to assert a lien on said premises and agrees to indemnify and hold Owner safe and harmless from and against all losses, damages, costs, and expenses of any character whatsoever, specifically including court costs, bonding fees and attorney fees, arising out of, or in any way relating to, claims for unpaid labor or material used or associated with construction of improvements under the Contract.

By 

Name BENJAMIN C. VASQUEZ

Title CM

Subscribed and sworn before me, the undersigned authority, on this the 16th day of JANUARY 2015.


Notary Public in and for the State of Texas

PARTIAL/FINAL WAIVER OF LIEN

THE STATE OF TEXAS

COUNTY OF FORT BEND

The undersigned contracted with Fulshear Municipal Utility District No. 2 to furnish labor and materials in connection with certain improvements to real property located in Fort Bend County, Texas, and owned by Fulshear Municipal Utility District No. 2, which improvements are described as follows:

CONSTRUCTION OF THE WATER, SANITARY SEWER, DRAINAGE & PAVING FACILITIES TO SERVE FULSHEAR RUN SECTION 1 FULSHEAR MUNICIPAL UTILITY DISTRICT NO. 2 CITY OF FULSHEAR FORT BEND COUNTY, TEXAS LJA JOB NO. 2145-3001D & 2145-3001

Three million Seven Hundred Forty Two Thousand Two Hundred Sixty Five Dollars And

In consideration of Pay Estimate No. 3 AND FINAL in the amount of Two Cents DOLLARS (\$ 3,742,265.02)

and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned does hereby waive and release any mechanics' lien or materialmen's lien or claims of lien that the undersigned has or hereafter has on the above-mentioned real property on account of any labor performed or materials furnished or to be furnished or labor performed and materials furnished by the undersigned pursuant to the above-mentioned contract or any constitutional lien that the undersigned may have.

Undersigned hereby guarantees that all bids for labor performed and/or materials furnished in the erection and construction of such improvements on the Property have been fully paid and satisfied and Undersigned does further guarantee that if for any reason a lien or liens are filed for material or labor against said Property arising out of any bills for material or labor in connection with the erection or construction of said improvements thereon, Undersigned will obtain a settlement of such lien or liens and a proper release thereof shall be obtained.

Hurtado Construction Company Contractor

BENJAMIN C. VASQUEZ Name

Signature

GM Title

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 16th day of JANUARY 20 17, to certify which witness my hand and seal of office.

(Seal)

Notary Public in and for the State of Texas

Printed Name

2-16-2019 My Commission Expires

MAINTENANCE BOND

Bond No. 58S207183

KNOW ALL MEN BY THESE PRESENTS:

That Hurtado Construction Company
2115 Center Street Richmond, TX 77469
as Principal, hereinafter called Contractor, and Liberty Mutual Insurance Company
175 Berkeley Street Boston, MA 02116, as Surety, hereinafter called Surety, are held
and firmly bound unto Fulshear Municipal Utility District No. 2
c/o LJA Engineering, Inc., 2929 Briarpark Drive, Suite 600 Houston, TX 77042, as Oblige, hereinafter
called Owner, in the penal sum of Three Million Seven Hundred Forty Two Thousand Two Hundred
Sixty Five Dollars and 02/100 Dollars (\$ 3,742,265.02), for payment whereof Contractor
and Surety bind themselves, their heirs, executors, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

WIHEREAS, Contractor has constructed various public improvements:

Construction of Water, Sanitary Sewer, Drainage & Paving Facilities to Serve Fulshear Run Section
One

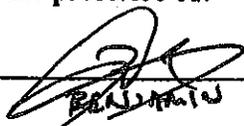
in accordance with the General Conditions, the Drawings and Specifications, which Plans are by
reference incorporated herein, and made a part hereof, and is referred to as the Plans.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall remedy any
defects due to faulty materials or workmanship, and pay for any damage to other work resulting
therefrom, which shall appear within a period of One Year from the date of substantial
completion of the work provided for in the Plans, then this obligation to be void; otherwise to
remain in full force and effect.

PROVIDED, HOWEVER, that Owner shall give Contractor and Surety notice of observed
defects with reasonable promptness.

SIGNED and sealed this 12th day of January, 2017.

In the presence of:


REYNOLDO C. URBAN

Hurtado Construction Company
Principal (Seal)

By: ~~Reynoldo C. Urban~~ Reynoldo C. Urban president
MIGUEL HURTADO Title

Liberty Mutual Insurance Company
Surety

By: 
Sylvia Hinojosa Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7563441

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David Stephen Wightman; Denise Raker; Jo Ann Parker; Sylvia Hinojosa

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of December, 2016



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 7th day of December, 2016, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2017.
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 12th day of January, 2017



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



TEXAS
IMPORTANT NOTICE

To obtain information or make a complaint:

You may call toll-free for information or to
make a complaint at
1-877-751-2640

You may also write to:

2200 Renaissance Blvd., Ste. 400
King of Prussia, PA 19406-2755

You may contact the Texas Department of
Insurance to obtain information on companies,
coverages, rights or complaints at
1-800-252-3439.

You may write the Texas Department of Insurance
Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your
premium or about a claim you should first
contact the agent or call 1-800-843-6446.
If the dispute is not resolved, you may contact the
Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR
POLICY:

This notice is for information only and does not
become a part or condition of the attached
document.

TEXAS
AVISO IMPORTANTE

Para obtener informacion o para someter una
queja:

Usted puede llamar al numero de telefono gratis
para informacion o para someter una queja al
1-877-751-2640

Usted tambien puede escribir a:

2200 Renaissance Blvd., Ste. 400
King of Prussia, PA 19406-2755

Puede comunicarse con el Departamento de
Seguros de Texas para obtener informacion
acerca de companias, coberturas, derechos o
quejas al
1-800-252-3439

Puede escribir al Departamento de Seguros
de Texas Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX # (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concierne a su prima o a
un reclamo, debe comunicarse con el agente o
primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI)

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion
y no se convierte en parte o condicion del
documento adjunto.



HURTADO CONSTRUCTION CO. INC.
2115 CENTER ST.
RICHMOND, TX 77469

DEDEN SERVICES, LLC
9328 Westview
HOUSTON, TX. 77055

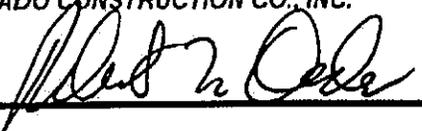
PROJECT: FULSHEAR RUN SECTION 1

ESTIMATE No. :	3		
DATE:	6/25/2016		
CONTRACT PRICE:	\$ 3,060,076.06	WORK TO DATE:	\$ 3,742,265.02

TOTAL WORK TO DATE:	\$ 3,742,265.02
Less 0% Retainage	\$ -
Sub-Total	\$ 3,742,265.02
Material on Hand	\$0.00
Less Previous Estimates	\$ 3,025,344.84
Total this Estimate	\$ 716,920.18



BENJAMIN C. VASQUEZ
HURTADO CONSTRUCTION CO., INC.



ROBERT T. DEDEN, P.E.
DEDEN SERVICES, LLC

Memorandum

To: Fulshear Municipal Utility District No. 2
c/o Coats Rose, P.C. Attn: John Cannon (w/ enclosure)

From: Robert T. Deden, P.E. 

Copy: Mr. Doug Konopka (w/ enclosure)
City of Fulshear (w/ enclosure)

Date: June 25, 2016

Re: Certificate of Completion
Construction of the Water, Sanitary Sewer, Drainage and Paving Facilities to Serve
Fulshear Run Section 2
To Serve Fulshear Municipal Utility District No. 2
City of Fulshear, Fort Bend County, Texas
LJA Job No. 2145-3001 / Deden Services, LLC

Enclosed please find your copy of the Engineer's Certificate of Completion for the noted project.

If there are any questions, please do not hesitate to call me at 713.461.8822.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENGINEER'S CERTIFICATE OF COMPLETION

Name of Project: Construction of the Water, Sanitary Sewer, Drainage & Paving Facilities to
serve Fulshear Run Section 2

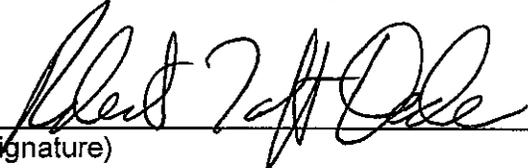
Owner of Project: Fort Bend County Municipal Utility District No. 2

Address of Owner: c/o John Cannon, Coats Rose, P.C
9 Greenway Plaza, Suite 1100, Houston, Texas 77046

Type of Facilities Constructed, Contract Identification and Name of Contractor: Water, Sanitary
Sewer, Drainage & Paving Facilities to Serve Fulshear Run Section 2, Fulshear MUD No. 2; LJA
Job No. 2145-3002; Hurtado Construction Company

Consulting Engineer Deden Services, LLC and LJA Engineering, Inc.

I certify this Project was completed on June 25, 2016, that the Project was under periodic observation during construction; that all observation of the work was performed by or under the supervision of Robert T. Deden, Licensed Professional Engineer; that to the best of my knowledge the Project was constructed in accordance with and includes all items in plans and specifications approved by all authorities having jurisdiction; and "Record Drawings" will be furnished to the District and the City.



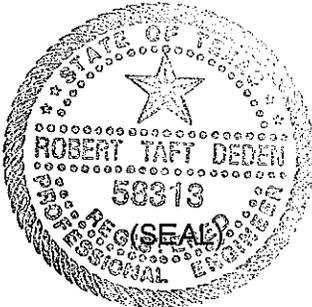
(Signature)

Robert Taft Deden, P.E.

(Name and Title)

6/25/16

(Date)



AFFIDAVIT OF BILLS PAID
(TO BE FILED WITH FINAL PAY ESTIMATE ONLY)

STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared _____

BENJAMIN C. UASQUEZ

representing Contractor under the following Contract:

Owner: Fulshear Municipal Utility District No. 2

Contractor: Hurtado Construction Company

Date: _____

Project: Construction of the Water, Sanitary Sewer, Drainage, & Paving Facilities to Serve Fulshear Run Section 2

LJA Job No.: 2145-3002D

The undersigned was by me duly sworn and now states upon oath:

1. The improvements required by the Contract have been erected and completed in full compliance with the Contract and the agreed plans and specifications for the Contract.

2. All bids and claims for materials furnished and labor performed on the Contract have been paid. There are no outstanding unpaid bills or legal claims for labor performed or materials furnished upon the job.

3. This Affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained in this Affidavit that final and full settlement of the balance due on the Contract is being made, and in consideration of the disbursement of funds by Owner, the undersigned expressly gives and releases all liens, claims and rights to assert a lien on said promises and agrees to indemnify and hold Owner safe and harmless from and against all losses, damages, costs, and expenses of any character whatsoever, specifically including court costs, bonding fees and attorney fees, arising out of, or in any way relating to, claims for unpaid labor or material used or associated with construction of improvements under the Contract.

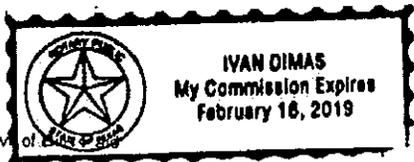
By _____

Name BENJAMIN C. UASQUEZ

Title CM

Subscribed and sworn before me, the undersigned authority, on this the 21st day of JUNE, 2016.

Ivan Dimas
Notary Public in and for the State of Texas



Affidavit of _____

PARTIAL/FINAL WAIVER OF LIEN

THE STATE OF TEXAS

COUNTY OF FORT B

The undersigned contracted with Fulshear Municipal Utility District No. 2 to furnish labor and materials in connection with certain improvements to real property located in Fort Bend County, Texas, and owned by Fulshear Municipal Utility District No. 2, which improvements are described as follows:

CONSTRUCTION OF THE
WATER, SANITARY SEWER, DRAINAGE, & PAVING FACILITIES
TO SERVE
FULSHEAR RUN SECTION 2
FULSHEAR MUNICIPAL UTILITY DISTRICT NO. 2
CITY OF FULSHEAR
FORT BEND COUNTY, TEXAS
LJA JOB NO. 2145-3002D

*One Hundred Eighty Eight
Thousand Six Hundred
Seventy Seven Dollars*

In consideration of Pay Estimate No. 3 AND FINAL in the amount of And Ten Cents DOLLARS (\$ 188,677.10)

and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned does hereby waive and release any mechanics' lien or materialmen's lien or claims of lien that the undersigned has or hereafter has on the above-mentioned real property on account of any labor performed or materials furnished or to be furnished or labor performed and materials furnished by the undersigned pursuant to the above-mentioned contract or any constitutional lien that the undersigned may have.

Undersigned hereby guarantees that all bids for labor performed and/or materials furnished in the erection and construction of such improvements on the Property have been fully paid and satisfied and Undersigned does further guarantee that if for any reason a lien or liens are filed for material or labor against said Property arising out of any bills for material or labor in connection with the erection or construction of said improvements thereon, Undersigned will obtain a settlement of such lien or liens and a proper release thereof shall be obtained.

Hurtado Construction Company
Contractor

BENJAMIN C. VASQUEZ
Name

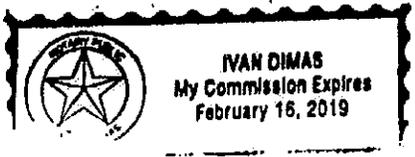
[Signature]
Signature

GM
Title

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 21st day of JUNE, 2016, to certify which witness my hand and seal of office.

(Seal)

[Signature]
Notary Public in and for the State of Texas



Ivan Dimas
Printed Name

2-16-2019
My Commission Expires

MAINTENANCE BOND

Bond No. 58S207218

KNOW ALL MEN BY THESE PRESENTS:

That Hurtado Construction Company
2115 Center Street Richmond, TX 77469
as Principal, hereinafter called Contractor, and Liberty Mutual Insurance Company
175 Berkeley Street Boston, MA 02116, as Surety, hereinafter called Surety, are held
and firmly bound unto Fulshear Municipal Utility District No. 2
c/o LJA Engineering, Inc., 2929 Briarpark Drive, Suite 600 Houston, TX 77042, as Obligee, hereinafter
called Owner, in the penal sum of One Million Six Hundred Fifty Six Thousand Six Hundred
Eighteen Dollars and 92/100 Dollars (\$ 1,656,618.92), for payment whereof Contractor
and Surety bind themselves, their heirs, executors, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

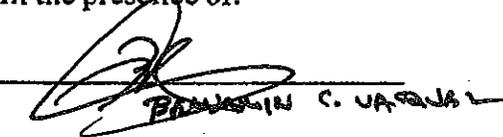
WIHEREAS, Contractor has constructed various public improvements:
Construction of the Water, Sanitary Sewer, Drainage and Paving Facilities to serve Fulshear Run
Section 2

in accordance with the General Conditions, the Drawings and Specifications, which Plans are by
reference incorporated herein, and made a part hercof, and is referred to as the Plans.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall remedy any
defects due to faulty materials or workmanship, and pay for any damage to other work resulting
therefrom, which shall appear within a period of One Year from the date of substantial
completion of the work provided for in the Plans, then this obligation to be void; otherwise to
remain in full force and effect.

PROVIDED, HOWEVER, that Owner shall give Contractor and Surety notice of observed
defects with reasonable promptness.

SIGNED and sealed this 12th day of January, 2017.

In the presence of:

FRANCISCO C. VASQUEZ

Hurtado Construction Company
Principal (Seal)

By: 
MIGUEL HURTADO President
Title

Liberty Mutual Insurance Company
Surety
By: 
Sylvia Olinojosa Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7563442

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David Stephen Wightman; Denise Raker; Jo Ann Parker; Sylvia Hinojosa

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of December, 2016



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 7th day of December, 2016, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 12th day of January, 2017



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



TEXAS
IMPORTANT NOTICE

To obtain information or make a complaint:

You may call toll-free for information or to make a complaint at
1-877-751-2640

You may also write to:

2200 Renaissance Blvd., Ste. 400
King of Prussia, PA 19406-2755

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at
1-800-252-3439

You may write the Texas Department of Insurance Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the agent or call 1-800-843-6446. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

TEXAS
AVISO IMPORTANTE

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis para información o para someter una queja al
1-877-751-2640

Usted también puede escribir a:

2200 Renaissance Blvd., Ste. 400
King of Prussia, PA 19406-2755

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al
1-800-252-3439

Puede escribir al Departamento de Seguros de Texas Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091
FAX # (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI)

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



HURTADO CONSTRUCTION CO. INC.
2115 CENTER ST.
RICHMOND, TX 77469

DEDEN SERVICES, LLC
9328 Westview
HOUSTON, TX. 77055

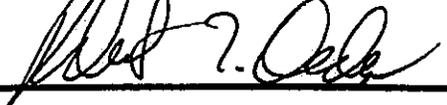
PROJECT: FULSHEAR RUN SECTION 2

ESTIMATE No. :	3 AND FINAL		
DATE:	6/15/2016		
CONTRACT PRICE:	\$ 1,565,856.32	WORK TO DATE:	\$ 1,656,618.92

TOTAL WORK TO DATE:	<u>\$ 1,656,618.92</u>
Less 0% Retainage	<u>\$ -</u>
Sub-Total	<u>\$ 1,656,618.92</u>
Material on Hand	<u>\$0.00</u>
Less Previous Estimates	<u>\$ 1,467,941.82</u>
Total this Estimate	<u>\$ 188,677.10</u>



BENJAMIN C. VASQUEZ
HURTADO CONSTRUCTION CO., INC.



ROBERT T. DEDEN, P.E.
DEDEN SERVICES, LLC

STREET ACCEPTANCE

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF FORT BEND §

WHEREAS, plats for Fulshear Run, Sections 1 and 2 have been recorded under Clerk’s File Nos. 2015-118192 and 2015-118197 in the Official Public Records of fort Bend County, Texas and a Special Warranty Deed for a portion of Bois D’ Arc Lane has been recorded under Clerk’s File No. 2016-003531 in the Official Public Records of Fort Bend County, Texas, and street(s) (and culvert facilities, if any) have been constructed within the land shown on such plats and deed (collectively, the “Streets”); and

WHEREAS, the City desires to accept the Streets for operation and maintenance.

NOW, THEREFORE, the City hereby accepts the Streets for operation and maintenance by the City.

CITY OF FULSHEAR, TEXAS

Mayor

ATTEST:

City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, as Mayor the City of Fulshear, Texas, on behalf of said City.

(NOTARY SEAL)

Notary Public, State of Texas

UTILITY CONVEYANCE AND SECURITY AGREEMENT

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF FORT BEND §

Fulshear Municipal Utility District No. 2 of Fort Bend County (the "District") has constructed certain improvements, structures, and facilities designed to provide water, wastewater, drainage and/or roads to serve areas within or near the District's boundaries and the boundaries of the City of Fulshear, Texas (the "City"). For good and valuable, consideration, the receipt and sufficiency of which are hereby acknowledged, the District does hereby convey, transfer, and deliver to the City, its successors and assigns those certain facilities described as follows:

- (1) Those certain water, sanitary sewer, and storm sewer facilities, and all related appurtenances, and roads to serve Fulshear Run, Section 1 (except any detention ponds and any drainage channels) constructed to date on behalf of the District pursuant to the construction contract ("Construction Contract") between the District and Hurtado Construction Company ("Contractor") dated February 27, 2015, which facilities are located within or near the boundaries of the District, and together with any improvements, structures, storm sewer mains, plants, service pumps, storage reservoirs, electrical equipment, plant equipment, distribution lines, collection lines, water mains, lift stations, meters, valves, pipes, fittings, connections, meter boxes, laterals, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the facilities being conveyed hereby (the "Facilities"). The Facilities are located within Fulshear Run, Section 1, a subdivision in Fort Bend County, Texas according to the plat thereof recorded in the Official Records of Fort Bend County, Texas under Clerk's File No. 2015-118192.

- (2) Those certain water, sanitary sewer, and storm sewer facilities, and all related appurtenances, and roads to serve Fulshear Run, Section 2 (except any detention ponds and any drainage channels) constructed to date on behalf of the District pursuant to the construction contract ("Construction Contract") between the District and Hurtado Construction Company ("Contractor") dated February 27, 2015, which facilities are located within or near the boundaries of the District, and together with any improvements, structures, storm sewer mains, plants, service pumps, storage reservoirs, electrical equipment, plant equipment, distribution lines, collection lines, water mains, lift stations, meters, valves, pipes, fittings, connections, meter boxes, laterals, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the facilities being conveyed hereby (the "Facilities"). The Facilities are located within Fulshear Run, Section 2, a subdivision in Fort

Bend County, Texas according to the plat thereof recorded in the Official Records of Fort Bend County, Texas under Clerk's File No. 2015-118197.

- (3) Those certain paving improvements to Bois D' Arc Lane constructed to date on behalf of the District pursuant to the construction contract ("Construction Contract") between the District and Hurtado Construction Company ("Contractor") dated February 27, 2015, which facilities are located within or near the boundaries of the District, and together with any improvements, structures, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the facilities being conveyed hereby (the "Facilities"). The Facilities are located within the right of way for Bois D' Arc Lane conveyed to the City by the District under Special Warranty Deed recorded in the Official Records of Fort Bend County, Texas under Clerk's File No. 2016-003531.

The District hereby reserves the full capacity of the Facilities.

The District hereby assigns to the City all rights (including without limitation, all rights under the Construction Contract, to the extent the Construction Contract allows assignment of such rights), maintenance, bonds, warranties and manufacturer's warranties, if any, owned or acquired by the District for the Facilities. Notwithstanding any provision hereof, this Utility Conveyance and Security Agreement shall not be construed to limit or modify any indemnity obligations, or any other obligations, that Contractor, or its surety, may otherwise have to the District or to any other party under the Construction Contract.

The City hereby agrees by its acceptance of this conveyance to operate and maintain the Facilities.

IN WITNESS WHEREOF, this conveyance is executed on this _____ day of January, 2017.

**FULSHEAR MUNICIPAL UTILITY
DISTRICT NO. 2 OF FORT BEND COUNTY**

President, Board of Directors

ATTEST:

Secretary, Board of Directors

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2017, by _____, _____ of Fulshear Municipal Utility District No. 2 of Fort Bend County, in the capacity herein stated.

(SEAL)

Notary Public in and for the
State of TEXAS

Name Printed or Typed
My Commission Expires: _____

The City hereby accepts this Utility Conveyance and Security Agreement on this _____ day of _____, 2017.

CITY OF FULSHEAR, TEXAS

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the day ____ day of _____, 2017, by _____ as Mayor of the City of Fulshear, Texas, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

AFTER RECORDING RETURN TO:

John Cannon
Coats Rose, P.C.
9 Greenway Plaza, Suite 1100
Houston, Texas 77046

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF: January 24, 2017

AGENDA ITEM:

DATE SUBMITTED: January 19, 2017

DEPARTMENT: Administration

PREPARED BY: Paula Ryan,
Assistant City Manager

PRESENTER: Paula Ryan,
Assistant City Manager

SUBJECT: Restricted Prior Service Credit in TMRS for City Employees

ATTACHMENTS: Ordinance of the City of Fulshear, Texas Authorizing
and Allowing Restricted Prior Service Credit in TMRS

EXPENDITURE REQUIRED: N/A

AMOUNT BUDGETED: N/A

ADDITIONAL APPROPRIATION REQUIRED: N/A

EXECUTIVE SUMMARY

The Restricted Prior Service Credit option under the Texas Municipal Retirement System (TMRS) allows a member city to grant restricted prior service credit to employees for service performed for various other public entities including a public authority or agency created by the United States, any state or territory of the United States, any political subdivision of any state of the United States, any public agency or authority created by a state or territory of the United States, previously forfeited service with one of the five statewide retirement systems in Texas (Texas Municipal Retirement System, Texas County and District Retirement System, Teacher Retirement System of Texas, Employees Retirement System of Texas, and Judicial Retirement System of Texas), and any institution of higher education at which the person was commissioned as a campus security personnel employee.

Restricted Prior Service Credit has no monetary value and is counted toward length of service requirements for vesting and retirement eligibility. The city's contribution rate will not be immediately affected by the adoption of this provision. It can have an impact on the city's contribution rate in future years as employees apply for the credits. This was discussed with TMRS and such rate increase is generally expected to be very slight in any given year, depending upon the amount of service credit added. Adopting this plan provision is common among other TMRS member cities recognizing that a city greatly benefits from the expertise and experience of those who have prior public service.

RECOMMENDATION

Staff recommends that City Council take action to approve the attached Ordinance of the City of Fulshear, Texas authorizing and allowing Restricted Prior Service Credit to employees who are members of the Texas Municipal Retirement System for service previously performed for various other public entities.

ORDINANCE NO. 2017-1236

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS AUTHORIZING AND ALLOWING, UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM, RESTRICTED PRIOR SERVICE CREDIT TO EMPLOYEES WHO ARE MEMBERS OF THE SYSTEM FOR SERVICE PREVIOUSLY PERFORMED FOR VARIOUS OTHER PUBLIC ENTITIES FOR WHICH THEY HAVE NOT RECEIVED CREDITED SERVICE; AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, the City Council of the City of Fulshear, Texas desires to recognize public service previously performed by City employees; AND

WHEREAS, the Restricted Prior Service Credit option under the Texas Municipal Retirement System (TMRS) allows the City of Fulshear, Texas as a member city to grant restricted prior service credit to employees for service performed to use to satisfy length of service requirements for vesting and service retirement eligibility, and has no monetary value;

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

Section 1. Authorization of Restricted Prior Service Credit.

(a) On the terms and conditions set out in Sections 853.305 of Subtitle G of Title 8, Texas Government Code, as amended (hereinafter referred to as the "TMRS Act"), each member of the Texas Municipal Retirement System (hereinafter referred to as the "System") who is now or who hereafter becomes an employee of this City shall receive restricted prior service credit for service previously performed as an employee of any of the entities described in said Section 853.305 provided that (1) the person does not otherwise have credited service in the System for that service, and (2) the service meets the requirements of said Section 853.305.

(b) The service credit hereby granted may be used only to satisfy length-of-service requirements for retirement eligibility, has no monetary value in computing the annuity payments allowable to the member, and may not be used in other computations, including computation of Updated Service Credits.

(c) A member seeking to establish restricted prior service credit under this ordinance must take the action required under said Section 853.305 while still an employee of this City.

Section 2. This ordinance shall become effective on February 1, 2017.

Passed and approved this the _____ day of _____, 2017.

APPROVED:

Jeff Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

UPDATE FOR COMMUNITY EVENTS

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF: January 24, 2017

AGENDA ITEM: G

DATE SUBMITTED: January 20, 2017

DEPARTMENT: Administration

PREPARED BY: CJ Snipes
City Manager

PRESENTER: CJ Snipes
City Manager

SUBJECT: Tree Preservation Policy

ATTACHMENTS: Resolution No. 2017-338

EXPENDITURE REQUIRED: N/A

AMOUNT BUDGETED: N/A

ADDITIONAL APPROPRIATION REQUIRED: N/A

EXECUTIVE SUMMARY

Following on the lengthy debate around a proposed Tree Ordinance, Staff has developed the attached Resolution providing for a Policy of Tree Preservation for new developments which we believe achieves the Policy goals of Council without the acrimony associated with prior drafts of the Ordinance.

RECOMMENDATION

Staff recommends that City Council take action to approve the Resolution creating a Tree Preservation Policy for development in the City and ETJ.

RESOLUTION NO. 2017-338

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS ADOPTING A TREE PRESERVATION POLICY

WHEREAS, the City Council of the City of Fulshear, Texas is desirous of maintaining the local charm and character of our community; and

WHEREAS, the City Council of the City of Fulshear, Texas recognizes the important role trees play in the protecting our environment, preserving property values and sustaining habitats; and

WHEREAS, the City Council of the City of Fulshear, Texas wishes to enact some form of Tree Protection Policy to promote quality, sustainable development which enhances the beauty and quality of life of our community, while providing a balanced approach to development.

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

Section 1: Applicability. This Tree Preservation Policy (TPP) shall be applicable to any:

- 1) New Commercial Development consisting of more than 1 acre within the City Limits or Extraterritorial Jurisdiction (ETJ); and
- 2) Any new Residential Development consisting of more than three (3) single family homes or more than two (2) Multi-Family dwelling units.

Review for compliance with this Policy shall be made at the time of Final Plat submittal.

For the purposes of applying this Policy to properties located within the ETJ, staff shall ensure that the provisions contained heretofore, herein or hereinafter developed in relation to this Policy shall be included in the language of any contemplated Development Agreement.

Section 2: Purpose. The purpose of this Tree Preservation Policy is to create a set of principles to use during the planning, design and construction of Developments meeting the Applicability Standards set forth in Section 1 of this Document within the City Limits and ETJ. The TPP identifies criteria for the evaluation, selection and preservation of individual trees, stands of trees and related canopy area ("candidates"). It is the intent of the TPP to identify candidates for preservation, evaluate their viability and impact, and incorporate those findings into the development process.

Section 3: Evaluation. Developer will engage a landscape architect or arborist to evaluate the general topography, access constraints, drainage and topographical constraints of the Property, and consider the candidates' general condition, species, age, location, and health to help determine the best site layout for the TPP.

