

CITY OF TEXAS CITY  
REGULAR CALLED CITY COMMISSION MEETING

AGENDA

WEDNESDAY, DECEMBER 20, 2017 - 5:00 P.M.  
KENNETH T. NUNN COUNCIL ROOM - CITY HALL  
1801 9th Ave. N.  
Texas City, TX 77590

PLEASE NOTE: Public comments and matters from the floor are generally limited to 3 minutes in length. If you would like to request to speak, please do so in advance of the meeting by filling out a Request To Address Commission form. All in attendance are required to remove hats and/or sunglasses (dark glasses) during meetings and to also silence all cell phones and electronic devices.

(1) ROLL CALL

(2) INVOCATION

(3) PLEDGE OF ALLEGIANCE

(4) PROCLAMATIONS AND PRESENTATIONS

(a) Service Awards

|               |                       |            |          |
|---------------|-----------------------|------------|----------|
| Jason Grimm   | Fire                  | 12/17/2007 | 10 years |
| Sheila Bowden | Community Development | 12/09/2002 | 15 years |

Retirement

|            |                         |            |          |
|------------|-------------------------|------------|----------|
| Ron Dysart | Rain Water Pump Station | 11/08/1988 | 29 years |
|------------|-------------------------|------------|----------|

(b) Promotion of Kenneth Brown.

(c) It's Time Texas Community Challenge.

(5) REPORTS

(a) Park Operation (Recreation & Tourism)

(6) CONSENT AGENDA

(a) Approve City Commission Minutes for December 6, 2017 meeting. (City Secretary)

(b) Consider and take action on Resolution No. 17-087, approving a contract for the purchase and delivery of Police Department Uniforms Annual Contract. (Purchasing)

- (c) Consider and take action on Resolution No. 17-088, retaining Lloyd Gosselink, et. al, to pursue collection of disputed cable franchise fees. (City Secretary)
- (d) Consider and take action on Resolution No. 17-089, approving a contract for Emergency Levee Repairs Project. (Purchasing)
- (e) Consider and take action on Resolution No. 17-090, appointing and/or re-appointing board members to the Houston-Galveston Area Council. (City Secretary).
- (f) Consider and take action on Resolution No. 17-091, Approve and award Bid # 2018-040 Recycled Crushed Concrete Annual Contract to Cherry Crushed Concrete Inc. (Public Works)
- (g) Consider and take action on Resolution No. 17-092, authorizing the Mayor to execute an extension of the agreement for professional services with Public Consulting Group, Inc. (Fire Department)
- (h) Consider and take action on Resolution No. 17-093, amending Resolution No. 17-085 which approved the purchase of a camera from CDW Government, LLC. (Homeland Security)
  
- (7) REGULAR ITEMS
  
- (8) PUBLIC COMMENTS
  
- (9) MAYOR'S COMMENTS
  
- (10) COMMISSIONERS' COMMENTS
  
- (11) ADJOURNMENT

NOTICE OF ANY SUBJECT APPEARING ON THIS AGENDA REGARDLESS OF HOW THE MATTER IS STATED MAY BE ACTED UPON BY THE CITY COMMISSION.

NOTICE: The City of Texas City will furnish free transportation to handicapped individuals via a 4-door sedan for anyone wishing to attend the City Commission meetings. Call (409) 948-3111, City Secretary's Office before noon on Monday preceding the meeting to make arrangements.

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THIS NOTICE OF MEETING WAS POSTED ON THE BULLETIN BOARDS AT CITY HALL, 1801 9TH AVENUE NORTH, TEXAS CITY, TEXAS, AT A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AND ON THE CITY'S WEBSITE ON DECEMBER 15, 2017, PRIOR TO 5:00 P.M. AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.

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JAMES HARTSHORN  
CITY SECRETARY

**CITY COMMISSION REGULAR MTG**

**(4) (a)**

**Meeting Date:** 12/20/2017

Retirement

**Submitted For:** Jennifer Price, Human Resources

**Submitted By:** Susan Sensat, Administration

**Department:** Administration

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**Information**

**ACTION REQUEST (Brief Summary)**

Service Awards

|               |                       |            |          |
|---------------|-----------------------|------------|----------|
| Jason Grimm   | Fire                  | 12/17/2007 | 10 years |
| Sheila Bowden | Community Development | 12/09/2002 | 15 years |

Retirement

|            |                         |            |          |
|------------|-------------------------|------------|----------|
| Ron Dysart | Rain Water Pump Station | 11/08/1988 | 29 years |
|------------|-------------------------|------------|----------|

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**CITY COMMISSION REGULAR MTG**

**(4) (b)**

**Meeting Date:** 12/20/2017

Kenneth Brown's Promotion

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** Police Department

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**Information**

**ACTION REQUEST (Brief Summary)**

Promotion of Kenneth Brown.