Section 4: Selection. The landscape architect or arborist will consider the size, species, maturity, location and condition of each tree in determining which candidates will be preserved and which should be removed. Specifically, the following principles and factors will apply in making this determination:

- 1) It is understood that the largest, most mature trees are not always the best to preserve. Younger, more vigorous trees can usually survive and better adapt to the stresses of construction.
- 2) Maintenance of diversity of species and ages.
- 3) Life expectancy and present age.
- 4) Health and disease susceptibility.
- 5) Structure.

- 6) Cleanliness.
- 7) Aesthetic values.
- 8) Comfort.
- 9) Wildlife.
- 10) Adaptability to the proposed development.
- 11) Survival needs of the tree.
- 12) Relationship to other trees.

Section 5: Preservation Principles. Preservation principles include the following:

- 1) Undevelopable areas such as flood plains and steep slopes should be left in their natural condition.
- 2) Tree Protection Zones ("TPZs") around preserved trees shall be marked and avoided as much as possible. Utilities should be positioned away from TPZs. Parking and storage should be away from the TPZ. Erosion and sediment control measures should be located at the limits of clearing and grading to avoid sediment deposition within the TPZs of preserved trees.
- 3) Road Rights of Way and Utility construction alignment will take into consideration identified candidates and will avoid TPZs.
- 4) When planning sediment basins, retention basins, or ponds, locations requiring extensive grading and tree removal should be avoided.

Section 6: Plan Requirements and Submittal. Using the Evaluation, Selection and Preservation Principles listed above the landscape architect or arborist commissioned by the Developer shall submit a formal plan to the City's Planning and Development Department coincident to the filing of the Final Plats for the property which shall include:

- 1) A general statement acknowledging the Policy and its applicability on the property in question.
- 2) An inventory of candidate trees for preservation.
- 3) Photos of the property in situ at the time of submittal.
- 4) A map identifying Tree Preservation Zones (if applicable)
- 5) A plan outlining the landscape/ planting plan for the property in question.

This Resolution duly passed this 24th day of January, 2017.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

**AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS**

AGENDA OF: January 24, 2017	AGENDA ITEM: I
DATE SUBMITTED: January 20, 2017	DEPARTMENT:
PREPARED BY:	PRESENTER:
SUBJECT: Tree Ordinance	
ATTACHMENTS:	
EXPENDITURE REQUIRED:	\$0
AMOUNT BUDGETED:	\$0
ACCOUNT NO.:	
ADDITIONAL APPROPRIATION REQUIRED:	\$0
ACCOUNT NO.:	

EXECUTIVE SUMMARY

RECOMMENDATION

ORDINANCE NO. 2017-1237

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, REGULATING THE REMOVAL, REPLACEMENT, AND RELOCATION OF TREES; REQUIRING A MINIMUM CANOPY AREA COVERAGE ON CERTAIN TRACTS OF LAND; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, the City Council of the City of Fulshear has determined that it is necessary to adopt new regulations for Tree Preservation in order to better protect the interest of the City and its citizens; and

WHEREAS, the City Council has determined that the urban forest is of great value in the maintenance of public health and welfare; that the urban forest can aid in the conservation of vital energy resources and natural resources and in the preservation of the City's heritage and quality of life; that trees are a valuable amenity to the urban environment, creating greater human comfort by providing shade, cooling the air through evaporation, restoring oxygen to the atmosphere, reducing glare, reducing noise levels, providing an ecological habitat for songbirds and other animal and plant species, and most importantly providing storm water retention properties in the emerging City with increased hardscape and storm water runoff; and that the urban forest of the City should be preserved and enhanced, to the maximum extent feasible, consistent with the property rights of its citizens;

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

Section 1. Purpose and intent.

The terms and provisions of this Ordinance are intended to accomplish the following public purposes:

Establish rules and regulations governing the protection and preservation of the urban forest which is vital to the quality of life within the city.

Encourage the protection of healthy and desirable trees, and provide for the replacement or replanting of trees that are necessarily removed during construction, development or redevelopment.

Provide for the preservation and protection of the urban forest which enhances property values and makes the City a more attractive place in which to live, visit and do business.

Provide natural areas for more efficient drainage of land, thereby reducing the effects of soil erosion and the need for additional drainage facilities.

Prevent clear-cutting of land containing trees with a twelve inch (12") Diameter at Breast Height (DBH) or larger.

Section 2. Definitions.

For the purpose of this Ordinance, the following words, terms and phrases, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

Caliper – shall mean the diameter of the trunk measured at six (6) inches above the root ball for four inch caliper and smaller trees, and twelve (12) inches above the root ball for trees larger than (6) inches and less than 12 inches DBH.

Canopy Area – shall mean the area, in square feet, covered by foliage immediately beneath a protected or credit tree. Canopy area for each tree shall be determined with the formula: SF of Canopy Area = (DBH) x DBH x 3.14. In the event that the Canopy Area of two Protected Trees, Replacement Trees, New Trees or any combination thereof overlap more than 50%, only canopy area of the larger of the two trees can be applied.

Protected Trees 25 inch DBH and greater will be granted 1.5 times Canopy Area after calculating with above formula.

On sites larger than 5 acres, canopy area of continuous tree stands of protected trees may be determined using either the tree stand delineation method or by measurement of individual protected trees within the stand. Canopy Area of tree stand determined by the tree stand delineation method is the ground area within the smallest perimeter that contains all trees in the stand. The tree stand area may be surveyed on the ground or calculated from an aerial photograph depicting existing conditions. Tree stand canopy area calculations using aerial photograph must be verified by an urban forester in an on ground inspection.

City – means the City of Fulshear, Texas, a Home Rule Municipality in the State of Texas.

City Manager – shall mean the City Manager or his/her designee with authority over this Ordinance.

Critical Root Zone – shall mean a circular region measured outward from the tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. The Critical Root Zone shall be one foot of radial distance from the base of the trunk for every inch of tree DBH.

Crown – shall mean all portions of a tree, excluding the trunk and roots.

Damage – shall mean to take action which causes or may reasonably be expected to cause a tree to die including, without limitation, damage inflicted on greater than 30% of the Critical Root Zone by machinery, storage of materials, spilling or pouring of chemicals or solvents or soil compaction; changing the natural grade by more than 2" on greater than 30% of the Critical Root Zone; pruning or removal of more than 30% of a tree's crown; paving with concrete, asphalt, or other impervious materials over greater than 30% of the Critical Root Zone; or failing to comply with the specific direction approved on a Tree Protection Plan or permit.

Diameter-At-Breast-Height (DBH) – shall mean the tree trunk diameter measured in inches at a height of 4.5 feet (54 inches) above natural grade. When the tree trunk branches out at a point lower than 4.5 feet, measure the smallest circumference below the lowest branch. Divide circumference inches by 3.14 to get diameter inches.

Dripline – shall mean the periphery of the area underneath a tree which would be encompassed by perpendicular lines dropped from the farthest edges of the crown of the tree.

Grow Space – shall mean an area capable of supporting tree establishment and growth and containing soil that has not been stabilized, or compacted to a point where water infiltration rates fall below 3.0 inches/hour.

Protected Tree – shall mean a tree that due to its size, species or unique characteristics as set forth in Section 5 is protected from arbitrary removal.

Protected Tree Removal Permit – shall mean written authorization granted by the City Manager, under the provisions of Section 7, for the removal or transplanting of a Protected Tree.

Site Plan – shall mean an application for any permit required by the City for the erection, alteration, demolition, or moving of any building or structure, including but not limited to any permit required by the International Building Code or the International Residential Code as may be adopted and amended from time to time by the City.

Tree Protection Fencing – shall mean physical barriers in good condition, at least four (4) feet in height, installed prior to construction for the purpose of preventing damage to trees. Such devices include chain link fence, vinyl construction fencing or other similar temporary barrier, that is non-intrusive to the tree canopy and Critical Root Zone.

Tree – shall mean any perennial woody plant of considerable size, usually over 8 feet high, and growing with a single trunk.

Tree Inventory – shall mean an on-site evaluation of protected trees by an urban forester, forester, horticulturalist, or arborist with a minimum of a Bachelor's of

Science degree from an accredited University. The inventory does not need to include trees with more than 30% canopy dieback, trees in the proposed building area, or trees of undesirable species (Chinese Tallow, Sugarberry, Chinaberry, Boxelder, Golden Raintree or Yaupon). Trees located at the edge of proposed structure, or within 20' of the edge of structure areas shall be included. Trees shall be flagged and numbered in the field. The inventory shall be represented in table format showing tree tag number, species, DBH, Canopy, Critical Root Zone Area, and condition.

Tree Protection Plan – shall mean a plan submitted by the applicant in a form or manner specified by the City Manager providing the method of protecting trees during construction that shall include protection details, standards, notes, and construction plans in accordance with generally accepted methods. The plan shall also identify each tree to be protected by surveyed location, tag number, and shall include a table listing the Canopy Area of each tree to be preserved. Total site area and Canopy Area Calculations shall also be included on the plan.

Tree Removal – shall mean uprooting, severing the main trunk of the tree, or any act which causes or may reasonably be expected to cause the tree to die, including, without limitation, damage inflicted on the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree.

Tree Replacement Plan – shall mean a plan submitted by the applicant in a form and manner specified by the City Manager providing the method of replacement for the proposed Protected Trees to be removed that shall include a plan that identifies the location, size, and species of all new trees proposed as replacement for the Protected Trees being removed or canopy area credits that will be purchased in the Tree Fund.

Tree Survey – shall mean identifying the physical location of each tree to be protected on a subject site. The tree survey shall be completed with field equipment that provides sub-meter accuracy.

Tree Stand – shall mean an area of contiguous wooded vegetation covering at least two thousand five hundred (2,500) square feet where trees are at a density of at least one protected tree per five hundred (500) square feet of land and where the branches and leaves form a canopy over substantially all the area.

Urban Forest Technical Manual – shall mean the standards and specifications based on generally accepted practices for sound arboricultural practices, techniques and procedures which shall serve as guidelines for trees regulated by this Ordinance, including but not limited to tree selection, planting, alteration, treatment, protection, and removal as approved by the City Council and administered by the City Manager.

Urban Forester – shall mean a forester or arborist degreed from an accredited university with expertise in tree care, maintenance and preservation planning retained by the City and responsible to the City Manager for assistance with the technical administration of this Ordinance.

Section 3. Applicability and exemptions

(1) Except as provided by Subpart (2), the requirements of this Ordinance are applicable throughout the corporate limits of the City.

(2) This Ordinance does not apply to:

- a. The removal or trimming of trees on individual single-family residential lots within R-1 & R-2 zoning districts by the end-buyer;
- b. The removal or trimming of trees within an easement or right of way held by a railroad or utility company;
- c. The removal or trimming of trees or other vegetation within or adjacent to street rights-of-way to conform to traffic safety requirements; and
- d. The removal or trimming of trees on property subject to a development agreement between the City and the owner of the property, if the development agreement specifically states that the property is exempt from this Ordinance.

Section 4. Prohibited activities.

(1) It is unlawful for any person to damage a Protected Tree without first securing a tree removal permit as specified in Section 7. It is a defense to prosecution under this subsection that the damage to the Protected Tree is authorized by and in accordance with the subdivision process or the site plan process set forth in this Ordinance.

(2) It is unlawful for a person to continue work or removal of trees when the City Manager has issued a stop work order.

(3) It is unlawful to remove a protected tree within a City of Fulshear right of way, except as provided in Section 3, without first securing a tree removal permit as specified in Section 7.

Section 5. Size and types of protected trees.

(1) *Size.* Except as provided by Subsection (2), a tree having a DBH of twelve (12) inches or more is a Protected Tree.

(2) *Type.* Trees of all species that meet the size requirement in Subsection (1) above are protected except for Chinese Tallow, Sugarberry, Boxelder, Camphor, Golden Raintree, and Chinaberry.

(3) *Replacement trees.* Trees that have been planted to meet the requirements of minimum Canopy Area are protected, regardless of size.

(4) *Public right of ways.* Trees in a public right of way with a minimum caliper of 3" are protected.

Section 6. Tree Removal

(1) *Transplanting of trees without replacement.* Transplanting a Protected Tree to a suitable location on the same property, as approved under Section 7, shall not require replacement provided that the applicant complies with the generally accepted transplanting methods described in the Urban Forest Technical Manual and the Protected Tree survives, without more than 30% canopy dieback, for a period of at least two (2) years.

(2) *A protected tree may be removed with replacement if:*

- a. A demonstration is made that the Protected Tree is so located as to prevent reasonable access to the property; or
- b. A demonstration is made that the location of the Protected Tree precludes reasonable and lawful use of the property on which it is located. City Manager shall make final determinations.
- c. Except as provided in Subsection (1) above, all Protected Trees that are approved for removal will be replaced so that replacement tree planting canopy area equals canopy area of Protected Tree removed. Full replacement canopy area will not be required if remaining Protected Trees on site meet the 30% Canopy Area requirement.

Section 7. Tree removal permitting process.

(1) *Protected tree removal permit process.*

a. *Protected tree removal permit.*

This process is reserved for those situations provided for in Section 6 and where the subdivision process or the site plan process does not apply. Applications for Protected Tree Removal Permits are reviewed by the City Manager or designee.

b. *Protected tree removal permit application*

The application for a Protected Tree Removal Permit shall be made by the owner of the property on which the Protected Tree is located, and shall be accompanied by documentation showing:

1. The approximate location of all protected trees on site;
2. The DBH of all protected trees on site;
3. The Canopy Area of all protected trees on site;
4. The species or common name of each tree;
5. The approximate size of the lot, tract or parcel on which the tree is located;
6. Reason for the proposed removal;
7. Such other information as may be reasonably required by the City Manager;

c. *Application review.*

Upon receipt of the application, the City Manager or designee shall inspect the subject tree and approve or deny the application in accordance with the provisions of this Ordinance.

d. *Processing of application.*

An application for a Protected Tree Removal Permit shall be processed within ten (10) working days from the date the application is received. Processing of the application is considered completed if:

1. The application is approved, with or without conditions;
2. The application is denied;
3. The City Manager requests additional information in accordance with this Section; or
4. The City Manager requests a Tree Replacement Plan in accordance with this Section.

e. *Tree protection, removal, and replacement.*

1. Replacement trees in accordance with Section 8 shall be required if removal of the Protected Tree causes the subject site's total Canopy Area coverage to fall below 30%.
2. A Tree Replacement Plan will be required if, after evaluation of the Tree Removal Permit application, the City Manager determines Canopy Area coverage will fall below 30% of the total site area. The Tree Replacement Plan will be reviewed in conjunction with Protected Tree Removal Permit application and will be approved or denied by the City Manager.

- (2) *Protected tree removal through the subdivision process.* No plat shall be approved without first meeting the requirements of this Ordinance.

A Tree Protection Plan, a Tree Replacement Plan, or both shall be required as set forth in this Subsection for all projects requiring plat approval, and shall be submitted to the City Manager or designee at the same time the preliminary plat application is submitted.

a. *Tree Protection and Tree Replacement plan:*

1. Tree Protection and Tree Replacement Plans will be reviewed by the City Manager or designee as part of the plat approval process.
2. A Tree Protection Plan will not be required if it is demonstrated by applicant and confirmed by City Manager that there are no Protected Trees on the proposed site.
3. If a Site has no Protected Trees or if existing Protected Trees do not meet a minimum of 30% Canopy Area coverage of the total site, a Tree Replacement Plan will be required and the Site must obtain a minimum of 30% Canopy Area coverage with newly planted trees as per Section 8.

b. *Tree protection, removal, and replacement:*

With respect to required subdivision improvements, the following will apply:

1. When necessary for construction of required improvements, Protected Trees may be removed without replacement provided the remaining Canopy Area coverage within the boundaries of the plat meets at least 30% coverage of the area within the boundaries of the total plat. Replacement trees in accordance with Section 8 shall be required if the Canopy Area requirement is not met with the Protected Trees that will be preserved.
2. The Critical Root Zone of any Protected Tree not being removed shall be preserved in accordance with Section 9 and shall be shown on the Tree Protection Plan as generally described in the Urban Forest Technical Manual.
3. During construction of improvements, tree protection criteria as described in Section 9 shall apply to all Protected Trees being preserved and shall be shown on the Tree Protection

Plan and Tree Replacement Plan as generally described in the Urban Forest Technical Manual.

- (3) *Protected tree removal through the site plan process.* No site plan shall be approved without first meeting the requirements of this Ordinance.

In addition to Subsection (2), a Tree Protection Plan, a Tree Replacement Plan, or both shall be required as set forth in this Subsection for all projects requiring a site plan, and shall be submitted to the City Manager or designee at the same time the site plan is submitted.

a. *Tree Protection and Tree Replacement plan:*

1. A Tree Protection Plan is required unless a land surveyor, urban forester, forester, horticulturalist, or arborist certifies that there are no Protected Trees on the proposed site.
2. If a Site has no Protected Trees or if existing Protected Trees do not meet a minimum of 30% Canopy Area coverage of the total site, a Tree Replacement Plan will be required and the Site must obtain a minimum of 30% Canopy Area coverage with newly planted trees as per Section 8.

b. *Tree protection, removal and replacement:*

With respect to the work for which a site plan is required, the following will apply:

1. When necessary for the work for which the site plan is required, Protected Trees may be removed without replacement provided the remaining Canopy Area coverage within the boundaries of the site meets at least 30% coverage of the area within the boundaries of the site. A Tree Replacement Plan and replacement trees in accordance with Section 8 shall be required if the Canopy Area requirement is not met with the Protected Trees that will be preserved.
2. The Critical Root Zone of any Protected Tree not being removed shall be preserved in accordance with Section 9 and shall be shown on the Tree Protection Plans as generally described in the Urban Forest Technical Manual.
3. During the work for which a Site Plan is required, tree protection criteria as described in Section 9 shall apply to all Protected Trees being preserved and shall be shown on the

Tree Protection Plans and Tree Replacement Plan as generally described in the Urban Forestry Technical Manual.

Section 8. Tree replacement.

(1) *Tree replacement.*

- a. Tree replacement or new tree planting shall be required on any site that does not meet a minimum Protected Tree Canopy Area coverage of 30% of the total site area. Sites that preserve Protected Trees that meet the 30% Canopy Area coverage shall not be required to provide tree replacement.
- b. Replacement trees will be required to replace any trees that were planted or identified to be preserved in a Tree Replacement Plan or Tree Protection Plan, but died within two (2) years of the final plat approval or the issuance of the permit sought by the site plan, whichever occurs first.
- c. Each replacement tree and new tree shall be a minimum of three inches (3") caliper and a minimum of ten feet (10') in height with a five foot (5') canopy spread (radius), when planted. All replacement trees and new trees shall comply with generally accepted criteria such as those provided in the Urban Forest Technical Manual.
- d. To ensure survival, each replacement tree and new tree shall have an irrigation system or watering schedule in accordance with the generally accepted methods in the Urban Forest Technical Manual.
- e. Each replacement tree and new tree shall be planted in a Grow Space that has the following minimum surface area requirements (Tree size description as included in the Tree List included in the Urban Forestry Technical Manual):

Small Tree – Minimum 80 sq.ft with narrowest dimension of 4'
Medium Tree-Minimum 120 sq.ft with narrowest diemension of 6'
Large Tree-Minimum 200 sq.ft. with narrowest dimension of 10'

No more than one tree shall be planted in each Grow Space.

- f. Each replacement tree shall be planted on the same subdivision or development site from which the corresponding Protected Tree was removed. In the event that there is not a suitable location for the replacement tree(s) on the same site, as determined and certified by a landscape architect and approved by the City Manager, or if City Manager determines that replacement trees are unable to survive on

the site based on information submitted by the landscape architect, the applicant will be allowed to do one of the following:

1. Make a cash payment into the Tree Fund in accordance with the Canopy Area calculation schedule provided in Subpart (h) below, or
 2. Plant trees on public property according to the Canopy Area calculation schedule provided in Subpart (h) below, as approved by the City Manager.
- g. Replacement trees and new trees required under the subdivision process shall be planted no later than two (2) years after the date of the final plat approval. Replacement trees and new trees required under the site plan process shall be planted no later than two (2) years after the date the permit sought by the site plan is issued. All replacement trees and new trees planted shall require bond security to be posted in accordance with Section 10.
- h. The Canopy Area calculation schedule is provided below and the Canopy Area credits for Replacement Trees or New Trees shall be calculated as follows:

Caliper of Replacement/New Tree	Canopy Area Credits
I. 3.0" to 5.99"	200 square feet
II. 6.0" to 8.0"	800 square feet

(2) *Tree Fund Canopy Area credits fee.*

- a. Fees are based on the Canopy Area credits in Section 8(h) above. Current fees are found in the City's Fee Schedule.
- b. Payment of Tree Fund canopy area credit fee shall be made at same time and in same manner as payment of plat application or site plan fee.

(3) *Canopy Area Tree credits with existing site trees.*

- a. Only trees with a DBH of three (3) or more inches located on site may be credited toward the minimum 30% Canopy Area coverage required under this Ordinance.
- b. The trees selected for tree credits toward the minimum 30% Canopy Area coverage shall be included in the Tree Inventory, Tree Survey, Tree Protection Plan and the Tree Replacement Plan, as applicable.

Canopy area for each tree credit tree shall be calculated per definition for Canopy Area in Section 2.

- c. Any trees shown on any Tree Inventory, Tree Survey, Tree Protection Plan, or Tree Replacement Plan as trees proposed for tree credits shall be protected in the same manner as a Protected Tree.
- d. The City Manager or designee will review the trees proposed for tree credits and will approve or deny the use of the selected trees as credits toward the minimum 30% Canopy Area required. The City Manager's review will be based on the assessed health, structure, habit, disease, or decline of the tree.

Section 9. Tree protection measures.

Tree protection measures shall include but not be limited to the use of preservation treatments such as pruning, fertilization, protection fencing, root pruning, root pruning with chemical barrier installation, mulching, utility boring, zero curb cutback, tree boarding, aeration systems and special demolition / construction procedures as noted in the Urban Forest Technical Manual. Protection measures are as follows:

(1) *Critical root zone.*

Prior to construction, Tree Protection Fencing shall be installed as drawn on an approved Tree Protection Plan. The Tree Protection Fencing shall protect a minimum of 70% of the Critical Root Zone of any Protected Tree to be preserved when the respective Critical Root Zone is within the proposed building area of any improvement.

(2) *Disturbance of Critical Root Zone.*

If a site plan, tree protection plan or subdivision construction plan show that more than thirty percent (30%) of the Critical Root Zone of any Protected Tree would be disturbed, the tree will be considered damaged and will be removed and replaced in accordance with the approved Tree Replacement Plan.

(3) *Hazardous activities.*

Activities hazardous to the health of any Protected Tree being preserved are prohibited including but not limited to the following and as generally described in the Urban Forest Technical Manual:

- a. *Physical damage.* Any physical damage, including broken limbs, trunk scaring, and improper pruning practices such as stubbing or topping.
- b. *Equipment cleaning and liquid disposal.* Cleaning equipment, depositing or allowing harmful liquids to flow overland within the limits of the Critical Root Zone. This includes paint, oil, solvents, asphalt, concrete, mortar, tar or similar materials.
- c. *Grade changes.* Grade changes (cut or fill) within the limits of the Critical Root Zone unless adequate construction methods are approved by the City Manager.
- d. *Impervious paving.* Paving with asphalt, concrete or other impervious materials within the limits of the Critical Root Zone in a manner which may reasonably be expected to kill a tree.
- e. *Material storage.* Storing materials intended for use in construction or allowing waste materials due to excavation or demolition to accumulate within the limits of the Critical Root Zone.
- f. *Tree attachments.* Attaching to a tree, in any manner that pierces the bark, any signs, wires, or other items, other than those of a protective nature.
- g. *Vehicular traffic.* Vehicular or construction equipment traffic, parking, or storage within the limits of the Critical Root Zone, other than on pre-existing or approved pavement. This restriction does not apply to single incident access within the Critical Root Zone for purposes of clearing underbrush, vehicular access necessary for emergency services, routine utility maintenance, emergency restoration of utility service, or routine mowing operations. All access must be approved by the City Manager.
- h. *Utility encroachment.* Installation of utilities and appurtenances within the Critical Root Zone or crown except as otherwise approved by the City Manager.
- i. *Excavation and trenching.* Excavation and trenching within the limits of the Critical Root Zone, except as otherwise approved by the City Manager.

(4) *Plans.*

Details and notes prohibiting the above activities as generally provided in the Urban Forest Technical Manual shall be included on all Tree Protection Plans and Tree Replacement Plans.

Section 10. Bond security for trees

(1) *Posting of bond at subdivision or site plan approval.*

Upon the recordation of the final plat or the issuance of the permit for which the site plan is required, as applicable, the applicant must post bond security with the City for a period of two years if the replacement trees required under the approved Tree Replacement Plan have not been installed and accepted by the City Manager.

(2) *Amount.*

The amount of bond security posted by the applicant shall equal the replacement cost as defined in Section 8.

(3) *Administrative fee.*

The applicant shall pay an administrative fee equal to five percent (5%) of the amount to be posted for all fiscal posting.

(4) *Types.*

In a form approved by the City Attorney, an applicant must post as bond security, unless waived by City Manager.

- a. A Performance & Maintenance bond; or
- b. A letter of credit.

(5) *Expenditure of bond security.*

The City may draw on the bond security for and may pay the cost of completing the approved Tree Replacement Plan if it determines that the applicant has breached the obligations secured by the bond security or if the two (2) year time period for the installation of the secured replacement trees has expired and the trees have not been installed. The City shall refund the balance of the bond security, if any, to the applicant. The applicant shall be liable for the cost that exceeds the amount of bond security, if any, including any costs incurred by the City to draw on the bond security.

(6) *Maintenance Bond.*

A Maintenance Bond shall be required for each new and replacement tree required by this Ordinance, and shall be posted by the applicant for a period of 2 years commencing on the date the last tree required under this Ordinance is planted.

Section 11. Tree fund.

The Tree Fund shall consist of fees generated as a result of tree replacement requirements as well as general donations for public Tree plantings.

- (1) *Establishment of fund.* The City Council hereby creates a special fund to be known as the "Tree Fund."
- (2) *Funds to be deposited.* Tree replacement fees for the installation of replacement trees, as provided for in Section 8, shall be deposited in the Tree Fund.
- (3) *Use of funds.* Expenditures from the Tree Fund shall be used for the purpose of purchasing and planting trees on public rights-of-way, public park land or any other City-owned property. Planting costs payable from the fund include, but are not limited to, the installation of related irrigation equipment and other measures necessary to the establishment and maintenance of planted trees. Expenditures may also be used for maintenance of trees on public land, Urban Forestry management services, and for administering the Tree Fund. Funds may also be expended to promote public awareness of the objectives of this Ordinance, including Earth Day or Arbor Day programs for the distribution of trees to residents of the City of Fulshear.

Section 12. Approved plant list.

All replacement trees or new trees planted shall be in conformance with species list in Urban Forestry Technical Manual, Appendix B-Tree List.

Section 13. Variances.

The Board of Adjustment, in accordance with the procedures, standards, and limitations of this Section, shall approve, approve with conditions, or disapprove an application for a variance permit after receiving a recommendation by the City Manager.

- (1) *Initiation.* An application for a variance permit shall be submitted by a qualified applicant.
- (2) *Procedure.*
 - a. *Submission of application.* A complete application for a variance permit shall be submitted to the City Manager, along with a nonrefundable fee that is established from time to time by the City Council to defray the actual cost of processing the application. No applications shall be processed until the established fee has been paid and the application has been determine completed by the City Manager.

- b. *Review and recommendation by City Manager.* After determining that the application is complete, the City Manager shall review the application and prepare a staff report, which may include a recommendation of approval, approval with conditions, or disapproval based upon the criteria in this Section. A copy of the report shall be mailed to the applicant at least five (5) days prior to the Public Hearing on the application.
 - c. *Public Hearing.* After due notice, the Board of Adjustment shall hold a Public Hearing on an application for a variance permit. At the Public Hearing the Board of Adjustment shall consider the application, the staff report, the relevant supporting materials and the public testimony given at the Public Hearing. After the close of the Public Hearing, the Board of Adjustment shall vote to approve, approve with conditions, or disapprove the application for a variance permit pursuant to the criteria of this Section.
 - d. *Notice of Decision.* The City Manager shall provide a copy of the decision to the applicant by mail within ten (10) days of the board's decision.
- (3) *Variance Permit Criteria.* To approve an application for a variance permit, the Board of Adjustment shall make an affirmative finding that the following criteria are met:
- a. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same Zoning District and are not merely financial;
 - b. These special circumstances are not the result of the actions of the applicant;
 - c. Literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same Zoning District, and would cause an unnecessary and undue hardship;
 - d. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and which would carry out the spirit of this Ordinance and substantial justice;
 - e. Granting the variance will not adversely affect adjacent land in a material way; and
 - f. Granting the variance will be generally consistent with the purposes and intent of this Ordinance.

Section 14. Appeal.

Appeals of any order, requirement, decision, or determination made by the City Manager shall be taken to the Board of Adjustment within thirty (30) days of such order, requirement, decision, or determination. In considering such an appeal, the Board of Adjustment shall consider the order, requirement, decision, or determination and public testimony in light of the comprehensive plan, this Ordinance, and the official zoning map, whichever are applicable. The Board of Adjustment shall modify or reject the order, requirement, decision, or determination only if it is not supported by substantial competent evidence or if contrary to the comprehensive plan, this Ordinance, or the official zoning map.

Section 15. Penalty.

Any person who violates or causes, allows, or permits another to violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or, in the case of a violation of a provision of this Ordinance that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, a fine of not more than Two Thousand Dollars (\$2,000.00). Each occurrence of any such violation of this Ordinance shall constitute a separate offense. Each day on which any such violation of this Ordinance occurs shall constitute a separate offense.

Section 16. Severability.

That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 17. Repeal.

That all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 18. Effective date.

That this Ordinance shall be effective and in full force when published as required by law.

PASSED, APPROVED, and ADOPTED this, the _____ day of _____, 2017.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

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INTRODUCTION

Trees provide numerous benefits to quality of life in the urban area, such as beautification, energy conservation, and increased property values. The City of Shenandoah-Fulshear is a peaceful, and comfortable growing community which currently is undergoing an ~~explosion in commercial significant~~ development. Much of the wooded tracts have been developed or are in the process of being developed. There is a concern for loss of the natural forested areas of the City and the effects on the community as a whole.

Meeting this concern, the City of Shenandoah-Fulshear Code of Ordinances, 2002-16 Edition (Code), Article IV __, Tree Protection and Preservation was ~~completely rewritten in 2005 and again in 2008 drafted~~ to preserve the remaining trees and enhance future tree canopy development on property under development or already developed. This manual will refer to Article IV __ simply as "the Ordinance". The Ordinance is the City's primary regulatory tool to provide for the orderly protection of ~~specified trees~~ the City's urban forest, to promote the health, safety, welfare, and quality of life for the residents of the City, to protect property values, and to avoid significant negative impacts on adjacent properties. By assuring preservation and protection through regulations and standards of care, these resources will remain significant contributions to the landscape, streets, and parks, and continue to help define the ~~unique character of~~ Shenandoah-Fulshear.

This *Urban Forest Technical Manual* (the Manual), adopted by resolution by the City Council, is published separately from the Ordinance and is maintained by the City Secretary with distribution by the ~~City Administrator~~ Administrator. The Manual provides standards and specifications based on generally accepted practices and provides guidelines for survey, protection, planting, pruning, and irrigation of trees. If there appears to be a conflict in verbiage between the Ordinance and the Manual, the Ordinance will take precedence. The goals of the Manual are intended to provide consistent care and serve as benchmarks to measure achievement in the following areas:

- ❖ Ensure and promote preservation of the remaining tree canopy cover within the City limits
- ❖ Provide standardized presentation of tree survey data required by the City
- ❖ Increase the survivability of trees during and after construction events by providing protection standards and best management practices
- ~~❖ Provide standards for the replacement of trees that are permitted to be removed~~
- ❖ Provide standards for new tree planting, tree care, and irrigation
- ❖ Provide guidance on protection, planting, and care of trees in the city's right-of-way and publicly owned lands
- ❖ Establish criteria for determining when a tree is hazardous and a possible threat to the public health, safety and welfare

PRIMARY SOURCES CONSULTED

Standards and specifications were gathered from various documents listed in Appendix C: Bibliography. The International Society of Arboriculture (ISA) material was used for much of the tree planting, pruning, and general tree care information. The resultant standards in this Manual are based on common practices in the area and the types of soils and trees that exist in Shenandoah-Fulshear.

SECTION 1: TREE SURVEY STANDARDS

1.1. INTRODUCTION

This section describes the format of tree surveys as well as the types of tree identification required in the field. These standards and specifications assure a faster review process as they relate to tree protection and mitigation.

1.2. PROTECTED AND UNPROTECTED TREES

Trees of all species that are at least ~~eight (8)~~ twelve (12) inches in diameter are protected except for Chinese Tallow, Sugarberry, Boxelder, Camphor, Golden Raintree, Chinaberry and exceptions as outlined in Section ~~98~~ 156 (1) of the Ordinance. Trees of all species located in a City right of way that are at least three (3) inches in diameter are protected except for Chinese Tallow, Sugarberry, Boxelder, Camphor, Golden Raintree, Chinaberry and exceptions as outlined in Sections ~~98~~ 156 (1) of the Ordinance. For details related to protected trees, refer to the ordinance.

~~There is one grouping based on size or designation within the protected tree family. The group includes trees with diameters of 8 inches or more.~~

Trees less than ~~eight (8)~~ twelve (12) inches in diameter and less than three (3) inches diameter located in City right of way are not protected. However, healthy trees (good branching structure, height, and spread similar to nursery grown trees) with diameters of 3 to less than ~~8~~ 12 inches may be credited toward replacement ~~trees~~ canopy area required as described in Section ~~98~~ 156 (3) of the Ordinance. The trees selected for mitigation will be indicated on the tree survey and construction ~~tree protection~~ plans and will be protected in the same manner as a protected tree. The City ~~Administrator~~ Manager will approve the trees recommended for mitigation the canopy area coverage.

1.3. TYPES OF TREE INVENTORIES AND SURVEYS

~~There are two types of tree surveys, partial and full. Elements required in a partial tree survey shall be described by the City Administrator.~~
Tree Inventory shall be an on-site evaluation of protected trees by an urban forester, forester, horticulturalist, or arborist with a minimum of a Bachelor's of Science degree in one of the afore listed fields from an accredited University. The inventory does not need to include trees with more than 30% canopy dieback, trees obviously in the proposed building area, or trees of undesirable species (Chinese Tallow, Sugarberry, Golden Raintree, Chinaberry, Boxelder, or Yaupon). Trees located at the edge of proposed structure, or within 20' of the edge of structure, in proposed parking lot and drive areas shall be included. Trees shall be flagged and numbered in the field. The inventory shall be represented in table format showing tree tag number, species, DBH, Canopy/Critical Root Zone Area, and condition.

Tree Survey shall mean identifying the physical location of each tree to be protected on a subject site. The tree survey shall be completed with field equipment that provides sub-meter accuracy.

1.4. TREE SURVEY CERTIFICATION

All tree surveys shall be certified. The tree survey will be performed by a registered professional land surveyor. Protected trees over eight inches will be surveyed, located and reflected on the survey graphically and in the legend. Protected species of trees under eight (8) to twelve (12) inches used for replacement canopy area credit will be illustrated on the survey and legend as well.

If it is found upon field inspection that the survey is inaccurate, the tree survey will not be accepted and reviewed and will be returned for corrections. This will delay the site plan or preliminary plat review process while the tree survey is corrected and approved.

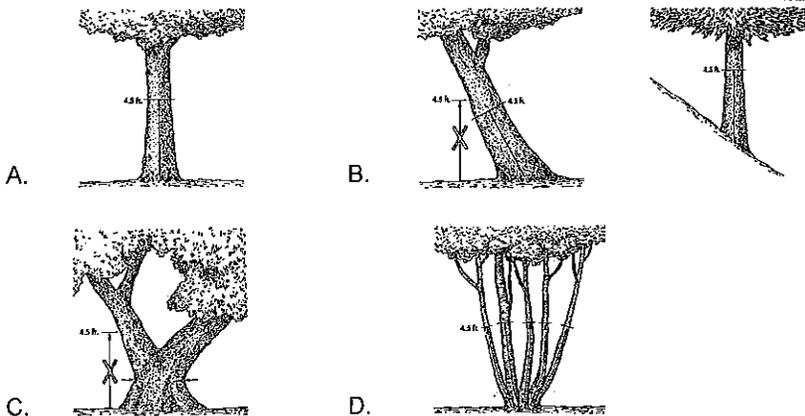
1.5. INFORMATION TO BE GATHERED IN THE FIELD

The data required to be collected and illustrated in the site tree survey/tree protection plan includes tree locations, diameters, species, limits of construction, and certain tree graphics.

1. **Location** – Tree data submitted must be obtained from a ground survey. A number shall be assigned and a corresponding numbered tag placed on each tree inventoried/surveyed and provided in the overall tree survey. Tree numbers will remain on the trees until the project has received its certificate of occupancy.
2. **Diameter** – Diameters of existing trees are measured as follows. Diameter measurement should be recorded to the nearest inch. Trees may be measured with a caliper, cruise stick, standard tape measure or diameter tape.

Illustration 1-1: Measurement of trees

From: *Guide For Plant Appraisal*, 9th ed.



- a. **Straight trunk:** Trees with fairly straight, upright trunks should be measured four and a half (4.5) feet above the ground (See illustration 1-1 A.)
- b. **Trunk on an angle or on a slope:** The trunk is measured at right angles to the trunk four and half (4.5) feet along the center of the trunk axis, so the height is the average of the shortest and the longest sides of the trunk (see illustration 1-1 B).

- c. Trunk branching lower than four and a half (4.5) feet from the ground: When branching begins less than four and a half (4.5) feet from the ground, measure the smallest circumference below the lowest branch. In this example, an alternative would be to add the sum of the cross-sectional areas of the two stems measured about 12 inches above the crotch. Then average the sum of these two branch areas and the smallest cross-sectional area below the branches. This may give a better estimate of the tree size (see illustration 1-1 C).
 - d. Multi-stemmed tree: To determine the diameter of a multi-trunk tree, measure all the trunks; add the total diameter of the largest trunk to one-half (1/2) the diameter of each additional trunk (see illustration 1-1 D). A multi-trunked tree is differentiated from individual trees growing from a common root stock if there is a visible connection between the trunks above ground.
3. **Species** – The name of the species, such as Live Oak, Water Oak, or Pinecan should be accurately reflected. Tree types may be listed by common names or Latin names. Indicating a tree name as “unknown” on a tree survey is not acceptable.

1.6. INFORMATION TO BE PROVIDED ON THE TREE SURVEY

1. **Trunk location** – The trunk location on the plan must represent the center of the trunk at ground level in the field. ~~If the tree leans substantially above the point, show the direction of the lean with an arrow. See the legend under the sample Tree Survey in illustration 1-2B for an example (Tree #10).~~
2. **Critical Root Zone (CRZ)** - Trees are to be represented on the tree survey by a concentric circle centered on the trunk location, with a radius equal in feet to the number of inches of the tree's trunk diameter. For example, an oak tree with a trunk diameter measuring fifteen (15) inches would be represented to scale on the tree survey with a circle representing a fifteen (15) foot radius. ~~Trees to be retained will be represented by a solid circle. Trees to be removed are to be represented by a dashed circle. See illustration 1-2B.~~
3. **Diameters and types species of existing trees** – Tree diameters and ~~types species~~ shall be shown on the survey through a legend. Tree numbers on the legend will be correlated with the appropriate tree circle drawn on the plan and the trees tags in the field. ~~Special conditions such as “dead” will be noted.~~
4. **Tree numbers** – Tree numbers on the plan will correlate with tags assigned to trees during the inventory/survey in the field.
5. **Tree survey table** – A table will be included listing all surveyed trees by number, species, sizes, ~~removal status~~, health conditions, and calculated canopy area and including credit trees under eight ~~ten~~ twelve inches. ~~It will also include a legend indicating the protection status of the tree.~~ Additionally, it will include calculations of ~~the number of inches of trees to be protected, inches to be removed without mitigation, number of inches equal to or greater than 8 inches, number of inches subject to mitigation, and number of inches credited.~~ See illustration 1-2A for reference total area of the site, total canopy area to be preserved, canopy area of credit trees 3 to 102 inches in diameter and canopy area credit for trees to be planted.

1.7. ADDITIONAL INFORMATION

There are other types of information related to tree structure and condition which may affect site plan design. The City ~~Administrator~~ Administrator may request these types of information. The information will be expressed as a written note on the survey and include the tree number and a description of any of the following:

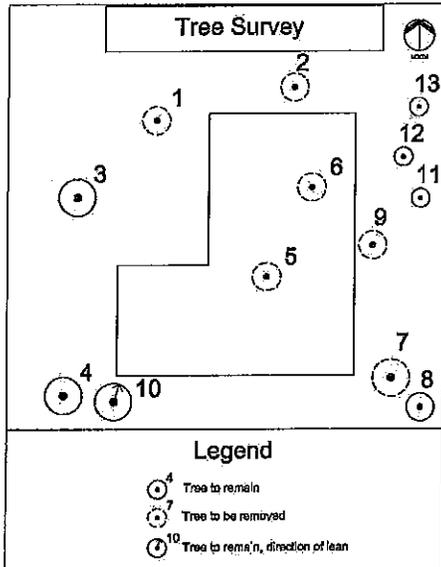
1. **Crown configuration** – If a tree has a crown which is skewed in one direction, this ~~information~~ this information would be useful for ~~surveyors~~ foresters to note. Project designers and plan reviewers need such information to more accurately assess design impacts on such trees.
2. **Crown Clearance** – This information is often critical in determining whether a given structure or vehicular use area can practically be placed within the drip line of a tree. If this information is recorded, the ~~surveyor~~ forester should consider the vertical distance to any major branches.
3. **Condition** – This is one of the principle factors in determining whether a tree should or should not be preserved. ~~Surveyors should not speculate about the condition of all trees unless they have the necessary credentials; however if a tree is obviously in poor condition, it should be noted to prevent unnecessary expense in trying to design around it. Trees with more than 30% canopy dieback do not need to be surveyed. Trees with trunk cavities, poor vigor, or minor dieback should be documented.~~
4. **Spot elevation—~~elevation~~** - Taking an elevation reading near the trunks of some trees will provide valuable information for project designers. Since grade changes are the most destructive impacts on trees, it is important to get the most accurate information possible. If there is more than a ~~six inches~~ six-inch change, existing and proposed grade elevation will need to be reflected on the tree survey.

Illustration 1-2: Elements of a Tree Inventory/Tree Survey

~~From: Burditt — Urban Forestry Consultants~~

A.

B. will insert PDF of existing file when I figure out how to do so Tree Survey/Tree Protection Plan Format



SECTION 2: TREE PROTECTION STANDARDS

2.1. INTRODUCTION

The tree protection section of the Ordinance and the standards in this section are provided to ensure that appropriate practices will be implemented in the field to eliminate undesirable consequences that may result from uninformed or careless acts, and preserve both trees and property values. Construction projects are required to implement the protective practices described in this section.

Typical negative impacts that may occur during construction include:

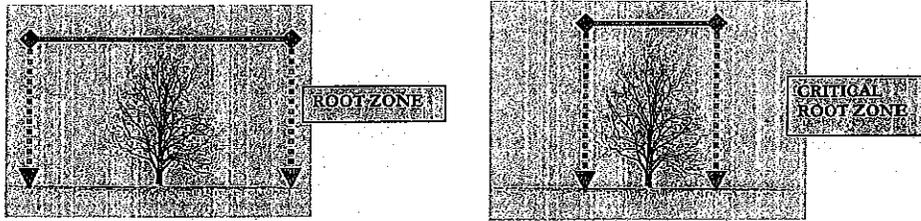
- ❖ Mechanical injury to roots, trunk or branches
- ❖ ~~Compaction of soil, which degrades the functioning roots and inhibits the development of new ones and restricts drainage, which desiccates roots and enables water mold fungi to develop~~
- ❖ Changes in existing grade which can cut or suffocate roots
- ❖ Alteration of the water table – either raising or lowering
- ❖ Microclimate change, exposing sheltered trees to sun or wind
- ❖ Sterile soil conditions, associated with stripping off topsoil

2.2. CRITICAL ROOT ZONE (CRZ)

Each tree to be retained shall have a designated CRZ identifying the area sufficiently large enough to protect the tree and roots from disturbance. The CRZ is defined as a radius equal in feet to the number of inches of the tree's trunk diameter. The CRZ shall be shown on all tree surveys, tree replacement plans, and ~~construction tree protection~~ plans. Improvements or activities such as paving, utility and irrigation trenching and other activities shall occur outside the CRZ, unless authorized by the City Administrator. Unless otherwise specified, the protective fencing shall define the CRZ protect at least 750% of the critical root zone of each tree to be preserved.

Illustration 2-1: Root zone vs. Critical root zone (CRZ)

From: Urban Forest Management Plan.



Activities prohibited within the CRZ include:

- Storage or parking vehicles, building materials, refuse, excavated spoils or dumping of poisonous materials on or around tree and roots. Poisonous materials include, but are not limited to, paint, petroleum products, concrete or stucco mix, dirty water or any other material which may be harmful to tree health
- The use of tree trunks as a winch support, anchorage, temporary power pole, sign posts or other similar function
- Cutting of tree roots by utility trenching, foundation digging, placement of curbs and trenches and other miscellaneous excavation without prior approval of the City Administrator
- Soil disturbance or grade change
- Impervious paving
- Vehicular traffic
- Drainage changes

Activities permitted or required within the CRZ include:

- **Mulching.** During construction, mulch may be spread within the CRZ. The mulch may be removed if improvements or other landscaping is required. Where there are areas of unprotected root zones in the CRZ, those areas shall be covered with four (4) inches of organic mulch to minimize soil compaction. See Chapter 3 of this Manual for a more thorough discussion on mulching.
- Irrigation, aeration, fertilizing or other beneficial practices that have been specifically approved for use within the CRZ and as defined by the City Administrator.

Erosion Control. If a tree is adjacent to or in the immediate proximity to a grade requiring erosion control, then approved erosion control or silt barriers shall be installed outside the CRZ to prevent siltation and/or erosion within the CRZ.

2.3. TREE PROTECTION AND PRESERVATION PLAN & PRE-CONSTRUCTION REQUIREMENTS

Prior to the start of any development project, the property owner shall have prepared and submitted for review a Tree Protection Plan for all protected trees to be preserved. The Tree Protection Plan will consist of three elements: (1) ~~illustrations showing options in exact location of tree fencing and protection measures drawn to minimum scale of 1" to 40'~~ (see illustrations in this section related to fencing and protection), (2) notes as listed in section 2.3.2 of this Manual, and (3) tree protection symbols on the tree protection plan as discussed in section 2.3.1 and illustrated in illustration 2-2 of this Manual. The plan will be reviewed by the City Administrator. The following elements will be addressed in the Tree Protection Plan prior to construction:

2.3.1. Site Plan Reflecting Critical Root Zones

In addition to the requirements described in the Tree Survey Standards, the CRZ to be enclosed with the specified tree fencing will be indicated on the Tree Replacement Protection Plan ~~and all construction plans~~ as a bold line with x's evenly spread along the line (see illustration 2-2).

2.3.2. Tree Protection Notes

~~The Construction Tree Protection Plan and Site Plan will~~ reflect the following tree protection notes. The following notes must be shown on plans accompanied by the tree protection details as illustrated on pages 2-12 ~~and 2-13~~.

1. All trees not located within the limits of construction and outside of disturbed areas shall be preserved.
2. All trees shown on this plan to be retained shall be protected during construction with fencing.
3. Tree protection fences shall be erected according to city standards for tree protection, including types of fencing and signage.
4. Tree protection fences shall be installed prior to the commencement of any site preparation work (clearing, grubbing, or grading) and shall be maintained throughout all phases of the construction project.
5. Erosion and sedimentation control barriers shall be installed without cutting tree roots 1" diameter or larger or and maintained in a manner which does not result in soil build-up within tree driplines or root damage.
6. Fences shall completely surround the tree or ~~clusters stand~~ of trees, located at the outermost limits of the tree branches (dripline) or CRZ, whichever is greater; and shall be maintained throughout the construction project in order to prevent the following:
 - a. Soil compaction in root zone area resulting from vehicular traffic or storage of equipment or material.
 - b. Root zone disturbances due to grade changes (greater than ~~3~~ 2 inches cut or fill) or trenching not reviewed and authorized by the City Administrator.
 - c. Wounds to exposed roots, trunk, or limbs by mechanical equipment.
 - d. Other activities detrimental to trees such as chemical storage, concrete truck cleaning, fires, and anchoring to tree trunk.
7. Exceptions to installing tree fences at the tree driplines or CRZ, whichever is greater, may be permitted in the following cases:
 - a. Where there is to be an approved grade change, impermeable paving surface, or tree well;
 - b. Where trees are close to proposed buildings, erect the fence no closer than 8 feet to the building.

8. Where any of the above exceptions result in a fence that is closer than 5 feet to a tree trunk, protect the trunk with strapped-on planking to a height of 8 feet (or to the limits of lower branching) in addition to the reduced fencing provided.
9. Where any of the above exception result in areas of unprotected root zones under the dripline or CRZ, whichever is greater, those areas shall be covered with 4 inches of organic mulch to minimize soil compaction.
10. All grading within protected root zone areas shall be done by hand or with small equipment to minimize root damage. Prior to grading, relocate protective fencing to 2 feet behind the grade change area.
11. Any roots exposed by construction activity shall be pruned flush with the soil. Backfill root areas with good quality light top soil within 24 hours. If exposed root areas are not backfilled within 24 hours, cover them with organic material in a manner which reduces soil temperature and minimized water loss due to evaporation.
12. Prior to excavation or grade cutting within tree driplines, a clean cut shall be made between the disturbed and undisturbed root zones with a trenching machine or similar equipment to minimize damage to remaining roots.
13. All trees impacted by construction activities will be watered deeply once a week during periods of hot, dry weather. ~~Tree crowns are to be sprayed with water periodically to reduce dust accumulation on leaves.~~
14. When installing concrete adjacent to the root zone of the tree use a plastic vapor barrier behind the concrete to prohibit leaching of lime into the root zone.
15. Any trenching required for the installation of landscape irrigation within the CRZ of protected trees shall be installed by hand digging with no root over 1" in diameter being cut.
16. No landscape topsoil dressing greater than (3) inches shall be permitted within the dripline or CRZ, whichever is greater, of trees. No topsoil or mulch is permitted on root flares of any tree.
17. Pruning to provide clearance for structures, vehicular traffic, and construction equipment shall take place before construction begins. All pruning must be done according to standards as outlined in most current version of the American National Standard for Tree Care Operation – Tree Shrub and Other Woody Plant Maintenance – Standard Practice (ANSI R300-1995).
18. The City Administrator has the authority to require additional tree protection before or during construction.
19. Trees approved for removal shall be removed in a manner which does not impact trees to be preserved. Refer Urban Forestry Technical Manual. ~~Refer to the City of Shenandoah Tree Technical Manual for appropriate removal methods.~~
20. Prior to construction all lower tree limbs over roadways must be pruned to a height of 14 feet ~~height~~ using the techniques described in the Urban Forestry Technical City of Shenandoah Tree Technical Manual.
21. All trees to be preserved and trees to be planted must be in good condition (less than 30% canopy dieback) two years following final inspections. Any tree found to have died back more than 30% at the 2 year follow up inspection will require replacement per The Ordinance.
22. The demolition, grading and underground contractors, construction superintendent and other pertinent personnel are required to meet with the City Administrator or his designee prior to beginning work to review procedures, tree protection measures and to establish haul routes, staging areas, contacts, watering, etc.

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21-23. Deviations from the above notes may be considered ordinance violations if there is substantial noncompliance or if a tree sustains damage as a result.

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2.3.3. Pre-construction meeting

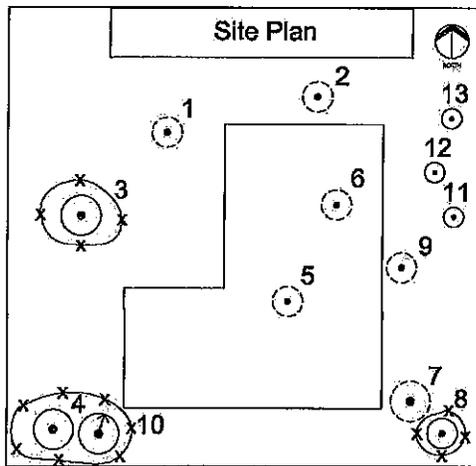
The demolition, grading and underground contractors, construction superintendent and other pertinent personnel are required to meet with the City Administrator or his designee prior to beginning work to review procedures, tree protection measures and to establish haul routes, staging areas, contacts, watering, etc.

2.3.4. Verification of tree protection

The project Urban Forester, landscape architect or contractor shall verify, in writing, that all preconstruction conditions have been met (tree fencing, erosion control, pruning, etc.) and are in place. Written verification must be submitted to and approved by the City Administrator before demolition or grading begins. The City Administrator or designee will verify in a site inspection that all preconstruction conditions have been met (tree fencing, erosion control, pruning, etc.) and are in place prior to issuance of permit.

Illustration 2-2: Site plan with tree protection fence illustrated as below. Circles illustrate the Critical Root Zone.

From: Burditt—Urban Forestry Consultants will insert PDF of existing project plan here when I figure out how to do so



2.3.5. fencing for protected trees

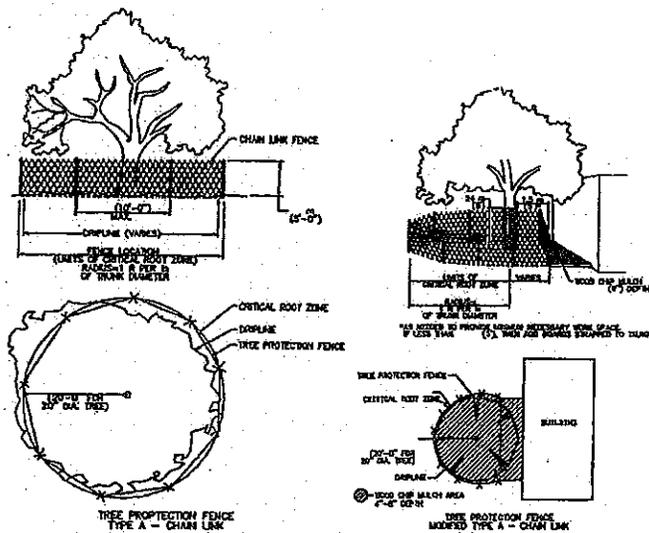
Tree

Fenced enclosures shall be installed at the CRZ or the dripline, whichever is greater, to achieve three primary goals:

1. To keep the foliage crowns and branching structure clear from contact by equipment, materials and activities
2. To preserve roots and soil conditions in an intact and non-compacted state
3. To identify the Critical Root Zone (CRZ) in which no soil disturbance is permitted and activities are restricted, unless otherwise approved.

Illustration 2-3: Examples of tree protection fencing surrounding the Critical Root Zone – Chain link fencing or vinyl fencing, without and with adjacent obstruction

From: City of Austin



a. Exceptions to fencing along the CRZ

1. Where aeration paving is to be installed, erect the fence at the outer limits of the aeration area
2. Where trees are close to proposed buildings, erect the fence no closer than eight (8) feet to the building
3. Where there are severe space constraints due to tract size, or other special requirements, contact the City Administrator

b. Size and type of fence

Chain Link:

Chain link fences around protected trees shall be a minimum of five (5) feet high. Fences are to be mounted on two-inch diameter galvanized iron posts, driven into the ground to a depth of at least 1 foot at no more than 10-foot spacing. This detail shall appear on grading, demolition and improvement plans. Shall be at least four (4) feet in height. Fences are to be mounted on 6' tall steel posts, driven into the ground to a depth of at least 18 inches and no greater than 10 feet on center.

Plastic/Vinyl:

Plastic-Vinyl fence will consist of 4' tall plastic-vinyl mesh fence supported by 6' tall iron-T-bar-steel posts driven 2' at least 18 inches into ground on no more and no greater than 10 feet on centers. Fence is attached to posts with 16-gauge wire ties spaced on 24" centers.

c. Area to be fenced

1. Type I Tree Protection

Tree fences shall enclose the entire area under the dripline or CRZ, whichever is larger, of the tree(s) to be saved throughout the life of the project, or until final improvement work within the area is required completed, typically near the end of the project.

~~Parking Areas: If the fencing must be located on paving or sidewalk that will not be demolished, the posts may be supported by an appropriate grade level concrete base.~~

2. Type II Tree Protection

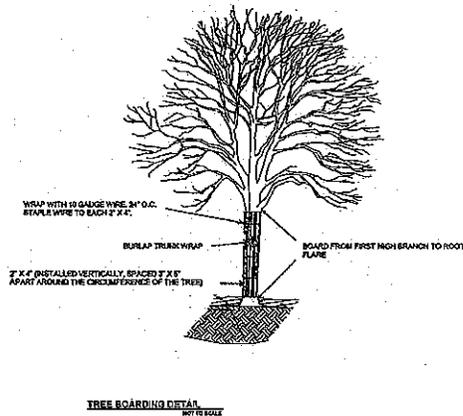
For trees situated within a narrow planting strip, only the planting strip shall be enclosed with the required chain link or wood-vinyl protective fencing in order to keep the sidewalk and street open for public use. For trees situated near buildings, partial fencing may be necessary.

3. Type III Tree Protection

Trees situated in a small tree well or sidewalk planter pit, or when construction will come within five (5) feet of a trunk, shall have the trunk protected with strapped-on planking to a height of eight (8) feet or to the limits of lower branches. During installation of the wood slats, caution shall be used to avoid damaging any bark or branches. Major scaffold limbs may also need protection as directed by the City Administrator.

Illustration 2-4: Example of trunk protection – done when CRZ is less than an 8-foot diameter, upon approval by the City Administrator.

From: Burditt – Urban Forestry Consultants



d. Duration

Tree fencing shall be erected before demolition, grading, or construction begins and remain in place ~~until the certificate of occupancy has been granted~~ until authorization to remove has been granted by City Administrator or designee. Removal of the fence during construction must be approved by the City Administrator. **Fence removal without the approval of the City Administrator will result in a stop work order.**

e. **'Warning' sign**

A warning sign shall be posted on each section of fence or every one hundred and fifty (400150') feet of fence and state in both English and Spanish the following: **'TREE PROTECTION ZONE – NO ACCESS BY ORDER OF THE CITY OF SHENANDOAH-FULSHEAR ADMINISTRATOR'**. Durable signs are recommended with a minimum size of 8"x11".