**BACKGROUND**

Kenneth Brown is being promoted from sergeant to lieutenant

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**CITY COMMISSION REGULAR MTG**

**(4) (c)**

**Meeting Date:** 12/20/2017

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** City Secretary

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**Information**

**ACTION REQUEST (Brief Summary)**

2018 It's Time Texas Community Challenge.

**BACKGROUND**

*The statewide competition challenges individuals, cities, schools and organizations to earn points for their communities by completing healthy activities and logging them online. GCHD would love to brief city councils on resources to encourage their citizens to participate AND ways to earn points as a city. GCHD would appreciate being added as a council/commission agenda item to give a 10 minute (or less) overview of the challenge to city councils.*

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**CITY COMMISSION REGULAR MTG**

**(5) (a)**

**Meeting Date:** 12/20/2017

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** City Secretary

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**Information**

**ACTION REQUEST (Brief Summary)**

Park Operation (Recreation & Tourism)

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**CITY COMMISSION REGULAR MTG**

**(6) (a)**

**Meeting Date:** 12/20/2017

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** City Secretary

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**Information**

**ACTION REQUEST (Brief Summary)**

Approve City Commission Minutes for December 6, 2017 meeting. (City Secretary)

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Minutes

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REGULAR CALLED CITY COMMISSION MEETING

MINUTES

WEDNESDAY, DECEMBER 6, 2017 – 5:00 P.M.  
KENNETH T. NUNN COUNCIL ROOM – CITY HALL

A Regular Called Meeting of the City Commission was held on Wednesday, DECEMBER 6, 2017, at 5:00 P.M. in the Kenneth T. Nunn Council Room in City Hall, Texas City, Texas. A quorum having been met, the meeting was called to order at 5:00 p.m. by Mayor Matthew T. Doyle.

1. ROLL CALL

Present: Matthew T. Doyle, Mayor  
Phil Roberts, Mayor Pro Tem, Commissioner District 2  
Bruce Clawson, Commissioner At Large  
Dee Ann Haney, Commissioner At Large  
Thelma Bowie, Commissioner District 1  
Dorthea Jones, Commissioner District 3  
Jami Clark, Commissioner District 4

2. INVOCATION

Led by Pastor Tim Franklin of The Connection Church.

3. PLEDGE OF ALLEGIANCE

Led by Commissioner Clawson.

4. REPORTS

a. Emergency Management Annual Report (Homeland Security)

Thomas Munoz, Homeland Security Director, presented a PowerPoint with updates on everything their department has accomplished this year. After Hurricane Harvey, the City was selected by FEMA to host the Washington Delegation tour. The Emergency Management Department took attendees to view the City's pump and levee systems. Also, due to Hurricane Harvey the sign-up rate for Blackboard and the emergency Facebook page has significantly increased.

b. Utilities Customer Service (Water)

Irene Fattig, Water Billing Supervisor, gave a PowerPoint presentation on the growth in their department due to new residential developments.

5. PUBLIC HEARING

- a. Public hearing to receive public comments on an amendment to the "Texas City Gulf Coast Reinvestment Zone No. 1" for purposes of commercial-industrial tax abatement to more particularly define the boundaries of the reinvestment zone by legal description pursuant to Texas Tax Code Section 312.201(d)

Nicholas Finan, Director of Management Services, stated that in May a Resolution was signed to create this Reinvestment Zone based off an aerial picture. It is recommended that a metes and bounds description is used to more clearly define the property.

Commissioner Jones asked if a Chapter 380 and Chapter 312 can be explained for those that may not understand. Nicholas Finan answered.

Motion by Commissioner At Large Dee Ann Haney, Seconded by Commissioner District 4 Jami Clark to close the Public Hearing.