2.4. TREE PRUNING, TREE SURGERY, AND REMOVAL PRIOR TO CONSTRUCTION

2.4.1. Pruning

Prior to construction, various trees may require that branches be pruned clear from structures, activities, building encroachment or may need to be strengthened by means of mechanical support or surgery per approval of City Administrator. The most compelling reason to prune is to develop a strong, safe framework and tree structure. Cosmetic pruning is left to the discretion of the owner. Consult an urban forester or ~~landscape architect-arborist~~ for best practices if cosmetic pruning is desired. However, practices such as limbing up should be avoided.

Heavy pruning just after the spring growth flush should be avoided. This is when trees have just expanded a great deal of energy to produce foliage and early shoot growth. Removal of a large percentage of foliage at this time can stress the tree.

a. **All trees except oak (Recommended):**

Most routine pruning to remove weak, diseased, or dead limbs can be accomplished at any time during the year with little effect on the tree. As a rule, growth is maximized and wound closure is fastest if pruning takes place between November and March in the Southeast Texas Area.

b. **Pruning limitations:**

1. **Minimum Pruning** – If the project urban forester or ~~landscape architect-arborist~~ recommends that trees be pruned, and the type of pruning is left unspecified, the standard pruning shall consist of 'crown cleaning' as described below. Trees shall be pruned to reduce hazards and develop a strong, safe framework.
2. **Maximum Pruning** – Maximum pruning should only occur in the rarest situation and be approved by the City Administrator. No more than one fourth (25 percent) of the functioning leaf and stem area may be removed within one calendar year of any protected tree. It must be recognized that trees are individual in form and structure, and that pruning needs may not always fit strict rules. The project urban forester or ~~landscape architect-arborist~~ shall assume all responsibility for special practices that vary from the standards outlined in this manual.

3. **Tree Workers** – Pruning shall not be attempted by construction or contractor personnel, but shall be performed by a certified arborist.
4. **Types of Pruning – (See Illustration 2-5)**
 - i. **Cleaning:**

The removal of dead, dying, diseased, crowded, weakly attached, and low-vigor branches from the crown of a tree.
 - ii. **Thinning:**

The selective removal of branches to increase light penetration and air movement through the crown. Thinning opens the foliage of a tree, reduces weight on heavy limbs, and helps retain the tree's natural shape.
 - iii. **Raising:**

Removes the lower branches from a tree in order to provide clearance for building, vehicles, pedestrians, and vistas.
 - iv. **Reduction:**

Reduces the size of a tree, often for clearance for utility lines. Reducing the height or spread of a tree is best accomplished by pruning back the leaders and branch terminals to lateral branches that are large enough to assume the terminal roles (at least 1/3 the diameter of the cut stem). Compared to topping, this helps maintain the form and structural integrity of the tree.
5. **Making Proper Pruning Cuts**
 - Tree topping is prohibited and may result in tree replacement.
 - Stub cuts are prohibited.
 - Cuts will be made just beyond the outer edge of the collar of live wood. See illustration 2-6 for an example.
 - To reduce potential of oak wilt ~~infections~~infestations, all pruning cuts on oak trees during the months of March, April, May or June shall be covered with a thin coat of water-based black paint.
 - If a large limb is to be removed, its weight should first be reduced. This is done by making an undercut about 12-18 inches from the limb's point of attachment. A second cut is made from the top, directly above or a few inches further out on the limb. This removes the limb leaving the 12-18 inch stub. The stub is removed by cutting back to the branch collar. This technique reduces the possibility of tearing the bark.

Illustration 2-5: Types of crown pruning
 From: *International Society of Arboriculture*

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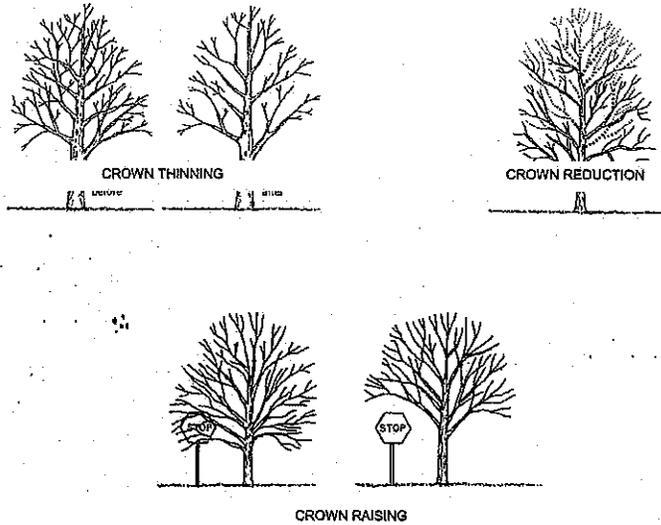
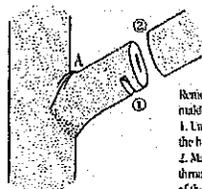
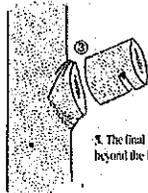


Illustration 2-6: Proper tree cuts
 From: *International Society of Arboriculture*

Pruning a Live Branch



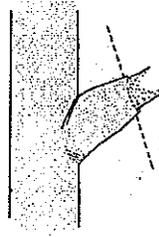
Remove a large limb by making three cuts:
 1. Undercut 12" to 24" from the branch collar (A)
 2. Make a top cut all the way through the branch, within 1" of the undercut



3. The final cut should be just beyond the branch collar (A)

Pruning a Dead Branch

A dead branch stub that has a collar of live wood should be cut just at the outer edge of the collar (swollen area where one branch meets another).



2.4.2. Tree Surgery

If it is necessary to promote health and prolong useful life or the structural characteristics, trees shall be provided the appropriate treatments (e.g. cavity screening, bark tracing, wound treat, cables, rods or pole supports) as specified by the project urban forester or landscape-architect arborist.

2.4.3. Tree Removal Adjacent to Protected Trees

When trees are removed and adjacent trees must be protected (as shown on the approved site plans), then the following tree removal practices apply:

- a. **Tree Removal** – Removal of trees that extend into the branches or roots of protected trees shall not be attempted by demolition or construction personnel, grading or other heavy equipment. A certified arborist or tree worker shall remove the tree carefully in a manner that causes no damage above or below ground to trees that remain.
- b. **Stump Removal** – Before performing stump extraction, the developer shall first consider whether or not roots may be entangled with trees that are to remain. If so, these stumps shall have their roots severed before extracting the stump. Removal shall include the grinding of stump and roots to a minimum depth of 12-inches.

2.5. ACTIVITIES DURING CONSTRUCTION & DEMOLITION NEAR TREES

Soil disturbance or other injurious and detrimental activity within the CRZ is prohibited unless approved by the City Administrator. If an injurious event inadvertently occurs, or soil disturbance has been specifically conditioned for project approval, then the following mitigation is required:

2.5.1. Soil compaction

If compaction of the soil occurs, it shall be mitigated as outlined in Section 2.5.5.

2.5.2. Grading limitations within the Critical Root Zone

- Grade changes within more than 25% of the CRZ are not normally permitted.
- If grading within more than 25% of the CRZ is approved, grading shall be done by hand or with small equipment to minimize root damage.
- Grade changes outside the CRZ shall not significantly alter drainage to the tree.
- Grade changes under specifically approved circumstances shall not allow more than three (3) inches of fill soil added or allow more than three (3) inches of existing soil to be removed from natural grade unless mitigated.
- Grade fills over three (3) inches or impervious overlay shall incorporate an approved permanent aeration system, or other approved mitigation.
- Grade cuts exceeding three (3) inches shall incorporate retaining walls or an appropriate transition equivalent.

Illustration 2-7: Options in tree preservation due to grade change
 From: City of Austin

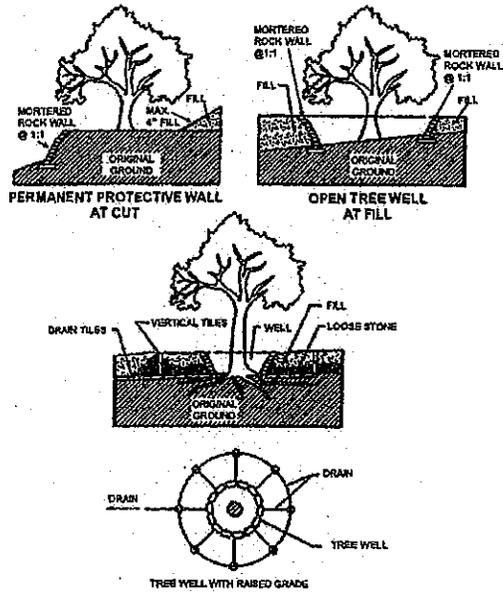


Illustration 2-8: Changing grade around tree trunk by grading or fill. Trees which have too high or a grade during or after construction will lack the root flare.
 From: A Guide to Preserving Trees in Development Projects

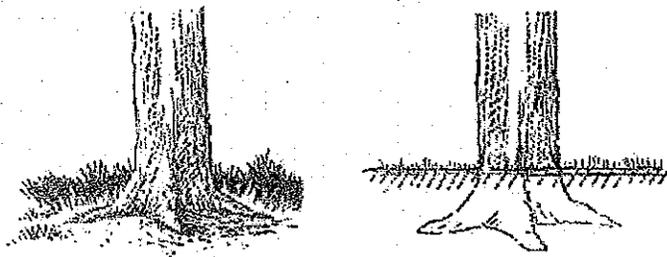
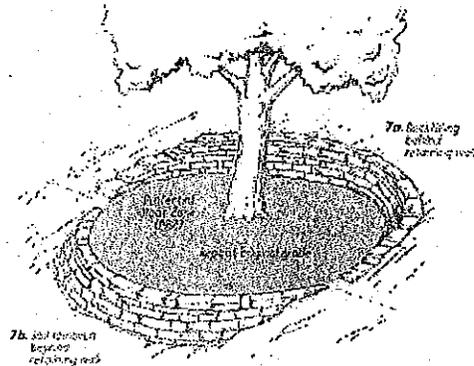


Illustration 2-9: Using retaining walls when natural grade must be raised or lowered.
 From: *Building Greener Neighborhoods*



2.5.3. Trenching, excavation and equipment use

Normally, trenching is allowed outside of the CRZ. Trenching, excavation or boring activity within more than 25% of the CRZ is restricted to the following activities, conditions and requirements if approved by the City Administrator. Mitigating measures shall include prior notification to and direct supervision by the ~~project urban forester or landscape architect~~ City Administrator or designee.

- a. Notification. Contractor shall notify the ~~project urban forester or landscape architect~~ City Administrator or designee a minimum of 24 hours in advance of the activity in the CRZ. ~~As noted above, the project urban forester or landscape architect must notify the City Administrator before any work begins in the CRZ.~~
- b. Root Severance. Roots that are encountered shall be pruned flush with the soil. Backfill root areas with good quality top soil within the same day. If exposed root areas are not backfilled within the same day, cover them with organic material in a manner which reduces soil temperatures and minimizes water loss due to evaporation.
- c. Excavation. Any approved excavation, demolition or extraction of material shall be performed with equipment sitting outside the CRZ. Methods permitted are by hand digging, or hydraulic air excavation technology.

If excavation or trenching for drainage, utilities, irrigation lines, etc., it is the duty of the contractor to tunnel under any roots 1-inches in diameter and greater.

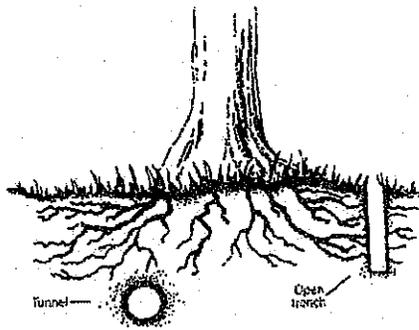
Prior to excavation for foundation/footings/walls, grading or trenching within the CRZ, roots shall first be severed cleanly one (1)-feet foot outside the CRZ and to the depth of the future excavation. The trench must then be hand dug and roots pruned with a saw, narrow trencher with sharp blades or other approved root pruning equipment.

- d. Heavy Equipment. Use of backhoes, steel tread tractors or any heavy vehicles within the CRZ, plans shall specify a design or special foundation,

footing, walls, concrete slab or pavement designs subject to City Administrator approval. Discontinuous foundations such as concrete pier and structural grade beam must maintain natural grade (not to exceed a 3-inch cut), to minimize root loss and allow the tree to use the existing soil.

Basement excavations shall be designed outside the CRZ of all protected trees and shall not be harmful to other mature or neighboring property trees.

Illustration 2-10: Trenching and boring options Illustrated.
From: Conserving Wooded Areas in Developing Communities



2.5.4. Tunneling and directional drilling

If tunneling or pipe installation has been approved within the CRZ, the trench shall be either cut by hand, air-spade, hydraulic vac-on excavation, or by mechanically boring the tunnel under the roots with a horizontal directional drill and hydraulic or pneumatic air excavation technology. In all cases, install the utility pipe immediately, backfill with soil and soak with water within the same day. Installation of private utility improvements shall be tunnel bored beneath the tree and roots per Trenching Tunneling and Distance Table in Illustration 2-11.

Emergency utility repairs shall be exempt from the above restriction zones within the CRZ. The City Administrator shall be contacted after any such repairs that may result in significant tree damage or removal.

Illustration 2-11: Trenching and boring distances.
From: Tree Technical Manual Standards and Specifications

TRENCHING DISTANCE ↔	
Tree diameter at 54 inches is:	Trenching will be replaced with boring if the CRZ is being encroached.
	CRZ
8-19"	8'-19'
20"+	20'+
DEPTH OF TUNNELING ⊖	
Tree Diameter	Depth of Tunneling
9" or less	2.5'
10-14"	3'
15-19"	3.5'
More than 19"	4.0'

2.5.5. Construction impact mitigation

A mitigation program is required if the approved development will cause drought stress, dust accumulation, or soil compaction to trees that are to be saved. To help reduce impact injury, one or more of the following mitigation measures shall be implemented and supervised by the project arborist or landscape architect as follows:

- a. Irrigation program – Irrigate or water weekly or as scheduled by City Administration with 10-gallons of water per diameter inch within the CRZ. Duration shall be until project completion or when seasonal rainfall begins.
- b. Dust control program – During periods of extended drought, wind or grading, spray wash trunk, limbs and foliage to remove accumulated construction dust.
- c. Soil compaction damage – Compaction of the soil is the largest killer of trees on construction sites due to suffocation of roots and ensuing decline of tree health. If compaction occurs to the upper 12-inches of soil within the CRZ by any means, then one or more of the following mitigation measures shall be implemented.
 - i. Type I Mitigation. IF an approved paving, hardscape, or other compromising material encroaches within the CRZ, an aeration system shall be designed by the project urban forester and landscape architect and used within this area (subject to approval by the City Administrator).
 - ii. Type II Mitigation. IF inadvertent compaction of the soil has occurred within the CRZ, the soil shall be loosened by one or more of the following methods to promote favorable root conditions: vertical mulching, soil fracturing, core-venting, radial trenching or other method approved by the City Administrator.

2.6. DAMAGE TO TREES

2.6.1. Reporting

Any damage or injury to trees shall be reported the same day to the project urban forester, landscape architect, job superintendent or City Administrator or designee so that mitigation can take place. All mechanical or chemical injury to branches, trunk or roots over 1-inch in diameter shall be reported. In the event of injury, the following mitigation and damage control measures shall apply:

- a. Root injury: If trenches are cut and tree roots 1-inch or larger are damaged they must be cleanly cut back to a sound wood lateral root. The end of the root shall be sawed off with a clean cut. All exposed root areas within the CRZ shall be backfilled or covered the same day. Exposed roots may be kept from drying out by temporarily covering the roots and draping layered burlap or carpeting or polyethylene sheeting over the upper 2-feet of trench walls.
- b. Bark or trunk wounding: Current bark tracing and treatment methods shall be performed by a certified arborist tree care specialist within 24 hours.

- c. Scaffold branch or leaf canopy injury: Remove broken or torn branches back to an appropriate branch capable of resuming terminal growth within five days. If leaves are heat scorched from equipment exhaust pipes, consult the project urban forester or ~~landscape architect~~ arborist the same day.

2.6.2. Penalty for damage to protected trees

In the event that protected trees or their roots have been damaged, replacement may be required if the City Administrator deems that the trees need to be replaced. Damaged trees will be replaced according to Section ~~3.4109-98 ? -158~~ of the Ordinance.

2.7. PAVEMENT AND HARDSCAPE CONFLICTS WITH TREE ROOTS

Conflicts may occur when tree roots grow adjacent to paving, foundations, sidewalks or curbs (hardscape). Improper or careless extraction of these elements can cause severe injury to the roots and instability or even death of the trees. The following alternatives must first be considered before root pruning within the CRZ of a protected tree.

2.7.1. Removal and replacement of pavement or sidewalk

- a. Removal of existing pavement over tree roots shall include the following precautions: Break hardscape into manageable pieces with a jackhammer or pick and hand load the pieces onto a loader. The loader must remain on undisturbed pavement or off exposed roots. Do not remove base rock that has been exploited by established absorbing roots. Apply untreated wood chips over the exposed area within one hour, then wet the chips and base rock and keep moist until overlay surface is applied.
- b. Replacement of pavement or sidewalk: An alternative to the severance of roots greater than 1 – inch in diameter should be considered before cutting roots. If an alternative is not feasible, remove the sidewalk and grind roots only as approved by the City Administrator. Use a wire mesh re-bar reinforcement if within 10-feet of the trunk of a protected tree.

2.7.2. Alternative methods to prevent root cutting (Recommended)

The following remedies should be considered before cutting tree roots that may result in tree instability or decline:

- a. Grinding a raised sidewalk edge.
- b. Ramping the walking surface over the roots or lifted slab with pliable paving.
- c. Routing the sidewalk around the tree roots.
- d. Inflexible paving or rubberized sections.
- e. On private property, new sidewalk or driveway design should offer alternatives to conventional pavement and sidewalk materials. Substitute permeable materials for typical asphalt or concrete overlay, sub-base or footings to consider are: permeable paving materials, interlocking pavers, flexible paving, wooden walkways, porches elevated on posts and brick or flagstone walkways on sand foundations.

2.7.3. Avoiding conflict (Recommended)

Conflicts and associated costs can be avoided or reduced by the following planting practices:

- Plant deep rooted trees that are proven to be non-invasive.
- Over soil that shrinks and swells, install a sidewalk with higher strength that has wire mesh-re-bar and/or expansion slip joint dowel reinforcement.
- Follow soil loosening planting techniques to promote deep rooting.
- Install root barrier only along the hardscape area of the tree (but allow roots to use open lawn or planter strip areas).

2.7.4. Alternative base course materials (Recommended)

When designing hardscape areas near trees, the project architect or engineer should consider the use of recommended base course material such as an engineered structural soil mix. Structural soil mix will allow a long term cost effective tree and infrastructure compatibility that is particularly suited for the following types of development project: repair or replacement of sidewalk greater than 40-feet in length; subdivisions with new street tree plantings; planting areas that are designed over structures or parking garages; confined parking lot median and islands or other specialized conditions as warranted.

SECTION 3: TREE REMOVAL, REPLACEMENT, PLANTING, AND MAINTENANCE STANDARDS

3.1. INTRODUCTION

A protected tree may not be removed without City review and approval, except in certain emergencies. The purpose of City review is to verify that the removal is allowed under the Ordinance, and to prevent unnecessary tree removal. This section discusses conditions for tree removal, replacement or protected trees, planting and pruning of replacement trees, and maintenance.

3.2. TREE REMOVAL

3.2.1. Allowable removal

Tree removal is approved as part of the subdivision and site plan process, or in the case of individual trees, through the tree removal permit process. These three processes are defined in the Ordinance. ***A tree removal must be granted, or a site or subdivision plan with a tree survey and replacement planting plan approved, before removing a protected tree regardless of the condition of the tree.***

3.2.2. Protected Tree Removal Permit Application

Tree removal applications are available at the City of Shenandoah-Fulshear City Administration Office. The form is required ONLY when a request for tree removal originates with an owner of fully developed land, ~~including a single family house under construction.~~ All other requests for removal of protected trees take place during the subdivision and site development processes as defined in the Ordinance.

An application for a Protected Tree Removal Permit shall be processed within fifteen (15) working days from the date the application is received.

3.3. TREE REPLACEMENT PLANTING PLAN TO MEET CANOPY AREA COVERAGE

Replacement requirements are defined in ~~Section 98 ? -157~~ of the Ordinance, and are limited to protected trees. ~~It is important to note that tree replacements during the site plan process will be addressed in both the Tree Protection Ordinance and the Landscape Ordinance. Whichever ordinance requires the greatest number of tree replacement inches, that is the ordinance which will be followed in terms of the number of inches to be replaced. The tree requirements of both ordinances will not be added up. See Section 98 ? -157 of the Ordinance for the types of replacements that are required dependent on lot size and development status.~~

~~In selecting trees to be replaced to be planted, the types species of trees removed will must be replaced with the same or similar species selected from the "List of Approved Trees for Planting" included in Appendix of this Technical Manual. Each replacement tree shall be a minimum of three inches (3") caliper, a minimum of ten feet (10') in height, and a minimum of five (5) feet in spread when planted. Illustration 3-1 shows the type of information required on a tree replacement plan.~~

~~The Tree Replacement Planting Plan will include four elements: (1) a table including the common or Latin name; tree size in caliper inches, height, container size, canopy area credit, and spread;~~

tree symbols; quantity; and if the tree is considered large, medium, or small; (2) a tree planting plan (may be combined with the Landscape Plan or Tree Protection Plan); (3) proper tree planting details including planting hole, tree planting, staking, and mulching; and, (4) notes on proper tree planting as described in section 3.7 of this Manual.

Illustration 3-1 shows the type of information required on a tree replacement plan.

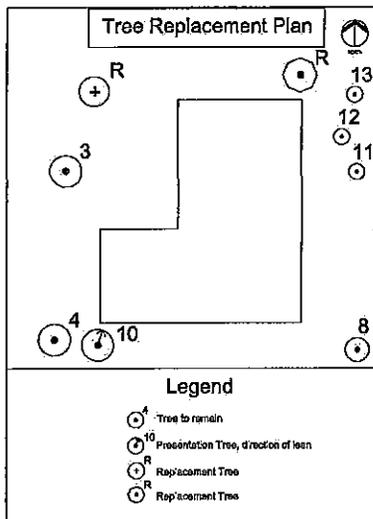
Illustration 3-1: Tree replacement planting plan

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From: Burditt - Urban Forestry Consultants - will replace with PDF file when I figure that out

Symbol	# of Trees	Species	Size
	1	Pecan <i>Caraya illinoensis</i>	3" caliper 10'-12' high 65 gallon 5' spread 200 sq.ft.
	1	Live Oak <i>Quercus virginiana</i>	4 3/4" caliper 10'-12' high 65 gallon 5' spread 200 sq.ft.

Required Replacement: 7-inches 400 sq. ft. canopy
 Total provided replacement:
 2 trees (4-3" cal 200 sq.ft. + 4-4" cal 200 sq.ft.) = 400 sq.ft.
 inches canopy credit
 Designed with (R)



3.4. TREE PLANTING REQUIREMENTS

3.4.1. *Species*

The replacement trees shall be ~~selected from the "List of Approved Trees for Planting" included in Appendix of this Technical Manual the same or similar species unless the City Administration determines that another species would be more suitable for the location or if there is a need to promote diversity of species.~~ Factors to be considered include the long term health of the tree in the location and its compatibility with adjacent uses as well as design considerations.

If the City Administration ~~or~~ or designee deems it necessary to plant species other than those that were removed, the following issues will be considered.

Street trees: On any four hundred foot (400') length of street, a single species of tree may be planted. On a length of street greater than four hundred feet (400'), no more than twenty percent (20%) of the total number of trees shall be of one species.

Non-street areas: For plantings in non-street areas (parking lots for example), no more than 20 percent (20%) of the total number of trees planted may be of one species. Exceptions must be approved by the City Administration ~~or~~ or designee.

The above restrictions are designed to avoid creating monocultures, or areas of plantings made up of only one species of trees. Monocultures are undesirable because if a certain species is prone to a particular disease or is more susceptible to storm damage or temperature extremes, then it is likely the entire stand could die or be destroyed by a single disease or weather event. Creating planting areas of several species creates a more diverse, and therefore more resistant, urban forest.

~~Chinese Tallow shall not be planted along city streets due to damaging surface roots and the possibility of causing damage to sidewalks, utilities and curbs. These trees also have short lifespans, weak wood, and susceptibility to disease and insects.~~

~~With the exceptions noted above, other species shall be chosen from the City of Shenandoah approved tree list provided in Appendix B of this Manual.~~

3.4.2. *Planting distances/spacing requirements:*

- a. Minimum distance between newly planted trees
 - Large sized trees: 40 ft;
 - Medium sized trees: 30 ft; and,
 - Small sized trees: 20 ft
- b. Minimum distance from any underground utility, water meter boxes, and fire hydrant: 10 feet

- c. Distance from trees to curb, sidewalk, or driveway: Minimum 40 feet.
- d. Planting strips should be a minimum of 10 ft wide ~~or as indicated for corner lots in Landscape Ordinance Section 98-118(4).~~
- e. Minimum distance from buildings and similar structures:
 - Large size tree: 320 ft;
 - Medium size tree: 120 ft; and,
 - Small size tree: 450 ft
- f. Minimum distance from overhead utility lines. Trees cannot be planted under utility lines. In order to avoid future interference of limbs, planting may take place as follows:
 - Large trees: 320 feet from line;
 - Medium trees: 210 feet from line; and,
 - Small trees: 540 feet from line
- g. From curb line of an intersection: 25 feet, or by Code, which-ever is greater.
- h. Minimum distance from stop or yield signs: 20 feet or by Code, which-ever is greater.
- i. Distance from directional traffic sign: 10 feet or by Code, which-ever is greater.
- j. Distance from street lights: 125 feet, or by Code, ~~which-ever~~whichever is greater.

Tree selection shall take into consideration ordinance requirements for height clearances as defined in the Code. As they grow, trees will need to be pruned to provide pedestrian clearance of at least 8 feet over sidewalks, and vehicular clearance of 14 feet over streets.

Variations from requirements listed above must be approved by the City Administration ~~or~~.

3.5. TREE STOCK AND MATERIALS

3.5.1. Quality

It is the contractor's responsibility to supply tree stock that meets the most current ANSI 760.1-4996 and any other standards addressed in this Manual.

- All trees installed within the City of ~~Fu~~Shenandoah~~shear~~ shall conform with the *American Standard for Nursery Stock*.
- Trees shall be sound, healthy, vigorous, and free of plant disease and insect pests or their damage.
- Container grown trees shall be grown for a least 8-months in containers in which delivered and shall not be root bound or have girdling roots. The root ball will be moist and the roots will be contained within the container.
- Trees shall not have been topped or headed.
- The tree will have healthy leaves if it is the time of year for trees to have leaves.
- There will be no weeds growing out of the container.

- If the tree is multi-stemmed, the stems will not be squeezing against each other or the trunk of the tree.
- Trees with broken tops, branches, injured trunks, poor structure, low branching, poor vigor, and apparent poor quality shall be rejected and the City Administrator or designee has the right to reject them if they do not meet the quality standards.

3.5.2. Container grown/ball and burlapped trees

~~Trees can be effectively planted that are container grown or balled and burlapped (B & B). The advantage to planting container grown trees is that they can be planted year round, provided there is good follow-up care. B & B trees require planting during the dormant season (November to April).~~

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Recommendations: Regardless, due to the advantages of container trees, it is recommended that container grown trees be used during all times of the year.

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3.5.3.2. Miscellaneous materials

The following materials shall be used unless otherwise specified:

- Tree stakes. Metal T-posts shall be used.
- Tree Ties. Tree ties may include one of two types. The first is a 10-gauge wire, cushioned with a rubber hose around the trunk. ~~The wire should not touch the trunk.~~ ArborTie Green or similar product. The second is a plastic chain lock, also called twist brace. Do not use wire of any kind.
- Mulch. All newly planted trees should be mulched with 2-4 inches of organic mulch. Mulch should never be placed against the trunk of a tree. There should be a space of 1-2 inches between the trunk and mulch. Mulch should cover the entire tree planting hole. No volcano mulching is allowed.
- Tree guards. For trees in turf areas requiring regular mowing and/or weed eating, the tree trunk shall be protected with TreeGuard or equivalent.
- Tree grates. Where sidewalk width is less than 8-feet and new trees will be installed in a tree well, metal tree grates may be used ~~and if approved by the City Administrator.~~ Minimum size grates shall be 4' x 4' unless specified otherwise. All tree grates shall be mounted in frames, frames inset into a concrete foundation within the sidewalk or surface material, and shall be flush with the surrounding surface.

3.6. PLANTING SITE PREPARATION

3.6.1. Soil preparation and conditioning

All debris, wood chips, pavement, concrete and rocks over 2-inches in diameter shall be removed from the planting pit to a minimum of 24-inch depth, unless specified otherwise.