**Vote: 7 - 0 CARRIED**

6. CONSENT AGENDA

Mayor Doyle pulled items b and c.

Motion by Commissioner Haney, Seconded by Commissioner Bowie to approve consent items a, d, and e.

- a. Approve City Commission Minutes for November 15, 2017 meeting. (City Secretary)

**Vote: 7 - 0 CARRIED**

- b. Consider and take action on Resolution 17-083, to approve a Chapter 312 Tax Abatement Agreement Between the City of Texas City, Texas, Gulf Coast Ammonia, LLC, and Eastman Chemical Texas City, Inc. for Property Located in the Texas City Gulf Coast Reinvestment Zone No. 1. (Management Services)

Item pulled by Mayor Doyle.

Nicholas Finan, Director of Management Services, asked Chris Nichols, contracted attorney, to explain the process of the Chapter 380 and Chapter 312 agreements. Commissioner Jones asked if this was contingent upon other taxing entities? Chris Nichols answered yes, the school district must also sign an agreement for the City's to take effect.

Mayor Doyle explained how this agreement will benefit the City and the school district.

Motion by Commissioner At Large Bruce Clawson, Seconded by Commissioner District 3 Dortha Jones to approve Resolution No. 17-083.

**Vote: 7 - 0 CARRIED**

- c. Consider and take action on Resolution 17-084, to approve a Chapter 380 Economic Development and Performance Agreement for Property Located in the Texas City Gulf Coast Reinvestment Zone No. 1. (Management Services)

Item pulled by Mayor Doyle.

Discussed in conjunction with item 6 (b).

Motion by Commissioner At Large Bruce Clawson, Seconded by Commissioner District 3 Dorthea Jones to approve Resolution No. 17-084.

**Vote: 7 - 0 CARRIED**

- d. Consider and take action on Resolution No. 17-085, to approve the purchase of a camera through CDW Government, LLC using a grant provided by the Houston-Galveston Area Council (H-GAC). (Homeland Security)

**Vote: 7 - 0 CARRIED**

- e. Consider and take action on Resolution No. 17-086, to approve and award Bid #2018-038 for the Janitorial Services Annual Contract. (Purchasing)

**Vote: 7 - 0 CARRIED**

## 7. REGULAR ITEMS

- a. Consider and take action on Ordinance No. 17-31, to amend the City of Texas City fiscal budget to create an additional dispatcher position. (Finance)

Laura Boyd, Finance Director, stated that this budget amendment is to create an additional police dispatcher position and appropriate funding for the position.

Motion by Commissioner At Large Dee Ann Haney, Seconded by Commissioner District 4 Jami Clark to approve Ordinance No. 17-31.

**Vote: 7 - 0 CARRIED**

- b. Consider and take action on Ordinance 17-32, amending "Texas City Gulf Coast Reinvestment Zone No. 1" to more particularly define its boundaries by legal description for commercial-industrial tax abatement purposes and making certain findings of fact in accordance with Texas Tax Code Section 312.201. (Management Services)

Commissioner Roberts asked if the legal description was surveyed by a professional to set metes and bounds for the property?

Russell F. Plackemeier, City Attorney, answered yes.

Motion by Commissioner At Large Dee Ann Haney, Seconded by Commissioner At Large Bruce Clawson to approve Ordinance No. 17-32.

**Vote: 7 - 0 CARRIED**

## 8. PUBLIC COMMENTS

Evelyn Robinson, Home Owner, requested action be taken in helping her resolve her water bill. Mayor Doyle requested that Corbin Ballast, Director of Utilities Management, visit with Ms. Robinson after the Commission meeting to help resolve the situation.

## STAFF COMMENTS

Joseph Byrd, Director of I.T., informed that he will be disconnecting all T-Mobile lines by January. Any City employee who still has T-Mobile needs to contact him.

Nicholas Finan, Director of Management Services, thanked Ernest Robles for his hard work at the Sanders/ Vincent Community Center during Hurricane Harvey.

Chief Robert Burby, Police Department, introduced 3 new S.W.A.T. trainees, Brandon Shives, Manda Serenil and Michael Kelmen. Manda Serenil is making history by becoming the first female S.W.A.T Officer in Texas City.

Chief David Zacherl, Fire Department, reminded everyone to use precautions with heaters and space heaters.