3.6.2. Planter pit preparation

- *Trees in a confined planter pit or sidewalk area:* The planting hole shall be excavated to a minimum of 30-inches deep x the width of the exposed area. Scarify the sides of the pit. Soil beneath the ~~rootball~~root ball shall be compacted to prevent settling.
- *Trees in all other areas*
 - a. Mark out a planting area 2 to 5 times wider than the ~~rootball~~root ball diameter (the wider the better). Loosen this area to about an 8" depth. This will enable ~~your~~ tree to extend a dense mat of tiny roots well out into the soil in the first one to ten weeks in the ground.
 - b. Remove all soil from on top of the root flare before planting so the root flare is visible. The top of the root ball should be at or 1-2 several inches above surrounding soil ~~or approximately 40% of the root ball is above the landscape grade~~. This prevents roots from being planted too deep (root flare remains above ground) and aids in establishment, even if the root ball should settle. ~~The handle of a shovel can be used to gauge appropriate planting height.~~

3.6.3. Drainage

Adequate drainage must be provided to the surrounding soil for the planting of new trees. If the trees are to be planted in impermeable or infertile soil and water infiltration rates are less than two (2) inches an hour, then one of the following drainage systems or other approved measures must be implemented:

- French drain, a minimum of three feet in depth
- ~~Drain tiles or lines beneath the trees~~
- ~~Auger six drain holes at the bottom perimeter of the planting pit, at a minimum of four (4) inches in diameter, twenty-four (24) inches deep and filled with medium sand or fine gravel~~

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~~3.6.3. Aeration tubes for trees~~

- ~~Trees planted in sidewalk planter pits, planting strip, parking islands, or medians shall use 4-inch diameter perforated aeration piping (rigid or flexible), circling the bottom of the planter connected to a T-fitting to two riser tubes with grated caps with filter fabric. This detail shall be shown on the approved landscape plans.~~

3.7. PLANTING THE TREE

After the hole has been prepared as described in Section 3.6 above, the tree is ready to be planted.

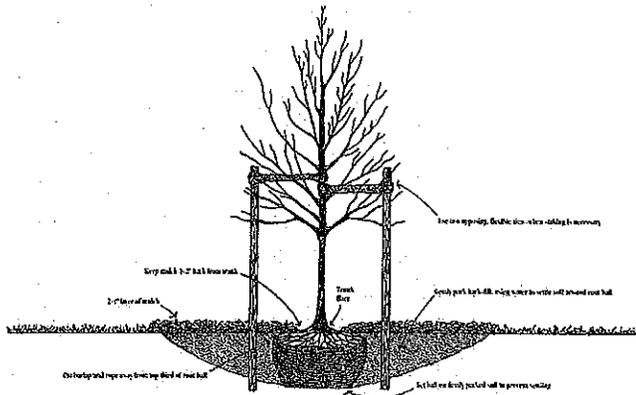
3.7.1. Container grown tree

Pull the container away from the root ball. Don't pull the tree out by its trunk. Container grown trees often have circling or girdling roots running along the edge of the ~~rootball~~root ball. If they exist in this area, cut them and spread them apart. Place the root ball in the center of the hole and adjust the tree so it is straight and at the proper level. Make any adjustments prior to filling the hole with dirt.

3.7.2. *Ball and burlapped tree*

Rest the root ball in the center of the hole, and reshape the hole so the tree will be straight and at the proper level. After adjusting the tree, pull the burlap and any other material away from the sides and top of the root ball. Do not remove the burlap from the bottom. ~~If you adjust or tree is lifted the tree after the burlap has been removed you run the risk of the root system may be damaging the root system.~~

Illustration 3-2: Tree planting detail graphic



3.7.3. *Backfill soil, amended soil*

Backfill with the original soil unless the original soil has been removed or the soil is poor. If soil must be amended, consult with a landscape architect or urban forester in identifying the most appropriate soil mix.

3.7.4. *Filling the hole*

Fill until the hole is half full. Flood the hole with a slow hose or tamp gently with your foot to firm the soil. Repeat until the hole is full. Do not press too firmly-only firm enough to hold the tree upright. Backfilling with soil and water or gently tamping will remove large air pockets.

3.7.5. *Constructing a berm*

A berm should be construction~~ed~~ from soil or mulch to hold water ONLY IF the tree will be watered with a hose or other high volume device. If irrigation will be from a low volume system or if little or no irrigation will be applied, do not bother with the berm. ~~No more water will reach the root ball under these circumstances if a berm is present. The potential downsides of the berm include cutting off rainwater and oxygen when personnel later push the berm over the rootball.~~

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3.7.6. Mulching

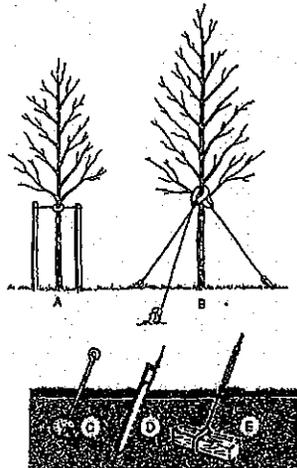
Cover the entire loosened area of soil with 2 to 3 inches of mulch composed of shredded wood or bark in the entire planting area. Mulch will be placed one to two inches away from the trunk of the tree.

3.7.7. Staking or guying

Stake trees only if necessary, and remove staking as soon as is possible. Staking or guying is to prevent movement of the lower trunk and root system. Movement of the top is desirable and will strengthen the tree. The stakes will be installed 12-18 inches in undisturbed soil outside of the planting hole. Depending on height and size of the tree, stakes shall be six, eight, or ten feet tall. Trees shall be staked with 3 metal T-posts. Metal stakes will not rub against tree trunks. Tree ties will be located near the lowest main branch on the tree. Check a staked or guyed tree monthly during the growing season and after storms or strong wind. Use wide strips attached loosely around the trunk. Do not stake a tree any longer than necessary. One or two growing seasons is all that is needed.

Illustration 3-2 and 3-3 show the proper staking and guying techniques. In Illustration 3-3 A, trees 3-4 inches in diameter are supported by three stakes. Branches should not rub against the stakes. For trees over four (4) inches, guy wires should be used, with a minimum of three guys. Cable or wire is attached to the tree by running wires through a piece of hose or by using lag hooks on large trees. The guys should be secured to arrowhead-shaped land anchors (C), wooden stakes (D), or deadmen buried in the soil (E).

Illustration 3-3: Staking and Guying Trees
From: *Principles and Practice of Planting Trees and Shrubs*



3.8. PRUNING NEWLY PLANTED TREES

Young trees are pruned to allow for proper growth through the years. If the tree is of high quality, it should need little pruning. It is no longer common practice to automatically trim a certain percentage of limbs from a newly planted tree. The tree needs as much foliage as can be available to assure rapid growth and solid leaf structure. This includes refraining from "limbing up" and topping.

3.8.1. *Prohibitions*

Topping trees – tree replacement may be required if this is done
Limbing up trees (the practice of cutting the lowest branches to a desired height)

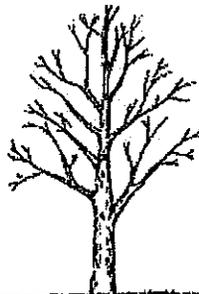
3.8.2. *Pruning guidelines (Recommended)*

Scaffolding / permanent branches. Identify the scaffolding/permanent branches. The lowest permanent branch should have a diameter of one-half or less of the trunk diameter where the branch attaches to the trunk. The vertical spacing of permanent scaffold branches should equal a distance equal to 3% of the tree's eventual height. Thus, a tree that will be 50 feet tall should have permanent scaffold branches spaced about 18 inches apart along the trunk. Avoid allowing two scaffold branches to arise one above the other on the same side of the tree. Maintain radial balance with branches growing outward in each direction.

3.8.3. *Limb removal (Recommended)*

The following may be removed.

- a. Torn, damaged, dead branches. Remove the branch just outside of the branch collar. See Illustration 2-6.
- b. Double Leaders: Maintain a dominant trunk for at least six to eight feet without a major fork. If the trunk divides into two or more relatively equal stems, favor one strong stem and remove the others. Cut one stem back to a lateral branch.
- c. Rubbing Branches: Eliminate branches that are rubbing or will soon rub against another branch.
- d. Crowding: Give each branch room to grow with minimal competition for sunlight. When possible, have major lateral branches evenly spaced eight to ten inches apart along the trunk. If the tree by its nature would lose too much foliage in the process of eliminating crowding, maintain at least half the foliage on branches in the lower 2/3 of the tree.



Select strong permanent scaffold branches that are spaced 12-18 inches apart.

- e. **Narrow Branch Angles/Included Bark:** Remove one branch if the angle is 40 degrees or narrower or if it appears that the bark from the branch is becoming pinched between the branch and the trunk.
- f. **Sprouts and Suckers.** Remove sprouts and suckers.
- g. **Temporary Branches:** Leave temporary branches that are not competing with permanent, scaffolding branches.

3.9. TRANSPLANTING TREES

Transplanting large trees is difficult, expensive, and requires expertise and equipment. Pre-approval from the City Administration and periodic inspections will be required for the transplanting of a protected tree. Such trees will be under warranty as if it is a new tree, and will need to follow replacement requirements should the tree die or severely decline more than 30% from condition prior to digging. When transplanting protected trees eight (8) inches and larger from existing landscapes it is important to select healthy, vigorous trees, dig an appropriate size root ball, select a site that is consistent with the tree's cultural needs, provide a saucer shaped planting hole approximately three times the root ball width, and then protect the root ball, trunk, and crown during lifting, transportation, and storage. The most important and hardest part in tree transplanting is creating and implementing a multi-year aftercare program, providing adequate moisture to the root ball.

When a tree is dug for transplanting, as much as 90% of its root system is left behind, severed in the process of digging for transplanting. The tree has a hard time relying on 5-10 percent of its root system doing the work of the 90 percent that was lost. Until it is well established, the root system will have difficulty supplying enough water to the leaves. This stress impacts vigor of the tree and also exposes the tree to the risk of being vulnerable to pests and diseases, as well as less able to adapt to or withstand drought, extreme cold, and drying winds.

The following issues should assist in providing a successful transplanting. Considering the size of the protected trees being transplanted, a professional arborist is required to assist in the process.

- **Site** – Before transplanting make sure the tree is a good match for the new site.
- **Timing** – Recommended timing for transplanting trees is during the dormant season, when the tree is not trying to support its leafy crown.
- **Health of tree** – Select a tree that is in good health and shape and has no major defects in its trunk branch structure.
- **Success rate** – Different species have different success rates in transplanting. Consult with your urban forester on the success rate of the tree you want to transplant.
- **Tree size** – Most commonly transplanted trees range in size from 4-12 diameter inches.

Transplanting process –

Digging up the tree –

Dig up a wide root ball with appropriate depth and wrap burlap material with wire and twine to save as much of the root ball as you can intact.

A rule of thumb for trees over six inches in diameter is that a root ball = 40-12 inches in diameter for every tree trunk diameter measured at 4-1/2 feet 12 inches above the ground (see Chapter 2 for a discussion on measuring the tree diameter in unusual situations). In other words, a 40 inch 10-inch tree should

have a ~~40-120-inch~~ 120-inch diameter root ball. Likewise, ~~the ball depth should be about 60% of the ball diameter. The same 40-inch~~ 10-inch tree should have a ~~60-72-inch~~ 72-inch depth.

While smaller trees, ~~upto up to 12"~~ diameter, can be transplanted using a tree spade or other specialty equipment/techniques, larger trees will require mechanical digging equipment and appropriate hoists and heavy equipment for moving the tree.

Transporting the tree –

During transportation the tree crown should always be covered with tarp to protect the tree from drying out and windburn.

After transplanting –

Keep the root ball moist at all time.

Anticipate watering three times a week, or in every hot weather every day.

Continued watering will be required for several years.

Do not prune newly transplanted trees to reduce crown and compensate for root loss. That will only further weaken the tree.

Mulch the transplanted tree with 2-4 inches of organic mulch to cover root ball.

The process of regenerating a normal root system will take several years, especially for large trees. Immediately after transplanting, the tree will be susceptible to extreme stress. Moisture is a critical factor in new root growth. Compacted soils and soil temperature also impact the growth of roots.

(Abridged from "Transplanting Trees", by Patrice Peitler and Gary W. Watson. *Arbor Age*, January-March 2000.)

3.10. IRRIGATION PLAN

COMMERICAL PROPERTIES:

The following requirements are mandatory for all tree replacement plantings.

An automatic irrigation system will be installed or a watering schedule approved by the City Administration ~~or~~ or designee. Tree irrigation shall not share the same irrigation zone, including valves and circuits, as shrubs and plants due to different watering requirements. A minimum of one (1) bubbler or sprayer each shall be provided for all newly planted trees. Trees larger than 4 inches in caliper shall have 2 bubblers or sprayers. Bubblers or sprayers shall be located between 1-2 feet from the trunk.

All automatic irrigation systems shall be equipped with an electronic controller capable of dual or multiple programming. Controller(s) shall have multiple cycle start capacity and a flexible calendar program, including the capability of being set to water every five days. All automatic irrigation systems shall be equipped with a rain and freeze sensor shut-off device.

The irrigation system must ~~be designed and sealed by a licensed irrigator~~ conform with the most current licensed irrigator rules and regulations.

Watering schedule and methods

Newly planted trees will be watered weekly for the first two years. Ten (10) gallons per caliper inch will be applied weekly. During June-September trees will be watered more frequently, or at least during each permitted watering day (every five days).

Irrigation plans need to be submitted prior to final inspection.

RESIDENTIAL PROPERTIES (RECOMMENDED):

Trees placed on residential properties are not required to have irrigation systems. When irrigation systems do not exist, trees need to be hand watered.

- Keep the soil moist but not soaked. Water trees at least once a week at the rate of 10 gallons per caliper inch, unless it has rained, and more frequently during hot weather. When the soil is dry below the surface of the mulch, it is time to water. Continue watering weekly during the winter if there is no rain. Continue watering newly planted trees for two years in this manner.
- Water the area within the dripline. A soaker hose is ideal as it can water a greater area at one time and does not need to be moved as often.

3.11. MAINTENANCE

All newly planted trees shall be maintained by the owner. Maintenance practices shall consist of all regular and normal maintenance of trees, including but not limited to irrigation, pruning, and disease control. Plant material that exhibits severe levels of insect or pest infestation, disease and/or damage, shall be ~~approximately~~ appropriately treated, and all dead trees shall be removed and replaced with living trees where required according to the city approved Tree Replacement ~~Planting~~ Plan for the site.

Failure to replace dead or diseased trees within thirty (30) days of written notification by ~~from~~ the City shall constitute a violation of the Ordinance.

SECTION 4: ADMINISTRATION, INSPECTION, AND ENFORCEMENT

4.1. ADMINISTRATION

The Ordinance and the standards in this Manual will be administered and updated by the City Administration ~~or. Refer to Section 98-16141 of the Ordinance for more information.~~

4.2. INSPECTION

4.2.1. Inspection by owner

The project urban forester or landscape architect retained by the applicant shall conduct the following required inspections of construction sites containing protected trees. Inspections shall verify that the type of tree protection and/or plantings are consistent with the standards outlined within this Manual. For each required inspection or meeting, a written summary of the changing tree related conditions and actions taken shall be provided to the City Administration ~~or or~~ designee.

- a. Construction Meeting. Prior to commencement of construction, the applicant or contractor shall conduct a pre-construction meeting to discuss tree protection with the job site superintendent, grading equipment operators, project urban forester or landscape architect, and City Administration ~~or or~~ designee.

designee. At this time all tree protection fencing approved in the permit plans must be installed correctly.

- b. Inspection of Rough Grading. The project urban forester or landscape architect shall perform an inspection during the course of rough grading adjacent to the CRZ to ensure trees will not be injured by compaction, cut or fill, drainage and trenching, and if required, inspect aeration systems, tree wells, drains and special paving. The contractor shall provide the City Administration or designee at least 48 hours advance notice of such activity.
- c. Monthly Inspections. The project urban forester or landscape architect shall perform monthly inspections to monitor changing conditions and tree health. The City Administration or designee shall be in receipt of an inspection summary if there are any changes to the approved plans, tree health conditions, or protection measures. If the City Administration or designee is not in receipt of inspection summaries prior to final inspection, he will assume that no change in tree conditions have occurred in the field during construction.
- d. Special activity within the Critical Root Zone. Work in this area (CRZ) requires that direct onsite supervision of the project urban forester or landscape architect.
- e. Landscape Architect Inspection. Prior to the issuing of the certificate of occupancy, the applicant or contractor shall contact the landscape architect to perform on-site inspection of all plant stock, quality of the materials and planting and that the irrigation is functioning consistent with the approved construction plans. The City shall be in receipt of a letter of compliance from the landscape architect prior to scheduling the final inspection, unless otherwise approved.

4.2.2. *Inspection by city representative*

There are four inspections performed by the City Administration or designee as described in Section 3-11-12 (2) of the Ordinance. They include the following:

- a. Site inspection at the site development plan or preliminary plat submittal.
- b. Tree fencing inspection and other tree preservation measures.
- c. Unscheduled site visits during construction.
- d. Final inspection.
- e. Follow up inspection 2 years after issuance of certificate of occupancy
OR final inspections

4.3. ENFORCEMENT

The Ordinance and the standards in this Manual are enforced by the City Administration or. Enforcement is described in Section ~~98-16-141~~ ? of the Ordinance.

APPENDIX A: DEFINITIONS

For the purposes of this Manual the following definitions apply. Additional definitions may be found in the Ordinance.

Certified Arborist is an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification, or who is a member of the American Society of Consulting Arborists.

Compaction means compression of the soil structure or texture by any means that creates an upper layer that is impermeable. Compaction is injurious to roots and the health of a tree.

Dangerous tree see Hazardous tree.

Dead Tree means a tree that is dead or that has been damaged beyond repair or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches, exist to sustain life) and has been determined to be such by a certified arborist. If the tree has been determined to be dead, removal is permitted as defined in the ordinance.

Disturbance refers to all of the various activities from construction or development that may damage trees.

Excessive Pruning means removing in excess, one-fourth (25 percent) or greater, of the functioning leaf, stem or root area. Pruning in excess of 25 percent is injurious to the tree and is a prohibited act. Excessive pruning typically results in the tree appearing as a 'bonsai', 'lion's-tailed', 'lolly-popped', or overly thinned.

Unbalanced Crown. Excessive pruning also includes removal of the leaf or stem area predominantly on one side, topping, or excessive tree canopy or crown raising.

Exceptions are when clearance from overhead utilities or public improvements is required or to abate a hazardous condition or a public nuisance.

Roots. Excessive pruning may include the cutting of any root two (1) inch or greater in diameter and/or severing in excess of 25 percent of the roots.

Hazardous Tree refers to a tree that possesses a structural defect which poses an imminent risk if the tree or part of the tree that would fall on someone or something of value (target).

Structural defect means any structural weakness or deformity of a tree or its parts. A tree with a structural defect can be verified to be hazardous by an urban forester and confirmed as such by the City Administrator. The City Administrator retains discretionary right to approve or amend a hazardous rating, in writing, and recommend any action that may reduce the condition to a less-than significant level of hazard. If the tree has been determined to be hazardous, removal of the tree is permitted as provided for in the Ordinance.

Injury means a wound resulting from any activity, including but not limited to 'excessive pruning', cutting, trenching, excavating, altering the grade, paving or compaction within the tree protection zone of a tree. Injury shall include bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, herbicide or poisoning, or any other action foreseeably leading to the death or permanent damage to tree health.

Manual means this Tree Technical Manual: Standards and Specifications.

Project Urban Forester means a consultant retained by a property owner or development applicant for the purpose of overseeing on-site activity involving the welfare of the trees to be retained. The project urban forester shall be responsible for all reports, appraisals, tree preservation plans, or inspections as required.

Protective Tree Fencing means a temporary enclosure erected around a tree to be protected at the boundary of the tree protection zone. The fence serves three primary functions: (1) to keep the foliage crown, branch structure and trunk clear from direct contact and damage by equipment, materials, or disturbances; (2) to preserve roots and soil in an intact and non-compacted state; and (3) to identify the tree protection zone in which no soil disturbance is permitted and activities are restricted.

Root Buffer means a temporary layer of material to protect the soil texture and roots. The buffer shall consist of a base course of tree chips or mulch spread over the root area to a minimum of 6-inch depth.

Site Plan means a set of drawings (e.g. preliminary drawings, site plan, grading, demolition, building, utilities, landscape, irrigation, tree survey, etc.) that show existing site conditions and proposed landscape improvements, including trees to be removed, relocated or to be retained. Site plans shall include the following minimum information that may impact trees:

- Surveyed tree location, species, size, dripline area (including trees located on neighboring property that overhang the project site) and protected trees within 30-feet of the project site.
- Paving, concrete, trenching and grade change located within the tree protection zone.
- Existing and proposed utility pathways.

- Surface and subsurface drainage and aeration systems to be used.
- Walls, tree wells, retaining walls and grade change barriers, both temporary and permanent.
- Landscaping, irrigation and lighting within dripline of trees, including all lines, valves, etc.
- Location of other landscaping and significant features.
- All of the final approved site plan sheets shall reference tree protection instructions.

Soil Compaction means the compression of soil particles that may result from the movement of heavy machinery and trucks, storage of construction materials, structures, paving, etc. within the tree protection zone. Soil compaction can result in atrophy of roots and potential death of the tree, with symptoms often taking 3 to 10-years to manifest.

Soil Fracturing means the loosening of hard or compacted soil around a tree by means of a pneumatic soil probe that delivers sudden bursts of air to crack, loosen or expand the soil to improve the root growing environment.

Target is a term used to include people, vehicles, structures or something subject to damage by a tree.

Note: A tree may not be a hazard if a "target" is absent within the falling distance of a tree or its parts (e.g., a defective tree in a non-populated area away from pathways may not be considered a hazard)

Trenching means any excavation to provide irrigation, install foundations, utility lines, services, pipe, drainage or other property improvements below grade. Trenching within the CRZ is injurious to roots and tree health and is prohibited, unless approved. If trenching is approved within the CRZ, it must be in accordance with instructions and table outlined in this Manual.

Verification of Tree Protection means the project urban forester shall verify, in writing, that all pre-construction conditions have been met (tree fencing, erosion control, pruning, etc.) and are in place. An initial inspection of protective fencing and written verification must be submitted to the City Administration prior to demolition, grading or building permit issuance.

Vertical Mulching means ~~augering~~ auguring, hydraulic or air excavation of vertical holes within a tree's root zone to loosen and aerate the soil, typically to mitigate compacted soil. Holes are typically penetrated 43- to 64- feet on center, 2- to 3- feet deep, 2- to 63-inches in diameter and backfilled with ~~either perlite, vermiculite, peat moss or a mixture thereof~~ compost.

APPENDIX B: TREE LIST

**LIST OF APPROVED TREES FOR PLANTING
IN THE CITY OF SHENANDOAH FULSHEAR**

LARGE TREES – EVERGREEN/SEMI-~~(EVERGREEN~~ (50' + HT.)

Common Name	Scientific Name	Recommended Size Min–Max	Recommended Uses
Southern Magnolia	<i>Magnolia grandiflora</i>	3"–6" Caliper	Accent
Loblolly Pine	<i>Pinus taeda</i>	3"–6" Caliper	Group-planting
Live Oak	<i>Quercus virginiana</i>	3"–6" Caliper	Group-planting

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MEDIUM TREES – EVERGREEN/SEMI-~~(EVERGREEN~~ (25' – 50' HT.)

Common Name	Scientific Name	Recommended Size Min–Max	Recommended Uses
Dahoon Holly	<i>Ilex cassine</i>	3"–4" Caliper	Accent
American Holly	<i>Ilex opaca</i>	3"–4" Caliper	Accent

East Palatka Holly	<i>Ilex x attenuata</i>	3"–4" Caliper	Accent
Savannah Holly	<i>Ilex opaca x attenuata</i>	3"–4" Caliper	Accent
Eastern Redcedar	<i>Juniperus virginiana</i>	3"–4" Caliper	Screen
Cherry Laurel	<i>Prunus caroliniana</i>	3"–4" Caliper	Screen

SMALL TREES – EVERGREEN/SEMI- (EVERGREEN (Under 25' HT.))

Common Name	Scientific Name	Recommended Size Min–Max Caliper	Recommended Uses
Yeuon-Holly	<i>Ilex yemitoria</i>	3"–4" Caliper	Screen
Southern Wax Myrtle	<i>Myrica cerifera</i>	3"–4" Caliper	Screen
Loquat	<i>Eriobotrya japonica</i>	3"–4" Caliper	Accent
Little Gem Magnolia	<i>Magnolia grandiflora</i> 'Little Gem'	3"–4" Caliper	Accent
Texas Mountain Laurel	<i>Sophora secundiflora</i>	3"–4" Caliper	Accent

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LARGE TREES – DECIDUOUS (DECIDUOUS (50' + HT.))

Common Name	Scientific Name	Recommended Size Min–Max Caliper	Recommended Uses
Pecan	<i>Carya illinoensis</i>	3"–4" Caliper	Street
Black Gum/Bald Cypress	<i>Nyssa sylvatica</i> <i>distichum</i>	3"–6" Caliper	Specimen, Groups
Sweetgum	<i>Liquidambar styraciflua</i>	3"–6" Caliper	Street, Fall color
Mexican Sycamore	<i>Platanus mexicana</i>	3"–6" Caliper	Plaza, Street, Parking lot
Southern Red Oak	<i>Quercus falcata</i>	3"–6" Caliper	Fall color, Street
Durand Oak/Water Oak	<i>Quercus durandii</i> <i>nigra</i>	3"–6" Caliper	Street, Parking lot
Swamp Chestnut Oak/Willow Oak	<i>Quercus michauxii</i> <i>phellos</i>	3"–6" Caliper	Plazas
Shumard Oak	<i>Quercus shumardi</i>	3"–5" Caliper	Groups, Fall color
Bur Oak	<i>Quercus macrocarpa</i>	3"–6" Caliper	Street
Winged Elm	<i>Ulmus alata</i>	3"–6" Caliper	Specimen
Chinquapin Oak	<i>Quercus muehlenbergii</i>	3"–6" Caliper	Group planting
Cedar Elm	<i>Ulmus crassifolia</i>	3"–6" Caliper	
Winged Elm			
Black Gum/Tupelo			
Chinese Pistache	<i>Pistacia chinensis</i>	3"–6" Caliper	Accent
Bald Cypress/Chinese Elm	<i>Taxodium distichum</i> <i>parvifolia</i>	3"–6" Caliper	Accent
Montezuma Cypress	<i>Taxodium mucronatum</i>	3"–6" Caliper	Accent
Drummond Red Maple	<i>Acer rubrum (drummondii)</i>	3"–6" Caliper	Accent
Green Ash	<i>Fraxinus pennsylvanica</i>	3"–6" Caliper	Accent
White Ash/White Ash	<i>Fraxinus americana</i>	3"–6" Caliper	Accent
White Oak	<i>Quercus alba</i>	3"–6" Caliper	Accent
Sawtooth Oak	<i>Quercus acutissima</i>	3"–6" Caliper	Accent
Laurel Oak	<i>Quercus laurifolia</i>	3"–6" Caliper	Accent
Overcup Oak	<i>Quercus lyrata</i>	3"–6" Caliper	Accent

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Nuttall Oak	<i>Quercus nuttallii</i>	3"–6" Caliper	Accent
Monterrey Oak	<i>Quercus polymorpha</i>	3"–6" Caliper	Accent
<u>Loquat Leaf Oak</u>	<i>Quercus rizophyllia</i>		
<u>Chinquapin Oak</u>	<i>Quercus muehlenbergii</i>		

MEDIUM TREES – DECIDUOUS (DECIDUOUS (25' – 50' HT.))

Common Name	Scientific Name	Recommended Size Min–Max	Recommended Uses
River Birch	<i>Betula nigra</i>	3"–6" Caliper	Accent
<u>Wholly</u>	<i>Bumelia lanuginosa</i>	3"–6" Caliper	Accent
<u>Bucket Brandford Pear</u>	<i>Calleryana</i>		
<u>Chinese Pistache</u>	<i>Pistacia chinensis</i>	3"–6" Caliper	Accent
<u>Aristocrat Flowering Pear</u>	<i>Calleryana 'Aristocrat'</i>		
<u>Golden-Rain Tree</u>	<i>Koelreutteria paniculata</i>	3"–6" Caliper	Accent

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SMALL TREES – DECIDUOUS (DECIDUOUS (Under 25' HT.))

Common Name	Scientific Name	Recommended Size Min–Max	Recommended Uses
Redbud	<i>Cercis canadensis</i>	3"–4" Caliper	Accent
Fringe Tree	<i>Chionanthus virginicus</i>	3"–4" Caliper	Accent
Dogwood	<i>Cornus florida</i>	3"–4" Caliper	Accent
Parsley Hawthorn	<i>Crataegus marshalli</i>	3"–4" Caliper	Accent
Grape Myrtle	<i>Lagerstroemia spp.</i>	6'–10' HT.	Grouping
Mexican Plum	<i>Prunus mexicana</i>	3"–4" Caliper	Accent
Purple Leaf Plum	<i>Prunus cerasifera</i>	3"–4" Caliper	Accent
Saucer Magnolia	<i>Magnolia soulangiana</i>	3"–4" Caliper	Accent
<u>Cambay Oak</u>	<i>Quercus cambii</i>		

SHRUBS—LARGE

Common Name	Scientific Name	Recommended Size Min–Max	Recommended Uses
Mediterranean Fan Palm	<i>Chamaerops humilis</i>	14 gal. box	Accent plant
Laurel-leaf Coccolus	<i>Coccolus laurifolius</i>	2 gal.–5 gal.	Group
Pampas Grass	<i>Cortaderia sellowii</i>	5 gal. B&B	Accent—groups
Waxleaf Ligustrum	<i>Ligustrum texanum</i>	30"–48" HT.	Screen
Banana Shrub	<i>Michelia figo</i>	5 gal. B&B	Accent
Oleander	<i>Nerium oleander</i>	2 gal.–5 gal.	Screen
Rodtip Photinia	<i>Photinia x fraseri</i>	5 gal.	Screen
Chinese Photinia	<i>Photinia serratifolia</i>	5 gal. B&B	Accent—screen
Pittosporum	<i>Pittosporum tobira</i>	2 gal. B&B	Screen
Yew Podocarpus	<i>Podocarpus macrophyllus</i>	3'–6' HT.	Accent—screen
Japanese Viburnum	<i>Viburnum japonicum</i>	5 gal.	Screen
Sandankwa	<i>Viburnum suspensum</i>	2 gal.–5 gal.	Screen
Suspensum			
Shiny Xylocma	<i>Xylocma congestum</i>	2 gal.–5 gal.	Screen
<u>Yaupon Holly</u>			

Waxmyrtle

SHRUBS—MEDIUM AND SMALL

Common Name	Scientific Name	Recommended Size Min—Max	Recommended Uses
Cleyera	<i>Cleyera japonica</i>	2 gal.—B&B	Accent, screen
Sage Cycad	<i>Cycas revoluta</i>	1 gal.—B&B	Accent
Dwarf Chinese Holly	<i>Ilex cornuta</i> ‘Dwarf Chinese’	1 gal.—5 gal.	Mass grouping, borders
Dwarf Yaupon Holly	<i>Ilex vomitoria</i> ‘Nana’	1 gal.—5 gal.	Mass grouping, borders
Primrose Jasmine	<i>Jasminum mesnyi</i>	1 gal.—B&B	Screening
Italian Jasmine	<i>Jasminum humile</i>	1 gal.—B&B	Mass grouping
Dwarf Grape Myrtle	<i>Lagerstroemia indica</i> ‘Petite Snow’	1 gal.—5 gal.	Mass grouping
Heavenly Bamboo	<i>Nandina domestica</i> ‘Compacta’	1 gal.	Mass grouping, borders
Dwarf Oleander	<i>Nerium oleander</i> ‘Dwarf Pink’	1 gal.—5 gal.	Protected areas
Dwarf Pittosporum	<i>Pittosporum tobira</i> ‘Wheeler’s Dwarf’	1 gal.—2 gal.	Mass grouping
Indian Hawthorne	<i>Rhaphiolepis indica</i>	1 gal.—2 gal.	Mass grouping, accent
Azalea	<i>Rhododendron</i> spp.	1 gal.—5 gal.	Mass grouping
Andorra-Creeping Juniper	<i>Juniperus horizontalis</i> ‘Andorra’	1 gal.—B&B	Mass grouping
Cast Iron Plant	<i>Aspidistra elatior</i>	1 gal.	FS

GROUND COVER AND VINES

Common Name	Scientific Name	Recommended Size Min—Max	Recommended Uses
Carpet Bugleweed	<i>Ajuga reptans</i> var.	6" pot	SS, groundcover
Sprenger Fern	<i>Asparagus sprengeri</i>	4" pot—1 gal.	FP
Madam Galen Trumpet Creeper	<i>Campsis tagliabuana</i>	1 gal.—5 gal.	Vine
Holly Fern	<i>Crytomium falcatum</i>	1 gal.	SS, groundcover
Fatsyhedera	<i>Fatsyhedera lizei</i> x	1 gal.—5 gal.	SS, accent
Aralia	<i>Fatsia japonica</i>	5 gal.	SS, accent
Carolina Jessamine	<i>Gelsemium sempervirens</i>	1 gal.	DS, vine
Algerian Ivy	<i>Hedera canariensis</i>	4" pot—1 gal.	SS, groundcover
Liriope	<i>Liriope muscari</i>	4" pot—1 gal.	SS, groundcover
Asian Jasmine	<i>Trachelospermum asiaticum</i>	4" pot—1 gal.	SS, groundcover
Dwarf Mondo grass	<i>Ophiopogon japonicus</i> ‘Nanaus’	4" pot—1 gal.	SS, groundcover

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AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF: January 24, 2017

AGENDA ITEM: J

DATE SUBMITTED: January 20, 2017

DEPARTMENT: Administration

PREPARED BY: CJ Snipes
City Manager

PRESENTER: CJ Snipes
City Manager

SUBJECT: Restricting Late Night Deliveries

ATTACHMENTS: Ordinance No. 2017-1238 Amending 2011-1041 Noise

EXPENDITURE REQUIRED: N/A

AMOUNT BUDGETED: N/A

ADDITIONAL APPROPRIATION REQUIRED: N/A

EXECUTIVE SUMMARY

We recently had complaints from residents of Downtown about late night deliveries to commercial properties abutting homes. While this was an isolated incident, it will become more prevalent as the City continues to grow and proximity between commercial properties becomes more commonplace. The attached ordinance attempts to provide a realistic parameter for deliveries to those commercial properties located within the Downtown District and abutting R-1 and R-2 zoned areas.

RECOMMENDATION

Staff recommends that City Council take action to approve the Amendment of Ordinance No. 2011-1041 providing for a Restriction on the times at which commercial deliveries may be made in certain areas of the City.

ORDINANCE NO. 2017-1238

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS AMENDING ORDINANCE NO. 2011-1041 SECTION 4.0, RELATING TO NUISANCE NOISE BY VEHICLES; PROVIDING FOR PARAGRAPH 5) RELATED TO LATE NIGHT DELIVERIES; PROVIDING FOR SEVERABILITY AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Fulshear may enforce Ordinances necessary to protect health, life and property and to preserve the good government, order and security of the municipality and its inhabitants; and

WHEREAS, the City Council of the City of Fulshear, Texas (the "City") has determined that the provisions of this ordinance are necessary to prevent nuisances and to protect the property values and tranquility of the City's residents; and

WHEREAS, the City has seen an increase in complaints related to late night deliveries resulting in the creation of noise nuisance; and

WHEREAS, the City Council has also taken into account the First Amendment rights of those persons who would engage in speech within the City and has determined that the measures set forth in this ordinance strike an appropriate and lawful balance protecting such First Amendment rights while protecting the City's citizens from nuisance.

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

SECTION 1.0

PURPOSE: The purpose of this Ordinance is to amend and revise Ordinance 2011-1041, Section 4.0 related to Nuisance Noise by Vehicles, providing for Paragraph 5) related to late night deliveries.

SECTION 2.0

AMDENDED: Section 4.0 is hereby amended to read:

- 5) *Deliveries made to commercial businesses located within the Downtown District and adjacent to any District zoned R-1 or R-2 are hereby prohibited between the hours of 11 PM and 5 AM.*

SECTION 3.0

SEVERABILITY CLAUSE: That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

SECTION 4.0

REPEALING CLAUSE: All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5.0

EFFECTIVE DATE: This Ordinance shall become effective immediately and punishable when published as required by law.

SECTION 6.0

PUBLICATION: The City Secretary is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

ORDINANCE NO. 2017-1239

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL INVESTIGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.06 of the Charter, the City Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; and

WHEREAS, the City Council desires to adopt additional rules of procedure governing such investigations;

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That the rules of procedure attached hereto as Exhibit A (the "Rules for Investigations") are hereby adopted, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 3. Severability. That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 4. Repeal. That all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. Effective date. That this Ordinance shall be effective and in full force immediately upon its adoption.

EXHIBIT A

RULES FOR INVESTIGATIONS BY
THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS

1. Application of Rules.

1.1 *Rules for Investigations.* These rules shall apply to investigations conducted by the City Council of the City of Fulshear pursuant to Section 3.06 of the Home-Rule Charter or other law ("City Council Investigations"), except when in conflict with the Home-Rule Charter or other law.

1.2 *Application of Other Rules.* The rules of procedure governing all meetings of the City Council adopted by the City Council pursuant to Section 3.09(d) of the Home-Rule Charter, and as may be amended from time to time by the City Council, shall apply to and govern all City Council Investigations, except when in conflict with these rules.

2. Investigative Process

2.1 *Commencement of Investigations.* A special meeting may be called for the purpose of holding an investigation and hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter being investigated.

2.2 *Notice of Investigation.* Prior to the commencement of an investigation or as soon as practicable thereafter, each officer or employee being investigated shall be given written notice of the commencement of the investigation, which shall specify the subject matter of the investigation; and, as soon as practicable after the conclusion of the investigation, each officer or employee investigated shall be given written notice of the conclusion of the investigation, including any findings.

2.3 *Hearings to be Open to the Public.* All hearings held in relation to an investigation shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act, Chapter 551, Government Code.

2.4 *Recusal from Proceedings.* A member of City Council who initiated or is the subject of the investigation shall not sit at the dais and shall not participate in the deliberation or voting related to the investigation.

2.5 *Right to Respond.* Any officer or employee who is subject to a hearing held in relation to an investigation shall be provided an opportunity to respond to the allegations and to present any relevant evidence, including but not limited to testimony from individuals.

2.6 *Witnesses.* The City Council may ask questions of any individual, and may exclude a witness from a hearing during the examination of another witness.

2.7 *Public Comment.* No public comment shall be allowed at a hearing held in relation to an investigation unless agreed to by a majority of City Council.

2.8 *Determination of Qualifications for Office.* A finding that any current or prospective officer has failed to meet or maintain the qualifications for the office held or sought, as applicable, requires a vote of two-thirds (2/3) of the City Council. A finding that a current officer has failed to meet or maintain the qualifications for the office then held shall include a declaration that such office is deemed vacant.

ORDINANCE NO. 2017- 1240

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, CREATING AN OFFENSE FOR DISOBEDIENCE OF A SUBPOENA OR SUBPOENA DUCES TECUM; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.06 of the City of Fulshear, Texas, Home Rule Charter (the "Charter"), the City Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; and

WHEREAS, the City Council finds and determines that, in order to properly enforce the authority of the City Council to subpoena witnesses and to require the production of evidence, it is necessary to create an offense for disobedience of a subpoena or a subpoena duces tecum issued by the City Council;

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That a person commits an offence if the person disobeys a subpoena or a subpoena duces tecum issued by the City Council of the City of Fulshear Texas.

Section 3. Penalty. Any person who violates or causes, allows, or permits another to violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or, in the case of a violation of a provision of this Ordinance that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, a fine of not more than Two Thousand Dollars (\$2,000.00). Each occurrence of any such violation of this Ordinance shall constitute a separate offense. Each day on which any such violation of this Ordinance occurs shall constitute a separate offense.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a

ORDINANCE NO. 2017-1241

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, ADOPTING
RULES OF PROCEDURE FOR CITY COUNCIL MEETINGS;
PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND
PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.09(d) of the City of Fulshear, Texas, Home-Rule Charter, the City Council is required to adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council;

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That the rules of procedure attached hereto as Exhibit A (the "Rules of Procedure") are hereby adopted, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 3. That Roberts Rules of Order, Newly Revised, 2nd Edition, are hereby adopted in accordance with the Rules of Procedure, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Repeal. That all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Effective date. That this Ordinance shall be effective and in full force immediately upon its adoption.

PASSED, APPROVED, and ADOPTED this, the ____ day of _____, 2017.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

EXHIBIT A

**RULES OF PROCEDURE FOR MEETINGS OF
THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS**

1. Authority

1.1 *Home-Rule Charter.* The Home-Rule Charter of the City of Fulshear, Texas ("Home-Rule Charter" or "HRC") provides that the City Council of the City of Fulshear, Texas ("City Council") shall adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council. (HRC 3.09(d))

2. Application of Rules

2.1 *Rules of Procedure.* These rules shall apply to all City Council workshops, regular and special meetings, and public hearings, except when in conflict with the Home-Rule Charter or other law.

2.2 *Rules of Order.* The most recent edition of Robert's Rules of Order, Newly Revised, adopted by City Council shall govern the proceedings of the City Council in all cases, unless they are in conflict with these rules.

2.3 *Parliamentarian.* The city attorney shall be the City Council's parliamentarian.

2.4 *Motion to Enforce.* Any member of City Council may move to require enforcement of these rules; and, upon passage of such motion, the presiding officer shall be required to act.

3. Amendment and Suspension of Rules

3.1 *Amendment to Rules.* These rules may be amended, or new rules adopted, by a majority vote of the City Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior City Council meeting.

3.2 *Suspension of Rules.* As may be allowed by law, any provision of these rules not governed by the Home-Rule Charter or other law may be temporarily suspended by a two-thirds vote of the full City Council. The suspension shall remain in effect until the meeting in which the suspension occurs is adjourned. The vote on any such suspension shall be notated in the minutes.

4. Meetings

4.1 *Quorum.* A majority of the number of council members is fixed by the Home-Rule Charter (3.09 (c)) No meeting of the City Council shall be conducted without a quorum present.

4.2 *Regular Meetings.* The City Council shall meet at the city hall located at, 30603 FM 1093, Fulshear, Texas, or at another location as stated in the agenda for the meeting, in regular meetings at 7:00 p.m. on the third Tuesday of each month, except when such third Tuesday shall be a legal holiday or when such regular meeting is canceled or rescheduled by the City Council. (HRC 3.09(a))

4.3 *Workshops.* The city manager or his designee may call workshops on the city manager's or designee's own motion, and shall call workshops upon written request of the mayor, or three members of City Council. No official action may be taken at any workshop.

4.4 *Public Hearings.* A special meeting may be called for the purpose of holding a public hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter subject to the public hearing. A public hearing may be placed on the agenda of any other meeting in the manner provided for by the Home-Rule Charter. (HRC 3.09)

5. Agendas

5.1 *Agenda Required.* The city manager or his designee shall be responsible for creating an agenda for each meeting of the City Council in the manner provided for by the Home-Rule Charter and shall place items on the agenda pursuant to section 3.09 (e) of the Home Rule Charter.

6. Public Comment

6.1 *Public Comment at Regular and Special Meetings.* In accordance with Section 3.09(d) of the Home-Rule Charter, public comment shall be provided for at all regular meetings, and may be provided for at any special meeting.

7.2 *Request Required.* Each person desiring to speak at a meeting for which public comment is provided must deliver to the presiding officer, prior to the commencement of such meeting, a written public comment request, which shall state the person's name.

7.3 *Public Comment on Items.* Public comment may, at the discretion of the presiding officer, be heard either immediately prior to the consideration of the item by City Council or during the public comment section of the agenda, if any.

7.4 *Comment Duration.* Public comments shall be limited to three (3) minutes per speaker at any given meeting. The presiding officer or his designee shall be timekeeper for purposes of enforcing this rule. No speaker may yield time to any other speaker. This rule shall not apply to a public hearing.

8. Deliberation

8.1 *Role of the Presiding Officer.* The presiding officer shall be the Chair at all meetings of the City Council. The presiding officer shall assist the City Council in focusing agenda discussions and deliberations, and shall control the debate and the order of speakers. The presiding officer shall have the authority to prevent the misuse of motions, the abuse of any privilege, or the obstruction of the business of the City Council by ruling any such matter out of order, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

8.2 *Deliberation Before Motion.* Deliberation may occur prior to any motion on a matter before the City Council. Any member of City Council may make motions.

8.3 *Obtaining the Floor.* Any member of City Council wishing to speak must first obtain the floor by being recognized by the presiding officer. The presiding officer shall recognize any council member who seeks the floor at the earliest appropriate opportunity to do so, subject to the presiding officer's authority to control the order of speakers.

8.4 *Questions.* A council member holding the floor may request the presiding officer to address a question to another council member and that council member may respond while the floor is still held by the council member asking the question. The presiding officer may comply with such request at his or her discretion. The council member to whom the question is addressed may answer the question at his or her discretion.

8.5 *Limitations on Deliberation.* Members of City Council shall limit their comments and questions to the subject matter or motion currently being considered by the City Council. Members of City Council shall govern themselves as to the length of their comments or presentations.

9. Motions

9.1 *Motion to Suspend the Rules.* A motion to suspend these rules requires a two-thirds (2/3) vote of the City Council and, upon passage, shall suspend the rule stated in the motion.

10. Voting

10.1 *Vote Required for Passage.* In accordance with Section 3.09(c) of the Home-Rule Charter, and unless otherwise required by the Home-Rule Charter, these rules, or other law, each vote, order, decision, or other action taken by the City Council shall require the affirmative vote of a majority of the full City Council, provided that any abstention not required by law shall be counted as a vote against the matter under consideration, and provided that the mayor shall have the right to cast the deciding vote in the case of a tie, but shall not otherwise have any right, power, or authority to vote against or veto any action taken by the City Council.

10.2 *Vote on the Consent Agenda.* All items set out in the Consent Agenda shall be deemed passed upon the passage of a motion to approve the Consent Agenda, provided any member of City Council may request at any time prior to the passage of such motion that one or more items be removed from the Consent Agenda to be considered and voted on separately. The remaining Consent Agenda shall immediately be voted on. Immediately after a vote on the remaining Consent Agenda, each item removed from the Consent Agenda shall be considered and voted on separately.

10.3 *Roll Call Vote.* Upon request of any member of City Council, a vote shall be taken by roll call in random order and the results notated in minutes.

10.4 *Timing for Vote.* Subject to a motion to call the question, no vote shall be taken on any matter until after an adequate time for deliberation.

10.5 *Vote of City Council.* For purposes of these rules, a vote required of City Council for passage of a matter shall mean a vote of all members of the full City Council, regardless of the number of members present at the meeting at which the matter is presented for passage. Additionally, whenever the minimum number of votes required for passage of a matter results in a fraction, the minimum required shall be the lowest integer exceeding such fraction. For example, the following apply to a seven (7) member City Council:

- (a) a majority is four (4) members; and
- (b) a two-thirds (2/3) majority is five (5) members.

Kimberly Kopecky

From: CJ Snipes
Sent: Friday, January 20, 2017 10:35 AM
To: Kimberly Kopecky; Diana Offord
Subject: FW: Agenda Item Council Meeting Rules
Attachments: future agenda items and Rules of procedure; Meeting Rules; January 19 2016 Ordinance adopting rules of procedure for meetings excluding investigat....docx

CJ Snipes, MPA
City Manager
City of Fulshear, Texas
30603 FM 1093 West/ PO Box 279
Fulshear, Texas 77441
Phone: 281-346-1796
Cell: 281-202-5392
Email: cjsnipes@fulsheartexas.gov

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From: Grady Randle [mailto:grady@jgradyrandlepc.com]
Sent: Thursday, January 19, 2017 2:53 PM
To: City Council <City.Council@fulsheartexas.gov>; CJ Snipes <cjsnipes@fulsheartexas.gov>
Cc: Byron Brown <byron@jgradyrandlepc.com>; Tim Kirwin <tim@jgradyrandlepc.com>
Subject: Agenda Item Council Meeting Rules

Mayor and Council

We first started working on adopting council meeting rules last June. You have reviewed various versions we drafted for Fulshear. Because we have a new councilmember I am attaching two emails that pretty well sums up the process. One email has links to Dropbox where I have filed 14 different sets of rules from other cities as well as Fulshear.

Beside the email attachment, I am attaching one last draft version I did today that could work for Fulshear. If you want this on the agenda you now have all the information.

Comments are welcome.

J. Grady Randle | Randle Law Office Ltd., L.L.P. | ☎ (281) 657 2000

820 Gessner, Suite 1570 | Memorial City Plaza II | Houston, TX 77024

[Email](#) | [Bio](#) | [Website](#) | [V-Card](#)

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Kimberly Kopecky

From: Grady Randle <grady@jgradyrandlepc.com>
Sent: Wednesday, July 13, 2016 12:35 PM
To: City Council; Jeff Roberts
Cc: CJ Snipes; Michael Ross; Byron Brown; Drew Shirley; Tim Kirwin
Subject: future agenda items and Rules of procedure
Attachments: Rules of Procedure and Ethics Code; FW: [5105-2] Rules of Procedure; lcisd board procedures.pdf

Mayor and Council

I made a rough list of future agenda items for the city managers that I sent out July 7th that we all have been working on. In that vein attached is the original rules of procedure that was sent to you for the June meeting. I have verbally asked 2 of you after the June council meeting to give me feedback so that I can draft a set of rules that you like and would approve. I also sent out an email to the entire council on June 23rd soliciting feedback. Other than a lunch meeting with the Mayor and a phone call from Councilwoman Ridge I have received no feedback.

These rules were previously adopted by another city RLO represents after a 20 minute debate. They have been vetted and tested. However if it is not to your liking then please communicate that to me. I cannot efficiently and effectively draft for you without your input. As a comparison I have attached four pages of procedure rules from LCISD (they have a much longer "legal" section under their procedures that codifies the Education Code and Constitutions). These will not work for Fulshear because the Charter empowers the Council to do its own investigation and those rules were blended in with your proposed meeting rules to have one set of meeting rules. Also an ordinance was proposed to create a violation for not complying with a council subpoena that has yet to be acted on. If you want us to further split out your regular meeting rules from your investigative meeting rules we can.

Do not violate the Open Meetings Act trying to decide whether this should go on the agenda or how the rules should look. Talk to the managers about whether this goes on the agenda but talk to me and the managers about the content of the rules.

J. Grady Randle | Randle Law Office Ltd., L.L.P | ☎ (281) 657 2000

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From: Grady Randle
Sent: Thursday, July 07, 2016 2:47 PM
To: CJ Snipes <cjsnipes@fulsheartexas.gov>
Cc: 'Michael Ross' <mross@fulsheartexas.gov>
Subject: future agenda items

July agenda items from my list:

1. A recurring item for future agenda items by Council (motion and second only, no discussion)
2. Limited purpose annexations for Waller County RID
3. Rules of Procedure
4. Districting advisors for Council Districts
5. Hotel tax
6. CCR dedications
7. Ethics
8. ETJ permitting
9. CJ contract
10. Sex offender registration ordinance
11. Water meter antenna right of entry
12. Penalty ordinance for failure to obey council subpoena

J. Grady Randle | Randle Law Office Ltd., L.L.P | ☎ (281) 657 2000

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Kimberly Kopecky

From: Grady Randle <grady@jgradyrandlepc.com>
Sent: Thursday, June 23, 2016 12:04 PM
To: Jeff Roberts
Cc: City Council; CJ Snipes; Michael Ross
Subject: Rules of Procedure and Ethics Code

Mayor and Council

In an effort to speed up the workshops and meetings if you will send me your thoughts, comments and concerns before the meeting I can integrate them into the document which will make the meetings go smother. Erin and James I saw you had several notes please feel free to call or email me.

As to the alleged ambiguity I have done a quick review of the Charter and confirmed with the minutes that the mayor is empowered to vote only in the event of a tie, defined the composition of council as not including the mayor and what "full" means. What other city's charter may say and how other cities operate under their charter is not relevant to how Flusher operates under its Charter. Since after 12 open charter commission meetings and two presentations to you as City Council there remain questions about the charter, I have asked one of my lawyers to compose a complete and thorough legal memorandum on the proper construction of the Charter. If you will recall, you as the Council selected and engaged an "expert charter review attorney" for a second opinion. Mr. Zech did not call this out as an ambiguity. I assume you still believe his review was not flawed; therefore the only other conclusion is that there is no ambiguity.

Erin you mentioned you had talked with another lawyer about this issue. What was his name? I would like to call him to understand exactly what his advice was and what information he was basing it on. It is very hard to "shadow box" a "ghost lawyer" and Council can benefit from a good and thorough legal debate.

As your chief legal officer for the city, I invite any council member to call me with any questions you may have concerning the Charter or any other legal issue.

I look forward to your emails and phone calls as we implement the Charter together.

J. Grady Randle | Randle Law Office Ltd., L.L.P. | ☎ (281) 657 2000

820 Gessner, Suite 1570 | Memorial City Plaza II | Houston, TX 77024

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Kimberly Kopecky

From: Grady Randle <grady@jgradyrandlepc.com>
Sent: Monday, June 06, 2016 3:05 PM
To: Jeff Roberts
Cc: CJ Snipes; Michael Ross; Byron Brown
Subject: FW: [5105-2] Rules of Procedure
Attachments: Resolution adopting rules of procedure.docx; Ordinance Creating an Offense for Disobedience of a Subpoena.docx

Mayor

Pursuant to the Charter attached is a resolution and proposed council rules of procedure as well as an ordinance creating a penalty for failure to comply with a city council subpoena. These are presented to you for your and council consideration at the next meeting if you so choose.

J. Grady Randle | Randle Law Office Ltd., L.L.P | ☎ (281) 657 2000

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From: Byron Brown
Sent: Friday, May 27, 2016 5:34 PM
To: Grady Randle <grady@jgradyrandlepc.com>
Subject: [5105-2] Rules of Procedure

Grady,

Attached for your review and approval are the draft rules of procedure for Fulshear City Council meetings and investigations.

Also attached is a draft ordinance creating an offense for disobeying a subpoena.

Thank you,

Byron L. Brown

Randle Law Office Ltd., L.L.P.
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A RESOLUTION OF THE CITY OF FULSHEAR, TEXAS, ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL MEETINGS AND INVESTIGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.06 of the City of Fulshear, Texas, Home Rule Charter (the "Charter"), the City Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; and

WHEREAS, pursuant to Section 3.09(d) of the Charter, the City Council is required to adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council;

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

Section 1. That all of the facts recited in the preamble to this resolution are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That the rules of procedure attached hereto as Exhibit A (the "Rules of Procedure") are hereby adopted, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 3. That Roberts Rules of Order, Newly Revised, 2nd Edition, are hereby adopted in accordance with the Rules of Procedure, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this Resolution or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Repeal. That all other resolutions or parts of resolutions inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Effective date. That this Resolution shall be effective and in full force immediately upon its adoption.

PASSED, APPROVED, and ADOPTED this, the ____ day of _____, 2016.7

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

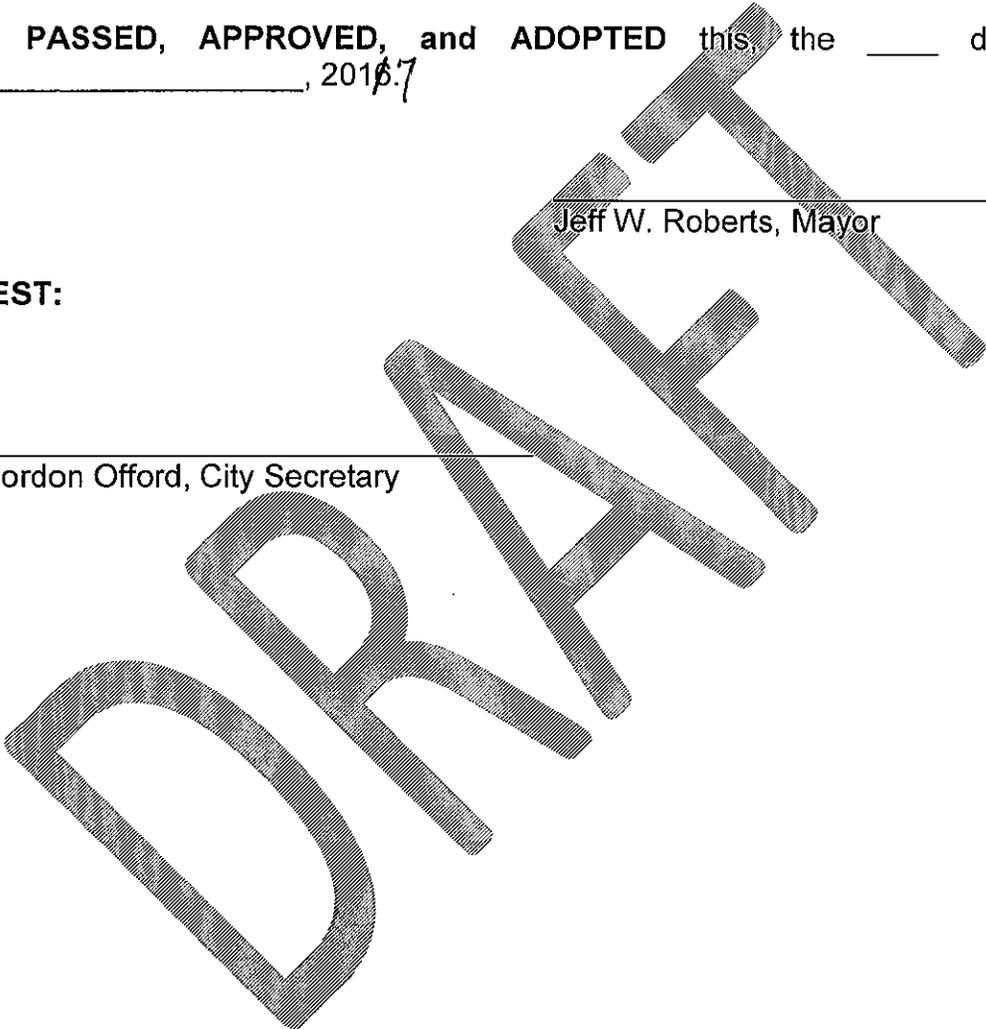


Exhibit A

RULES OF PROCEDURE FOR MEETINGS OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS

1. Authority

1.1 *Home-Rule Charter.* The Home-Rule Charter of the City of Fulshear, Texas ("Home-Rule Charter") provides that the City Council of the City of Fulshear, Texas ("City Council") shall adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council. The following set of rules shall be in effect upon their adoption by the City Council and until they are amended or new rules are adopted in the manner provided by these rules.

2. Application of Rules

2.1 *Rules of Procedure.* These rules shall apply to all City Council workshops, regular and special meetings, investigations, and public hearings, except when in conflict with the Home-Rule Charter or other law.

2.2 *Rules of Order.* The most recent edition of Robert's Rules of Order, Newly Revised, adopted by City Council shall govern the proceedings of the City Council in all cases, unless they are in conflict with these rules.

2.3 *Questions of Order.* All questions of order shall be decided by the presiding officer, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

2.4 *Parliamentarian.* The city attorney shall be the City Council's parliamentarian.

2.5 *Motion to Enforce.* Any member of City Council may move to require enforcement of these rules; and, upon passage of such motion, the presiding officer shall be required to act.

2.6 *Non-observance of Rules.* Rules adopted to expedite and facilitate the transaction of the business of the City Council in an orderly fashion shall be deemed to be procedural only, and the failure to strictly observe any such rules shall not affect the jurisdiction of, or invalidate any action taken by, the City Council.

3. Amendment and Suspension of Rules

3.1 *Amendment to Rules.* These rules may be amended, or new rules adopted, by a majority vote of the City Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior City Council meeting.

3.2 *Suspension of Rules.* As may be allowed by law, any provision of these rules not governed by the Home-Rule Charter or other law may be temporarily suspended by a two-thirds vote of the City Council. The suspension shall remain in effect until the meeting in which the suspension occurs is adjourned. The vote on any such suspension shall be notated in the minutes.

4. Meetings

4.1 *Quorum.* A majority of the number of council members fixed by the Home-Rule Charter and a presiding mayor or an additional council member properly designated and acting as mayor pro tempore shall constitute a quorum. No meeting of the City Council shall be conducted without a quorum present.

4.2 *Regular Meetings.* The City Council shall meet at the city hall located at, 30603 FM 1093, Fulshear, Texas, or at another location, in regular meetings at 7:00 p.m. on the third Tuesday of each month, except when such third Tuesday shall be a legal holiday or when such regular meeting is canceled or rescheduled by the City Council.

4.3 *Special Meetings.* In addition to any special meeting provided for by the Home-Rule Charter or other law, the mayor may call special meetings on the mayor's own motion, and shall call a special meeting upon written request of three members of City Council, or of the city manager.

4.4 *Workshops.* The city manager or his designee may call workshops on the city manager's or designee's own motion, and shall call workshops upon written request of the mayor, or three members of City Council. No official action may be taken at any workshop.

4.5 *Investigations.* A special meeting may be called for the purpose of holding an investigation and hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter being investigated.

4.6 *Public Hearings.* A special meeting may be called for the purpose of holding a public hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter subject to the public hearing. A public hearing may be placed on the agenda of any other meeting in the manner provided for by the Home-Rule Charter.

4.7 *Concurrent and Consecutive Meetings.* Except as may otherwise be prescribed by the Home-Rule Charter or other law, one or more regular meetings,

special meetings, workshops, investigations, public hearings, or any combination thereof may be held concurrently or consecutively.

5. Agendas

5.1 *Agenda Required.* The city manager or his designee shall be responsible for creating an agenda for each meeting of the City Council in the manner provided for by the Home-Rule Charter.

5.2 *Notice Required.* The city manager or his designee shall be responsible for publishing proper notice of each meeting of the City Council in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

5.3 *Consent Agenda.* An agenda for a regular or special meeting may have as part of the agenda a portion labeled "Consent Agenda," which may consist of routine, non-controversial items that require no more than a majority vote for passage, provided no item required to be considered or acted upon individually by the Home-Rule Charter or other law shall appear on such Consent Agenda.

6. Minutes and Certified Agenda

6.1 *Minutes.* The city manager or his designee shall be responsible for preparing and keeping minutes of each meeting of the City Council open to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

6.2 *Certified Agenda.* The city manager, or the presiding officer if the city manager is excluded, shall be responsible for keeping a certified agenda of each meeting of the City Council closed to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code. The presiding officer shall certify that the certified agenda is a true and correct record of the proceedings.

7. Public Comment

7.1 *Public Comment at Regular and Special Meetings.* In accordance with Section 3.09(d) of the Home-Rule Charter, public comment shall be provided for at all regular meetings, and may be provided for at any special meeting.

7.2 *Notice Required.* There shall be no public comment at any meeting unless otherwise provided for in the notice given for such meeting.

7.3 *Request Required.* Each person desiring to speak at a meeting for which public comment is provided must deliver to the presiding officer, prior to the commencement of such meeting, a written public comment request, which shall state the person's name, the agenda item or non-agenda item to be made the subject of the person's comments, and whether the person's comments will be for or against such

item. Delivery of a public comment request as required by this rule does not entitle a person to speak.

7.4 *Public Comment on Agenda Items.* For agenda items made the subject of public comment, such public comment may, at the discretion of the presiding officer, be heard either immediately prior to the consideration of the item by City Council or during the public comment section of the agenda, if any.

7.5 *Public Comment on Non-agenda Items.* For non-agenda items made the subject of public comment, the order and time of public comment shall be determined by the presiding officer. Any deliberation of or decision about a non-agenda item shall be limited to a proposal to place the item on the agenda for a subsequent meeting.

7.6 *Order and Number of Speakers.* For each item made the subject of public comment, the presiding officer shall recognize speakers in the order of the requests received, provided that the number of persons allowed to speak for or against any item made the subject of public comment shall not exceed five persons for and five persons against any such item at a given meeting. The limitation on the number of speakers provided by this rule shall not apply to a public hearing.

7.7 *Comment Duration.* Public comments shall be limited to three (3) minutes per speaker at any given meeting. The presiding officer or his designee shall be timekeeper for purposes of enforcing this rule. No speaker may yield time to any other speaker. This rule shall not apply to a public hearing.

8. Deliberation

8.1 *Role of the Presiding Officer.* The presiding officer shall be the Chair at all meetings of the City Council. The presiding officer shall assist the City Council in focusing agenda discussions and deliberations, and shall control the debate and the order of speakers. The presiding officer shall have the authority to prevent the misuse of motions, the abuse of any privilege, or the obstruction of the business of the City Council by ruling any such matter out of order, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

8.2 *Deliberation Before Motion.* Deliberation may occur prior to any motion on a matter before the City Council. Any member of City Council may make motions. Any member of City Council other than the person offering the motion may second a motion.

8.3 *Obtaining the Floor.* Any member of City Council wishing to speak must first obtain the floor by being recognized by the presiding officer. The presiding officer shall recognize any council member who seeks the floor at the earliest appropriate

opportunity to do so, subject to the presiding officer's authority to control the order of speakers.

8.4 *Questions.* A council member holding the floor may request the presiding officer to address a question to another council member and that council member may respond while the floor is still held by the council member asking the question. The presiding officer may comply with such request at his or her discretion. The council member to whom the question is addressed may answer the question at his or her discretion.

8.5 *Limitations on Deliberation.* Members of City Council shall limit their comments and questions to the subject matter or motion currently being considered by the City Council. Members of City Council shall govern themselves as to the length of their comments or presentations.

9. Motions

9.1 *Purpose of Section.* This section is simply a guide to those motions that may be the most useful in the orderly consideration of City business before the City Council and shall in no way limit the motions available to the members of City Council.

9.2 *Motion to Postpone Indefinitely.* A motion to postpone indefinitely requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall end consideration of the item before the City Council with no further action to be taken, provided that the item may be placed on the agenda of a subsequent meeting of the City Council in accordance with the Home-Rule Charter or other law, except that the item may not be placed on such agenda by a motion at the same meeting at which the item was postponed indefinitely.

9.3 *Motion to Postpone to a Date and Time Certain.* A motion to postpone to a date and time certain requires a majority vote and, upon passage, shall postpone consideration of the item before the City Council until the date and time stated in the motion.

9.4 *Motion to Refer to a Committee.* A motion to refer to a committee requires a majority vote and, upon passage, shall refer the item before the City Council to the committee stated in the motion.

9.5 *Motion to Amend.* A motion to amend requires a majority vote and, upon passage, amends the underlying motion to the extent stated in the motion. Action shall be taken on a motion to amend prior to any further action being taken on the underlying motion. A motion to amend a motion to amend shall be in order, but a motion to amend a motion to amend a motion to amend shall be out of order. A member of the City

Council who seconded a motion amended by a motion to amend shall be allowed to withdraw the second.

9.6 *Motion to Lay on the Table.* A motion to lay on the table requires a majority vote and, upon passage, shall set aside the item before the City Council until the City Council has considered one or more agenda items stated in the motion, which item or items shall be considered immediately after passage of such motion.

9.7 *Motion to Call the Question.* A motion to call the question requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall immediately end consideration and deliberation of the item before the City Council and the presiding officer shall take the vote on the item immediately after passage of such motion.

9.8 *Motion to Appeal from the Chair.* A motion to appeal from the chair requires a majority vote and, upon passage, shall overrule the ruling of the presiding officer stated in the motion.

9.9 *Motion to Suspend the Rules.* A motion to suspend the rules requires a two-thirds (2/3) vote of the City Council and, upon passage, shall suspend the rule stated in the motion.

9.10 *Motion to Recess.* A motion to recess requires a majority vote and, upon passage, shall require an intermission in the proceedings of the City Council for the duration stated in the motion and as may be allowed by law.

9.11 *Motion to Adjourn.* A motion to adjourn requires a majority vote and, upon passage, shall immediately end the meeting of the City Council.

10. Voting

10.1 *Vote Required for Passage.* In accordance with Section 3.09(c) of the Home-Rule Charter, and unless otherwise required by the Home-Rule Charter, these rules, or other law, each vote, order, decision, or other action taken by the City Council shall require the affirmative vote of a majority of the full City Council, provided that any abstention not required by law shall be counted as a vote against the matter under consideration, and provided that the mayor shall have the right to cast the deciding vote in the case of a tie, but shall not otherwise have any right, power, or authority to vote against or veto any action taken by the City Council.

10.2 *Vote on the Consent Agenda.* All items set out in the Consent Agenda shall be deemed passed upon the passage of a motion to approve the Consent Agenda, provided any member of City Council may request at any time prior to the passage of such motion that one or more items be removed from the Consent Agenda to be considered and voted on separately. The remaining Consent Agenda shall immediately

be voted on. Immediately after a vote on the remaining Consent Agenda, each item removed from the Consent Agenda shall be considered and voted on separately.

10.3 *Roll Call Vote.* Upon request of any member of City Council, a vote shall be taken by roll call in random order and the results notated in minutes.

10.4 *Timing for Vote.* Subject to a motion to call the question, no vote shall be taken on any matter until after an adequate time for deliberation.

10.5 *Vote of City Council.* For purposes of these rules, a vote required of City Council for passage of a matter shall mean a vote of all members of City Council, regardless of the number of members present at the meeting at which the matter is presented for passage. Additionally, whenever the minimum number of votes required for passage of a matter results in a fraction, the minimum required shall be the lowest integer exceeding such fraction. For example, the following apply to a seven (7) member City Council:

- (a) a majority is four (4) members; and
- (b) a two-thirds (2/3) majority is five (5) members.

11. Investigations

11.1 *Applicability.* In addition to the foregoing rules, the following rules shall apply to investigations conducted by the City Council pursuant to Section 3.06(a) of the Home-Rule Charter.

11.2 *Notice of Investigation.* Prior to the commencement of an investigation or as soon as practicable thereafter, each officer or employee being investigated shall be given written notice of the commencement of the investigation, which shall specify the subject matter of the investigation; and, as soon as practicable after the conclusion of the investigation, each officer or employee investigated shall be given written notice of the conclusion of the investigation, including any findings.

11.3 *Hearings to be Open to the Public.* All hearings held in relation to an investigation shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act, Chapter 551, Government Code.

11.4 *Recusal from Proceedings.* A member of City Council who initiated or is the subject of the investigation shall not sit at the dais and shall not participate in the deliberation or voting related to the investigation.

11.5 *Right to Respond.* Any officer or employee who is subject to a hearing held in relation to an investigation shall be provided an opportunity to respond to the

allegations and to present any relevant evidence, including but not limited to testimony from individuals.

11.6 *Witnesses.* The City Council may ask questions of any individual, and may exclude a witness from a hearing during the examination of another witness.

11.7 *Public Comment.* No public comment shall be allowed at a hearing held in relation to an investigation unless agreed to by a majority of City Council.

11.8 *Determination of Qualifications for Office.* A finding that any current or prospective officer has failed to meet or maintain the qualifications for the office held or sought, as applicable, requires a vote of two-thirds (2/3) of the City Council. A finding that a current officer has failed to meet or maintain the qualifications for the office then held shall include a declaration that such office is deemed vacant.

DRAFT

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, CREATING AN OFFENSE FOR DISOBEDIENCE OF A SUBPOENA OR SUBPOENA DUCES TECUM; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.06 of the City of Fulshear, Texas, Home Rule Charter (the "Charter"), the City Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; and

WHEREAS, the City Council finds and determines that, in order to properly enforce the authority of the City Council to subpoena witnesses and to require the production of evidence, it is necessary to create an offense for disobedience of a subpoena or a subpoena duces tecum issued by the City Council; and

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That a person commits an offense if the person disobeys a subpoena or a subpoena duces tecum issued by the City Council of the City of Fulshear Texas.

Section 3. Penalty. Any person who violates or causes, allows, or permits another to violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or, in the case of a violation of a provision of this Ordinance that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, a fine of not more than Two Thousand Dollars (\$2,000.00). Each occurrence of any such violation of this Ordinance shall constitute a separate offense. Each day on which any such violation of this Ordinance occurs shall constitute a separate offense.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a

whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Repeal. That all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Effective date. That this Ordinance shall be effective and in full force when published as required by law.

PASSED, APPROVED, and ADOPTED this, the _____ day of _____, 2016.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

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BOARD MEETINGS

BE
(LOCAL)

MEETING PLACE AND TIME	The notice for a Board meeting shall reflect the date, time, and location of the meeting.
REGULAR MEETINGS	Regular meetings of the Board shall normally be held on the third Thursday of each month at 7:00 p.m. When determined necessary and for the convenience of Board members, the Board President may change the date, time, or location of a regular meeting with proper notice.
SPECIAL OR EMERGENCY MEETINGS	<p>The Board President shall call special meetings at the Board President's discretion or on request by two members of the Board.</p> <p>The Board President shall call an emergency meeting when it is determined by the Board President or two members of the Board that an emergency or urgent public necessity, as defined by law, warrants the meeting.</p>
AGENDA DEADLINE	The deadline for submitting items for inclusion on the agenda is the sixth calendar day before regular meetings and the sixth calendar day before special meetings.
PREPARATION	<p>In consultation with the Board President, the Superintendent shall prepare the agenda for all Board meetings. Any Board member may request that a subject be included on the agenda for a meeting, and the Superintendent shall include on the preliminary agenda of the meeting all topics that have been timely submitted by a Board member.</p> <p>Before the official agenda is finalized for any meeting, the Superintendent shall consult the Board President to ensure that the agenda and the topics included meet with the Board President's approval. In reviewing the preliminary agenda, the Board President shall ensure that any topics the Board or individual Board members have requested to be addressed are either on that agenda or scheduled for deliberation at an appropriate time in the near future. The Board President shall place an item on the agenda if the item is requested by three Board members. The Board President shall not have authority to remove from the agenda a subject requested by a Board member without that Board member's specific authorization.</p>
NOTICE TO MEMBERS	Members of the Board shall be given notice of regular and special meetings at least 72 hours prior to the scheduled time of the meeting and at least two hours prior to the time of an emergency meeting.
CLOSED MEETING	Notice of all meetings shall provide for the possibility of a closed meeting during an open meeting, in accordance with law.

BOARD MEETINGS

BE
(LOCAL)

- The Board may conduct a closed meeting when the agenda subject is one that may properly be discussed in closed meeting. [See BEC]
- ORDER OF BUSINESS The order of business for regular Board meetings shall be as set out in the agenda accompanying the notice of the meeting. At the meeting, the order in which posted agenda items are taken may be changed by consensus of Board members.
- RULES OF ORDER The Board shall observe the parliamentary procedures as found in *Robert's Rules of Order, Newly Revised*, except as otherwise provided in Board procedural rules or by law. Procedural rules may be suspended at any Board meeting by majority vote of the members present.
- VOTING Voting shall be by voice vote or show of hands, as directed by the Board President. Any member may abstain from voting, and a member's vote or failure to vote shall be recorded upon that member's request. [See BDAA(LOCAL) for the Board President's voting rights]
- CONSENT AGENDA The Board shall determine items, if any, that qualify to be placed on the consent agenda. A consent agenda shall include these items, determined by the Board, grouped together under one action item. All such items shall be acted upon by one vote without separate discussion. The remaining items shall be adopted under a single motion and vote.
- MINUTES Board action shall be carefully recorded by the Board Secretary or clerk; when approved, these minutes shall serve as the legal record of official Board actions. The written minutes of all meetings shall be approved by vote of the Board and signed by the Board President and the Board Secretary.
- The official minutes of the Board shall be retained on file in the office of the Superintendent and shall be available for examination during regular office hours.
- DISCUSSIONS AND LIMITATION Discussions shall be addressed to the Board President and then the entire membership. Discussion shall be directed solely to the business currently under deliberation, and the Board President shall halt discussion that does not apply to the business before the Board.
- The Board President shall also halt discussion if the Board has agreed to a time limitation for discussion of an item, and that time limit has expired. Aside from these limitations, the Board President shall not interfere with debate so long as members wish to address themselves to an item under consideration.

LIMIT ON PARTICIPATION	Audience participation at a Board meeting is limited to the public comment portion of the meeting designated for that purpose. At all other times during a Board meeting, the audience shall not enter into discussion or debate on matters being considered by the Board, unless requested by the presiding officer.
PUBLIC COMMENT	<p>At regular and special Board meetings, except workshops and hearings other than public hearings, the Board shall allot time to hear persons who desire to make comments to the Board. Persons who wish to participate in this portion of the meeting shall sign up with the presiding officer or designee before the meeting begins and shall indicate the topic about which they wish to speak.</p> <p>No presentation shall exceed five minutes. Delegations of more than five persons shall appoint one person to present their views before the Board.</p>
BOARD'S RESPONSE	<p>Specific factual information or recitation of existing policy may be furnished in response to inquiries, but the Board shall not deliberate or decide regarding any subject that is not included on the agenda posted with notice of the meeting.</p> <p>The Superintendent may call upon District staff to respond to any question or request from the Board.</p>
COMPLAINTS AND CONCERNS	<p>The presiding officer or designee shall determine whether a person addressing the Board has attempted to solve a matter administratively through resolution channels established by policy. If not, the person shall be referred to the appropriate policy (see list below) to seek resolution:</p> <p>Employee complaints: DGBA Student or parent complaints: FNG Public complaints: GF</p>
DISRUPTION	The Board shall not tolerate disruption of the meeting by members of the audience. If, after at least one warning from the presiding officer, any person continues to disrupt the meeting by his or her words or actions, the presiding officer may request assistance from law enforcement officials to have the person removed from the meeting.

Lamar CISD
079901

BOARD MEETINGS
NEWS COVERAGE

BEE
(LOCAL)

The Board shall keep the public informed of its actions. Local news media representatives shall be welcome to attend all regular and special meetings of the Board. In the event that representatives of the news media are unable to attend a meeting of the Board, they shall be provided a summary of important Board actions.

Kimberly Kopecky

From: Grady Randle <grady@jgradyrandlepc.com>
Sent: Monday, November 21, 2016 4:23 PM
To: City Council
Cc: CJ Snipes; Michael Ross; Byron Brown; Drew Shirley; Tim Kirwin
Subject: Meeting Rules
Attachments: Ordinance adopting rules of procedure for meetings, excluding investigat....docx;
Ordinance adopting rules of procedure for meetings, excluding investigat....docx

Mayor and Council

It is my understanding that meeting rules will be back on the agenda in the near future. I have dusted off where we left off in June and July.

As I recall there was a desire to simplify the rules. We had combined the meeting rules with the rules for investigation. Per my previous email I had Byron break out the rules for council investigations required in section 3.06(a). That was the previous email I sent to you with a resolution to adopt the rules for investigation and an ordinance providing for a punishment for violating a council subpoena. Attached to this email are the resolution and ordinance for meeting rules.

Section 3.09 of the Charter states:

The City Council shall adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council.

The only requirement of the Charter for meeting rules is that they provide for comments from the public. The simplest meeting rules is just one rule stating:

Each person desiring to speak at a meeting for which public comment is provided must deliver to the presiding officer, prior to the commencement of such meeting, a written public comment request, which shall state the person's name and such public comment may, at the discretion of the presiding officer, be heard either immediately prior to the consideration of the item by City Council or during the public comment section of the agenda and shall be limited to three (3) minutes per speaker at any given meeting which the presiding officer or his designee shall be timekeeper for purposes of enforcing this rule and no speaker may yield time to any other speaker. This rule shall not apply to a public hearing.

In researching for proof that the City had adopted a sales tax during the Duke land deal, I ran across the August 29, 1977 minutes of the first meeting of the newly form "Village of Fulshear"

and found that on page two the Council had adopted “Roberts Rule of Order”. I have not spent the time or money to determine if these were ever repealed so as far as I can tell, the City of Fulshear has adopted Robert’s Rules of Order and are still in effect. The minutes are attached [here](#).

The amended rules attached have 10 rules with various subparts. You will find [here](#) rules for the Cities of *Bellaire, Rosenberg, West University, Allen, Mont Belvieu, Dallas, Spring Branch ISD and LCISD*. You can judge for yourselves the complexity of the rules for those meetings at those cities.

The proposed rules break down as follows:

1. Authority
2. Application
3. Amendment and suspension of rules
4. Meetings
5. Agendas
6. Minutes and certified agenda
7. Public comment
8. Deliberation
9. Motion
10. Voting

Cross referenced with Robert’s Rules are shown [here](#) where I deleted the rule if its subject matter was referenced by either the Charter or Robert’s Rules of Order (open the document in Word to see the references). Our intent in drafting the Rules was to have a one stop reference in conducting the meeting. De-solving the rules to make them simpler means that you will have to look at the Charter, Robert’s Rules and the Open Meeting Act to determine the proper procedure. Attached [here](#) are the Abbreviated Rules.

If you want additional research please find [here](#) books and other publications on rules for city meetings including *A Short and Easy Guide to Parliamentary Procedure and Robert’s Rules of Order; Modern Parliamentary Procedure; Modern Rules of Order; Robert’s Rules of Order; Robert’s Rules of Order Newly Revised in Brief; Suggested Rules of Procedure for Small Local Government Boards and Suggested Rules of Procedure for Small Cities*.

I can further customized the proposed rules that you want, but we will have to go through each rule for adoption by a majority vote.

[J. Grady Randle](#) | Randle Law Office Ltd., L.L.P | ☎ (281) 657 2000

820 Gessner, Suite 1570 | Memorial City Plaza II | Houston, TX 77024

[Email](#) | [Bio](#) | [Website](#) | [V-Card](#)

"Exceeding client expectations through exceptional results."

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AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL MEETINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, pursuant to Section 3.09(d) of the City of Fulshear, Texas, Home-Rule Charter, the City Council is required to adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council;

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

Section 1. That all of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That the rules of procedure attached hereto as Exhibit A (the "Rules of Procedure") are hereby adopted, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 3. That Roberts Rules of Order, Newly Revised, 2nd Edition, are hereby adopted in accordance with the Rules of Procedure, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Repeal. That all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Effective date. That this Ordinance shall be effective and in full force immediately upon its adoption.

PASSED, APPROVED, and ADOPTED this, the ____ day of _____, 2016.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

DRAFT

**RULES OF PROCEDURE FOR MEETINGS OF
THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS**

1. Authority

1.1 *Home-Rule Charter.* The Home-Rule Charter of the City of Fulshear, Texas ("Home-Rule Charter") provides that the City Council of the City of Fulshear, Texas ("City Council") shall adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council. The following set of rules shall be in effect upon their adoption by the City Council and until they are amended or new rules are adopted in the manner provided by these rules.

2. Application of Rules

2.1 *Rules of Procedure.* These rules shall apply to all City Council workshops, regular and special meetings, and public hearings, except when in conflict with the Home-Rule Charter or other law.

2.2 *Rules of Order.* The most recent edition of Robert's Rules of Order, Newly Revised, adopted by City Council shall govern the proceedings of the City Council in all cases, unless they are in conflict with these rules.

2.3 *Questions of Order.* All questions of order shall be decided by the presiding officer, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

2.4 *Parliamentarian.* The city attorney shall be the City Council's parliamentarian.

2.5 *Motion to Enforce.* Any member of City Council may move to require enforcement of these rules; and, upon passage of such motion, the presiding officer shall be required to act.

2.6 *Non-observance of Rules.* Rules adopted to expedite and facilitate the transaction of the business of the City Council in an orderly fashion shall be deemed to be procedural only, and the failure to strictly observe any such rules shall not affect the jurisdiction of, or invalidate any action taken by, the City Council.

3. Amendment and Suspension of Rules

3.1 *Amendment to Rules.* These rules may be amended, or new rules adopted, by a majority vote of the City Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior City Council meeting.

3.2 *Suspension of Rules.* As may be allowed by law, any provision of these rules not governed by the Home-Rule Charter or other law may be temporarily suspended by a two-thirds vote of the City Council. The suspension shall remain in effect until the meeting in which the suspension occurs is adjourned. The vote on any such suspension shall be notated in the minutes.

4. Meetings

4.1 *Quorum.* A majority of the number of council members fixed by the Home-Rule Charter and a presiding mayor or an additional council member properly designated and acting as mayor pro tempore shall constitute a quorum. No meeting of the City Council shall be conducted without a quorum present.

4.2 *Regular Meetings.* The City Council shall meet at the city hall located at, 30603 FM 1093, Fulshear, Texas, or at another location, in regular meetings at 7:00 p.m. on the third Tuesday of each month, except when such third Tuesday shall be a legal holiday or when such regular meeting is canceled or rescheduled by the City Council.

4.3 *Special Meetings.* In addition to any special meeting provided for by the Home-Rule Charter or other law, the mayor may call special meetings on the mayor's own motion, and shall call a special meeting upon written request of three members of City Council, or of the city manager.

4.4 *Workshops.* The city manager or his designee may call workshops on the city manager's or designee's own motion, and shall call workshops upon written request of the mayor, or three members of City Council. No official action may be taken at any workshop.

4.5 *Public Hearings.* A special meeting may be called for the purpose of holding a public hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter subject to the public hearing. A public hearing may be placed on the agenda of any other meeting in the manner provided for by the Home-Rule Charter.

4.6 *Concurrent and Consecutive Meetings.* Except as may otherwise be prescribed by the Home-Rule Charter or other law, one or more regular meetings, special meetings, workshops, public hearings, or any combination thereof may be held concurrently or consecutively.

5. Agendas

5.1 *Agenda Required.* The city manager or his designee shall be responsible for creating an agenda for each meeting of the City Council in the manner provided for by the Home-Rule Charter.

5.2 *Notice Required.* The city manager or his designee shall be responsible for publishing proper notice of each meeting of the City Council in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

5.3 *Consent Agenda.* An agenda for a regular or special meeting may have as part of the agenda a portion labeled "Consent Agenda," which may consist of routine, non-controversial items that require no more than a majority vote for passage, provided no item required to be considered or acted upon individually by the Home-Rule Charter or other law shall appear on such Consent Agenda.

6. Minutes and Certified Agenda

6.1 *Minutes.* The city manager or his designee shall be responsible for preparing and keeping minutes of each meeting of the City Council open to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

6.2 *Certified Agenda.* The city manager, or the presiding officer if the city manager is excluded, shall be responsible for keeping a certified agenda of each meeting of the City Council closed to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code. The presiding officer shall certify that the certified agenda is a true and correct record of the proceedings.

7. Public Comment

7.1 *Public Comment at Regular and Special Meetings.* In accordance with Section 3.09(d) of the Home-Rule Charter, public comment shall be provided for at all regular meetings, and may be provided for at any special meeting.

7.2 *Notice Required.* There shall be no public comment at any meeting unless otherwise provided for in the notice given for such meeting.

7.3 *Request Required.* Each person desiring to speak at a meeting for which public comment is provided must deliver to the presiding officer, prior to the commencement of such meeting, a written public comment request, which shall state the person's name, the agenda item or non-agenda item to be made the subject of the person's comments, and whether the person's comments will be for or against such item. Delivery of a public comment request as required by this rule does not entitle a person to speak.

7.4 *Public Comment on Agenda Items.* For agenda items made the subject of public comment, such public comment may, at the discretion of the presiding officer, be heard either immediately prior to the consideration of the item by City Council or during the public comment section of the agenda, if any.

7.5 *Public Comment on Non-agenda Items.* For non-agenda items made the subject of public comment, the order and time of public comment shall be determined by the presiding officer. Any deliberation of or decision about a non-agenda item shall be limited to a proposal to place the item on the agenda for a subsequent meeting.

7.6 *Order and Number of Speakers.* For each item made the subject of public comment, the presiding officer shall recognize speakers in the order of the requests received, provided that the number of persons allowed to speak for or against any item made the subject of public comment shall not exceed five persons for and five persons against any such item at a given meeting. The limitation on the number of speakers provided by this rule shall not apply to a public hearing.

7.7 *Comment Duration.* Public comments shall be limited to three (3) minutes per speaker at any given meeting. The presiding officer or his designee shall be timekeeper for purposes of enforcing this rule. No speaker may yield time to any other speaker. This rule shall not apply to a public hearing.

8. Deliberation

8.1 *Role of the Presiding Officer.* The presiding officer shall be the Chair at all meetings of the City Council. The presiding officer shall assist the City Council in focusing agenda discussions and deliberations and shall control the debate and the order of speakers. The presiding officer shall have the authority to prevent the misuse of motions, the abuse of any privilege, or the obstruction of the business of the City Council by ruling any such matter out of order, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

8.2 *Deliberation Before Motion.* Deliberation may occur prior to any motion on a matter before the City Council. Any member of City Council may make motions. Any member of City Council other than the person offering the motion may second a motion.

8.3 *Obtaining the Floor.* Any member of City Council wishing to speak must first obtain the floor by being recognized by the presiding officer. The presiding officer shall recognize any council member who seeks the floor at the earliest appropriate opportunity to do so, subject to the presiding officer's authority to control the order of speakers.

8.4 *Questions.* A council member holding the floor may request the presiding officer to address a question to another council member and that council member may respond while the floor is still held by the council member asking the question. The presiding officer may comply with such request at his or her discretion. The council member to whom the question is addressed may answer the question at his or her discretion.

8.5 *Limitations on Deliberation.* Members of City Council shall limit their comments and questions to the subject matter or motion currently being considered by the City Council. Members of City Council shall govern themselves as to the length of their comments or presentations.

9. Motions

9.1 *Purpose of Section.* This section is simply a guide to those motions that may be the most useful in the orderly consideration of City business before the City Council and shall in no way limit the motions available to the members of City Council.

9.2 *Motion to Postpone Indefinitely.* A motion to postpone indefinitely requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall end consideration of the item before the City Council with no further action to be taken, provided that the item may be placed on the agenda of a subsequent meeting of the City Council in accordance with the Home-Rule Charter or other law, except that the item may not be placed on such agenda by a motion at the same meeting at which the item was postponed indefinitely.

9.3 *Motion to Postpone to a Date and Time Certain.* A motion to postpone to a date and time certain requires a majority vote and, upon passage, shall postpone consideration of the item before the City Council until the date and time stated in the motion.

9.4 *Motion to Refer to a Committee.* A motion to refer to a committee requires a majority vote and, upon passage, shall refer the item before the City Council to the committee stated in the motion.

9.5 *Motion to Amend.* A motion to amend requires a majority vote and, upon passage, amends the underlying motion to the extent stated in the motion. Action shall be taken on a motion to amend prior to any further action being taken on the underlying motion. A motion to amend a motion to amend shall be in order, but a motion to amend a motion to amend a motion to amend shall be out of order. A member of the City Council who seconded a motion amended by a motion to amend shall be allowed to withdraw the second.

9.6 *Motion to Lay on the Table.* A motion to lay on the table requires a majority vote and, upon passage, shall set aside the item before the City Council until the City Council has considered one or more agenda items stated in the motion, which item or items shall be considered immediately after passage of such motion.

9.7 *Motion to Call the Question.* A motion to call the question requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall immediately end

consideration and deliberation of the item before the City Council and the presiding officer shall take the vote on the item immediately after passage of such motion.

9.8 *Motion to Appeal from the Chair.* A motion to appeal from the chair requires a majority vote and, upon passage, shall overrule the ruling of the presiding officer stated in the motion.

9.9 *Motion to Suspend the Rules.* A motion to suspend the rules requires a two-thirds (2/3) vote of the City Council and, upon passage, shall suspend the rule stated in the motion.

9.10 *Motion to Recess.* A motion to recess requires a majority vote and, upon passage, shall require an intermission in the proceedings of the City Council for the duration stated in the motion and as may be allowed by law.

9.11 *Motion to Adjourn.* A motion to adjourn requires a majority vote and, upon passage, shall immediately end the meeting of the City Council.

10. Voting

10.1 *Vote Required for Passage.* In accordance with Section 3.09(c) of the Home-Rule Charter, and unless otherwise required by the Home-Rule Charter, these rules, or other law, each vote, order, decision, or other action taken by the City Council shall require the affirmative vote of a majority of the full City Council, provided that any abstention not required by law shall be counted as a vote against the matter under consideration, and provided that the mayor shall have the right to cast the deciding vote in the case of a tie, but shall not otherwise have any right, power, or authority to vote against or veto any action taken by the City Council.

10.2 *Vote on the Consent Agenda.* All items set out in the Consent Agenda shall be deemed passed upon the passage of a motion to approve the Consent Agenda, provided any member of City Council may request at any time prior to the passage of such motion that one or more items be removed from the Consent Agenda to be considered and voted on separately. The remaining Consent Agenda shall immediately be voted on. Immediately after a vote on the remaining Consent Agenda, each item removed from the Consent Agenda shall be considered and voted on separately.

10.3 *Roll Call Vote.* Upon request of any member of City Council, a vote shall be taken by roll call in random order and the results notated in minutes.

10.4 *Timing for Vote.* Subject to a motion to call the question, no vote shall be taken on any matter until after an adequate time for deliberation.

10.5 *Vote of City Council.* For purposes of these rules, a vote required of City Council for passage of a matter shall mean a vote of all members of City Council, regardless of the number of members present at the meeting at which the matter is presented for passage. Additionally, whenever the minimum number of votes required for passage of a matter results in a fraction, the minimum required shall be the lowest integer exceeding such fraction. For example, the following apply to a seven (7) member City Council:

- (a) a majority is four (4) members; and
- (b) a two-thirds ($2/3$) majority is five (5) members.

DRAFT

ORDINANCERESOLUTION NO. 2016-_____

AN ORDINANCERESOLUTION OF THE CITY OF FULSHEAR, TEXAS, ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL MEETINGS AND INVESTIGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

~~**WHEREAS**, pursuant to Section 3.06 of the City of Fulshear, Texas, Home Rule Charter (the "Charter"), the City Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; and~~

WHEREAS, pursuant to Section 3.09(d) of the City of Fulshear, Texas, Home-Rule Charter, the City Council is required to adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council;

NOW THEREFORE, BE IT ORDAINEDRESOLVED BY THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS:

Section 1. That all of the facts recited in the preamble to this Ordinanceresolution are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 2. That the rules of procedure attached hereto as Exhibit A (the "Rules of Procedure") are hereby adopted, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 3. That Roberts Rules of Order, Newly Revised, 2nd Edition, are hereby adopted in accordance with the Rules of Procedure, and the same are incorporated by reference herein and expressly made a part hereof, as if copied herein verbatim.

Section 4. Severability. That in the event any clause, phrase, provision, sentence or part of this OrdinanceResolution or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this OrdinanceResolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Repeal. That all other ~~ordinances~~~~resolutions~~ or parts of ~~ordinances~~~~resolutions~~ inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Effective date. That this ~~Ordinance~~~~Resolution~~ shall be effective and in full force immediately upon its adoption.

PASSED, APPROVED, and ADOPTED this, the ____ day of _____, 2016.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

**RULES OF PROCEDURE FOR MEETINGS OF
THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS**

1. Authority

1.1 *Home-Rule Charter.* The Home-Rule Charter of the City of Fulshear, Texas (“Home-Rule Charter”) provides that the City Council of the City of Fulshear, Texas (“City Council”) shall adopt rules of procedure governing all meetings of the City Council, which shall provide for comments from the public at all regular meetings, subject to such limitations as may be imposed by the City Council. The following set of rules shall be in effect upon their adoption by the City Council and until they are amended or new rules are adopted in the manner provided by these rules.

2. Application of Rules

2.1 *Rules of Procedure.* These rules shall apply to all City Council workshops, regular and special meetings, ~~investigations~~, and public hearings, except when in conflict with the Home-Rule Charter or other law.

2.2 *Rules of Order.* The most recent edition of Robert’s Rules of Order, Newly Revised, adopted by City Council shall govern the proceedings of the City Council in all cases, unless they are in conflict with these rules.

2.3 *Questions of Order.* All questions of order shall be decided by the presiding officer, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

2.4 *Parliamentarian.* The city attorney shall be the City Council’s parliamentarian.

2.5 *Motion to Enforce.* Any member of City Council may move to require enforcement of these rules; and, upon passage of such motion, the presiding officer shall be required to act.

2.6 *Non-observance of Rules.* Rules adopted to expedite and facilitate the transaction of the business of the City Council in an orderly fashion shall be deemed to be procedural only, and the failure to strictly observe any such rules shall not affect the jurisdiction of, or invalidate any action taken by, the City Council.

3. Amendment and Suspension of Rules

3.1 *Amendment to Rules.* These rules may be amended, or new rules adopted, by a majority vote of the City Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior City Council meeting.

3.2 *Suspension of Rules.* As may be allowed by law, any provision of these rules not governed by the Home-Rule Charter or other law may be temporarily suspended by a two-thirds vote of the City Council. The suspension shall remain in effect until the meeting in which the suspension occurs is adjourned. The vote on any such suspension shall be notated in the minutes.

4. Meetings

4.1 *Quorum.* A majority of the number of council members fixed by the Home-Rule Charter and a presiding mayor or an additional council member properly designated and acting as mayor pro tempore shall constitute a quorum. No meeting of the City Council shall be conducted without a quorum present.

4.2 *Regular Meetings.* The City Council shall meet at the city hall located at, 30603 FM 1093, Fulshear, Texas, or at another location, in regular meetings at 7:00 p.m. on the third Tuesday of each month, except when such third Tuesday shall be a legal holiday or when such regular meeting is canceled or rescheduled by the City Council.

4.3 *Special Meetings.* In addition to any special meeting provided for by the Home-Rule Charter or other law, the mayor may call special meetings on the mayor's own motion, and shall call a special meeting upon written request of three members of City Council, or of the city manager.

4.4 *Workshops.* The city manager or his designee may call workshops on the city manager's or designee's own motion, and shall call workshops upon written request of the mayor, or three members of City Council. No official action may be taken at any workshop.

~~4.5 *Investigations.* A special meeting may be called for the purpose of holding an investigation and hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter being investigated.~~

4.56 *Public Hearings.* A special meeting may be called for the purpose of holding a public hearing as provided for in the Home-Rule Charter or other law. Items for consideration at such special meeting shall be limited to the matter subject to the public hearing. A public hearing may be placed on the agenda of any other meeting in the manner provided for by the Home-Rule Charter.

~~4.67~~ *Concurrent and Consecutive Meetings.* Except as may otherwise be prescribed by the Home-Rule Charter or other law, one or more regular meetings, special meetings, workshops, ~~investigations~~, public hearings, or any combination thereof may be held concurrently or consecutively.

5. Agendas

5.1 *Agenda Required.* The city manager or his designee shall be responsible for creating an agenda for each meeting of the City Council in the manner provided for by the Home-Rule Charter.

5.2 *Notice Required.* The city manager or his designee shall be responsible for publishing proper notice of each meeting of the City Council in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

5.3 *Consent Agenda.* An agenda for a regular or special meeting may have as part of the agenda a portion labeled "Consent Agenda," which may consist of routine, non-controversial items that require no more than a majority vote for passage, provided no item required to be considered or acted upon individually by the Home-Rule Charter or other law shall appear on such Consent Agenda.

6. Minutes and Certified Agenda

6.1 *Minutes.* The city manager or his designee shall be responsible for preparing and keeping minutes of each meeting of the City Council open to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

6.2 *Certified Agenda.* The city manager, or the presiding officer if the city manager is excluded, shall be responsible for keeping a certified agenda of each meeting of the City Council closed to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Government Code. The presiding officer shall certify that the certified agenda is a true and correct record of the proceedings.

7. Public Comment

7.1 *Public Comment at Regular and Special Meetings.* In accordance with Section 3.09(d) of the Home-Rule Charter, public comment shall be provided for at all regular meetings, and may be provided for at any special meeting.

7.2 *Notice Required.* There shall be no public comment at any meeting unless otherwise provided for in the notice given for such meeting.

7.3 *Request Required.* Each person desiring to speak at a meeting for which public comment is provided must deliver to the presiding officer, prior to the commencement of such meeting, a written public comment request, which shall state the person's name, the agenda item or non-agenda item to be made the subject of the person's comments, and whether the person's comments will be for or against such item. Delivery of a public comment request as required by this rule does not entitle a person to speak.

7.4 *Public Comment on Agenda Items.* For agenda items made the subject of public comment, such public comment may, at the discretion of the presiding officer, be heard either immediately prior to the consideration of the item by City Council or during the public comment section of the agenda, if any.

7.5 *Public Comment on Non-agenda Items.* For non-agenda items made the subject of public comment, the order and time of public comment shall be determined by the presiding officer. Any deliberation of or decision about a non-agenda item shall be limited to a proposal to place the item on the agenda for a subsequent meeting.

7.6 *Order and Number of Speakers.* For each item made the subject of public comment, the presiding officer shall recognize speakers in the order of the requests received, provided that the number of persons allowed to speak for or against any item made the subject of public comment shall not exceed five persons for and five persons against any such item at a given meeting. The limitation on the number of speakers provided by this rule shall not apply to a public hearing.

7.7 *Comment Duration.* Public comments shall be limited to three (3) minutes per speaker at any given meeting. The presiding officer or his designee shall be timekeeper for purposes of enforcing this rule. No speaker may yield time to any other speaker. This rule shall not apply to a public hearing.

8. Deliberation

8.1 *Role of the Presiding Officer.* The presiding officer shall be the Chair at all meetings of the City Council. The presiding officer shall assist the City Council in focusing agenda discussions and deliberations, and shall control the debate and the order of speakers. The presiding officer shall have the authority to prevent the misuse of motions, the abuse of any privilege, or the obstruction of the business of the City Council by ruling any such matter out of order, subject to the right of appeal to the City Council, the majority of whom may override the ruling.

8.2 *Deliberation Before Motion.* Deliberation may occur prior to any motion on a matter before the City Council. Any member of City Council may make motions. Any member of City Council other than the person offering the motion may second a motion.

8.3 *Obtaining the Floor.* Any member of City Council wishing to speak must first obtain the floor by being recognized by the presiding officer. The presiding officer shall recognize any council member who seeks the floor at the earliest appropriate opportunity to do so, subject to the presiding officer's authority to control the order of speakers.

8.4 *Questions.* A council member holding the floor may request the presiding officer to address a question to another council member and that council member may respond while the floor is still held by the council member asking the question. The presiding officer may comply with such request at his or her discretion. The council member to whom the question is addressed may answer the question at his or her discretion.

8.5 *Limitations on Deliberation.* Members of City Council shall limit their comments and questions to the subject matter or motion currently being considered by the City Council. Members of City Council shall govern themselves as to the length of their comments or presentations.

9. Motions

9.1 *Purpose of Section.* This section is simply a guide to those motions that may be the most useful in the orderly consideration of City business before the City Council and shall in no way limit the motions available to the members of City Council.

9.2 *Motion to Postpone Indefinitely.* A motion to postpone indefinitely requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall end consideration of the item before the City Council with no further action to be taken, provided that the item may be placed on the agenda of a subsequent meeting of the City Council in accordance with the Home-Rule Charter or other law, except that the item may not be placed on such agenda by a motion at the same meeting at which the item was postponed indefinitely.

9.3 *Motion to Postpone to a Date and Time Certain.* A motion to postpone to a date and time certain requires a majority vote and, upon passage, shall postpone consideration of the item before the City Council until the date and time stated in the motion.

9.4 *Motion to Refer to a Committee.* A motion to refer to a committee requires a majority vote and, upon passage, shall refer the item before the City Council to the committee stated in the motion.

9.5 *Motion to Amend.* A motion to amend requires a majority vote and, upon passage, amends the underlying motion to the extent stated in the motion. Action shall be taken on a motion to amend prior to any further action being taken on the underlying motion. A motion to amend a motion to amend shall be in order, but a motion to amend a motion to amend a motion to amend shall be out of order. A member of the City Council who seconded a motion amended by a motion to amend shall be allowed to withdraw the second.

9.6 *Motion to Lay on the Table.* A motion to lay on the table requires a majority vote and, upon passage, shall set aside the item before the City Council until the City Council has considered one or more agenda items stated in the motion, which item or items shall be considered immediately after passage of such motion.

9.7 *Motion to Call the Question.* A motion to call the question requires a vote of two-thirds (2/3) of the City Council and, upon passage, shall immediately end consideration and deliberation of the item before the City Council and the presiding officer shall take the vote on the item immediately after passage of such motion.

9.8 *Motion to Appeal from the Chair.* A motion to appeal from the chair requires a majority vote and, upon passage, shall overrule the ruling of the presiding officer stated in the motion.

9.9 *Motion to Suspend the Rules.* A motion to suspend the rules requires a two-thirds (2/3) vote of the City Council and, upon passage, shall suspend the rule stated in the motion.

9.10 *Motion to Recess.* A motion to recess requires a majority vote and, upon passage, shall require an intermission in the proceedings of the City Council for the duration stated in the motion and as may be allowed by law.

9.11 *Motion to Adjourn.* A motion to adjourn requires a majority vote and, upon passage, shall immediately end the meeting of the City Council.

10. Voting

10.1 *Vote Required for Passage.* In accordance with Section 3.09(c) of the Home-Rule Charter, and unless otherwise required by the Home-Rule Charter, these rules, or other law, each vote, order, decision, or other action taken by the City Council shall require the affirmative vote of a majority of the full City Council, provided that any abstention not required by law shall be counted as a vote against the matter under consideration, and provided that the mayor shall have the right to cast the deciding vote in the case of a tie, but shall not otherwise have any right, power, or authority to vote against or veto any action taken by the City Council.

10.2 *Vote on the Consent Agenda.* All items set out in the Consent Agenda shall be deemed passed upon the passage of a motion to approve the Consent Agenda, provided any member of City Council may request at any time prior to the passage of such motion that one or more items be removed from the Consent Agenda to be considered and voted on separately. The remaining Consent Agenda shall immediately be voted on. Immediately after a vote on the remaining Consent Agenda, each item removed from the Consent Agenda shall be considered and voted on separately.

10.3 *Roll Call Vote.* Upon request of any member of City Council, a vote shall be taken by roll call in random order and the results notated in minutes.

10.4 *Timing for Vote.* Subject to a motion to call the question, no vote shall be taken on any matter until after an adequate time for deliberation.

10.5 *Vote of City Council.* For purposes of these rules, a vote required of City Council for passage of a matter shall mean a vote of all members of City Council, regardless of the number of members present at the meeting at which the matter is presented for passage. Additionally, whenever the minimum number of votes required for passage of a matter results in a fraction, the minimum required shall be the lowest integer exceeding such fraction. For example, the following apply to a seven (7) member City Council:

- (a) a majority is four (4) members; and
- (b) a two-thirds (2/3) majority is five (5) members.

11. Investigations

~~11.1 *Applicability.* In addition to the foregoing rules, the following rules shall apply to investigations conducted by the City Council pursuant to Section 3.06(a) of the Home-Rule Charter.~~

~~11.2 *Notice of Investigation.* Prior to the commencement of an investigation or as soon as practicable thereafter, each officer or employee being investigated shall be given written notice of the commencement of the investigation, which shall specify the subject matter of the investigation; and, as soon as practicable after the conclusion of the investigation, each officer or employee investigated shall be given written notice of the conclusion of the investigation, including any findings.~~

~~11.3 *Hearings to be Open to the Public.* All hearings held in relation to an investigation shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act, Chapter 551, Government Code.~~

~~11.4 *Recusal from Proceedings.* A member of City Council who initiated or is the subject of the investigation shall not sit at the dais and shall not participate in the deliberation or voting related to the investigation.~~

~~11.5 *Right to Respond.* Any officer or employee who is subject to a hearing held in relation to an investigation shall be provided an opportunity to respond to the allegations and to present any relevant evidence, including but not limited to testimony from individuals.~~

~~11.6 *Witnesses.* The City Council may ask questions of any individual, and may exclude a witness from a hearing during the examination of another witness.~~

~~11.7 *Public Comment.* No public comment shall be allowed at a hearing held in relation to an investigation unless agreed to by a majority of City Council.~~

~~11.8 *Determination of Qualifications for Office.* A finding that any current or prospective officer has failed to meet or maintain the qualifications for the office held or sought, as applicable, requires a vote of two thirds (2/3) of the City Council. A finding that a current officer has failed to meet or maintain the qualifications for the office then held shall include a declaration that such office is deemed vacant.~~

DRAFT

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS

AGENDA OF: January 24, 2017

AGENDA ITEM: N

DATE SUBMITTED: January 20, 2017

DEPARTMENT: Public Works

PREPARED BY: CJ Snipes
City Manager

PRESENTER: CJ Snipes
City Manager

SUBJECT: Street Name Change

ATTACHMENTS: Ordinance No. 2017-1242

EXPENDITURE REQUIRED: N/A

AMOUNT BUDGETED: N/A

ADDITIONAL APPROPRIATION REQUIRED: N/A

EXECUTIVE SUMMARY

The City has received an informal request from LCISD about a potential name change to Bois D'Arc Lane north of FM 1093 to reflect the City's pride and support for Fulshear High School. As such, Staff undertook drafting the attached Ordinance to affect such a change.

RECOMMENDATION

Staff recommends changing the name of Bois D'Arc to Charger Way as indication of the City's pride and support for our Hometown Chargers.

ORDINANCE NO. 2017-1242

AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS CHANGING THE NAME OF BOIS D'ARC LANE NORTH OF FM 1093 TO CHARGER WAY; PROVIDING FOR SEVERABILITY AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Fulshear, Texas (the "City") is desirous of showing our pride in Fulshear High School and their mascot the Chargers; and

WHEREAS, the City has received an informal request from the school about a potential name change; and

WHEREAS, the City Council believes that since the school complex is the only property residing along the road, thereby negating adverse impact of a name change on any other property owner.

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

SECTION 1.0

PURPOSE: The purpose of this Ordinance is to modify the naming of Bois D'Arc Lane north of FM 1093 reflecting the recitals stated above.

SECTION 2.0

CHANGED: The formal name given to Bois D'Arc Lane north of FM 1093 (Front Street) is shall henceforth be known as **Charger Way**.

SECTION 3.0

SEVERABILITY CLAUSE: That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

SECTION 4.0

REPEALING CLAUSE: All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5.0

EFFECTIVE DATE: This Ordinance shall become effective immediately when published as required by law.

SECTION 6.0

PUBLICATION: The City Secretary is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

Jeff W. Roberts, Mayor

ATTEST:

D. Gordon Offord, City Secretary

CITY OF FULSHEAR, ORDINANCE 2017-1242

CJ Snipes

From: Meyers, Andy <Andy.Meyers@fortbendcountytexas.gov>
Sent: Thursday, January 19, 2017 4:20 PM
To: Jeff Roberts; Tricia Krenek; Ramona Ridge; Erin Tristan; Stephen Gill
Cc: CJ Snipes; Pinchback, Tom; Pechukas, Robert; Smith, Lila; Spencer, Marcus; Cordes, Roy
Subject: Draft Agreement County & Fulshear on County Assistance Districts
Attachments: Draft Agreement - Sales Use Tax Allocation FBCAD 7.Fulshear.v2.docx

Mayor, Councilmembers

Attached is a draft of the Interlocal Agreement between the county and Fulshear. This is on the Court's Agenda for Tuesday Jan. 24th for action. The term of the Agreement is 25 years.

This is the same Agreement the county has with the city of Houston on the 5 County Assistance Districts (CAD) that we've created so far, except there is no share of the sales/use tax revenue with Houston as we are doing with Fulshear. We will have future agreements between the county, Fulshear and the CAD, when it is created after the election in May 2017 to cover the use tax collection from the homebuilders in Fulshear's ETJ.

Should you have any questions, please contact me.

Andy Meyers

Commissioner Pct. 3

832-338-1199 Cell

281-238-1400 Office

**AGREEMENT FOR THE DURATION, RATE, AND ALLOCATION OF
SALES AND USE TAX**

This Agreement for the Duration, Rate, and Allocation of Sales and Use Tax (the "Agreement") is made and entered into by and between the City of Fulshear, Texas (the "City"), Fort Bend County, Texas (the "County"), and Fort Bend County Assistance District No. 7 (the "District"), Fort Bend County, Texas.

RECITALS

WHEREAS, the City requires the execution of this Agreement as a condition to its consent for the creation of the District;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. General. The City consented to the creation of the District on _____, 2017. The City, the County and the District agree that the District's imposition of sales and use tax within the boundaries of the District shall be governed by the terms of this Agreement. The City, the County, and the District agree that the District may perform the following functions in the District: (1) the construction, maintenance, or improvement of roads or highways, (2) the provision of law enforcement and detention services, (3) the maintenance or improvement of libraries, museums, parks, or other recreational facilities, (4) the provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services, or (5) the promotion of economic development and tourism.

Section 2. Duration. The City will not annex any land within the boundaries of the District for full purposes earlier than April 1, 2042 (the "Earliest Termination Date"). In the event the City annexes a portion of the District for full purposes, the City must provide the County and the District with six (6) months' notice of any such annexation and, as of the annexation date, the area annexed shall be automatically excluded from the boundaries of the District. If the City annexes the entirety of the District for full purposes, the City must provide the County and the District with six (6) months' notice of such annexation and, as of the annexation date, the District shall no longer be authorized to collect sales and use tax within the District.

Section 3. Rate and Allocation. The sales and use tax imposed by the District may not exceed two (2) percent, and may only be used for lawful purposes within the boundaries of the District. The District and the City hereby agree to an allocation of

fifty percent (50%) of all sales and use tax collected by the District shall be payable to the City for purposes consistent with this Agreement.

Section 4. Bonds or obligations. Neither the County nor the District may issue or enter into bonds, notes, or other obligations extending beyond the Earliest Termination Date, if such bonds, notes, or other obligations are secured by a pledge or other encumbrance or lien on the sales and use tax collected by the District.

Section 5. Boundaries and Annexation. The City hereby consents to District's inclusion of public right of way used for road purposes and County-owned property and facilities currently located within the municipal boundaries of the City within the boundaries of the District. The inclusion of such property will allow the District to spend its revenue collected from other areas within its boundaries and perform its functions on non-sales and use tax revenue generating property used for public purposes. Based on the current and proposed use of the right of way and County-owned property and facilities, there will be no imposition of the sales and use tax applicable to such that would exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state prescribed by Sections 321.101 and 323.101 of the Texas Tax Code. Further, the City agrees that the District may annex additional land located within the extraterritorial jurisdiction of the City into its boundaries with sixty (60) days' notice to the City.

Section 6. Termination of Agreement. This Agreement is to remain in full force and effect unless terminated by mutual agreement of the parties hereto. Notwithstanding the above, if the City annexes the entirety of the District for full purposes the Agreement shall terminate.

Section 7. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the City, the County, and the District concerning the duration, rate, and allocation of the imposition of sales and use tax by the District. There have been and are no agreements, covenants, representations, or warranties between the parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any party unless reduced to writing and signed by the parties.

Section 8. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the City, the County, and the District and shall not be construed to confer any benefit or right upon any other party, including particularly any resident of the District, the County, or the City.

Section 9. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any other person or circumstance shall ever be held by any court of competent jurisdiction to contravene or be invalid under the constitution or

laws of the State of Texas for any reason, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the parties shall be enforced accordingly, and this Agreement shall remain in full force and effect, as construed. The remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other parties or circumstances shall not be affected thereby.

Section 10. Successors and Assigns. This Agreement shall apply to and be binding upon the parties hereto and their respective officers, directors, successors, and assigns. This Agreement and any of the rights obtained hereunder are not assignable by any party hereto without the express written consent of the other parties, which consent shall not be unreasonably withheld.

Section 11. Authorization. Each party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

Section 12. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Section 13. Effective Date. This Agreement will be effective as of the date of the execution by the last party to execute this Agreement.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

FORT BEND COUNTY, TEXAS

By: _____
Robert E. Hebert, County Judge

Date: _____

ATTEST:

By: _____
Laura Richard, County Clerk

APPROVED AS TO FORM:

Marcus D. Spencer, First Assistant County Attorney

FORT BEND COUNTY ASSISTANCE
DISTRICT NO. 7

By: _____
Robert E. Hebert, County Judge

Date: _____

ATTEST:

By: _____
Laura Richard, County Clerk

DRAFT

CITY OF FULSHEAR, TEXAS

By: _____
Jeff W. Roberts, Mayor

Date: _____

ATTEST:

By: _____
D. Gordon Offord, City Secretary

DRAFT