Dennis J. Harris, Director of Recreation & Tourism, stated how great the turnout was for the Senior Serve event.

Joe Stanton, Assistant Chief of Police, stated that the Townhall Security Meeting went great. Almost 100 churches attended as well as the FBI.

Russell F. Plackemeier, City Attorney, thanked everyone for the support and kind gestures he and his family received after the passing of his father.

9. MAYOR'S COMMENTS

Mayor Doyle congratulated Rhomari Jackson on becoming a regular full-time employee with the City.

10. COMMISSIONERS' COMMENTS

Commissioner Roberts congratulated Officer Shives on training to become a member of the S.W.A.T Division.

Commissioner Bowie stated how much she enjoyed the Christmas Parade put on by the Recreation & Tourism Department.

Commissioner Jones wished everyone a "Merry Christmas!"

Commissioner Clark inquired about the portable FEMA trailers she's noticed around town. Mayor Doyle informed her that they were to be used as portable classrooms for TCISD.

Commissioner Clark then asked the status on recycling and why it has been suspended. Mike Stump, Public Works, informed everyone that recycling will need to be taken to the Biosphere pending negotiation of the new solid waste contract.

11. ADJOURNMENT

Having no further business, Commissioner Jones made a MOTION to ADJOURN at 5:45 p.m.; the motion was SECONDED by Commissioner Clark. All present voted AYE. MOTION CARRIED.

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MATTHEW T. DOYLE, MAYOR

ATTEST:

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James Hartshorn, City Secretary  
Date Approved:

**CITY COMMISSION REGULAR MTG**

**(6) (b)**

**Meeting Date:** 12/20/2017

Bid # 2018-039 Police Department Uniforms

**Submitted For:** Debbie Gurka, Administration

**Submitted By:** Debbie Gurka,  
Administration

**Department:** Purchasing

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-087, approve and award Bid #2018-039 for the purchase and delivery of Police Department Uniforms Annual Contract.

**BACKGROUND**

On November 6, 2017 bid packets were mailed to area vendors. A bid tabulation is attached for your review.

**ANALYSIS**

The responsible bid meeting all specifications was received from Lone Star Uniforms, in Houston, for the unit prices bid.

It is my recommendation to award the contract for the purchase and delivery of Police Department Uniforms to Lone Star Uniforms, in Houston, for the unit prices bid and that the Mayor be authorized to execute a contract on behalf of the City Commission.

Thank you.

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

"Exhibit A"

2018-039 Police Uniforms Tabulation

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**RESOLUTION NO. 17-087**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ANNUAL CONTRACT WITH LONE STAR UNIFORMS TO PROVIDE POLICE DEPARTMENT UNIFORMS; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, on November 6, 2017, bid packets were mailed to area vendors to provide police department uniforms, Bid #2018-039; and

**WHEREAS**, bids were opened on November 30, 2017, and the responsible bid meeting all specifications was Lone Star Uniforms, Houston, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the successful bidders for Bid #2018-039 to provide police department uniforms was Lone Star Uniform, Houston, Texas;

**SECTION 2:** That the Mayor is hereby authorized to enter into an annual contract with Lone Star Uniforms for the purchase and delivery of police department uniforms, for the amounts specified in **Exhibit "A"**, attached hereto and incorporated herein for all intents and purposes.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of December 2017.**

\_\_\_\_\_  
Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
James Hartshorn  
City Secretary

\_\_\_\_\_  
Russell F. Plackemeier  
City Attorney

## **PURCHASE AGREEMENT**

STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS AGREEMENT MADE AND ENTERED INTO THIS 20<sup>th</sup> DAY OF DECEMBER A. D., 2017, by and between the CITY OF TEXAS CITY (OWNER), a municipality in Galveston County, Texas, and LONE STAR UNIFORMS / GALLS, LLC. (SUPPLIER), of the City of Houston, County of Harris, and the State of Texas.

### **DESCRIPTION**

WITNESSETH: In consideration of the payments and agreements hereinafter mentioned, to be made and performed by OWNER, SUPPLIER agrees to furnish and deliver Police Department Uniforms, for the unit prices bid as described in:

### **BID #2018-039 ANNUAL CONTRACT FOR POLICE DEPARTMENT UNIFORMS**

The SUPPLIER agrees to furnish and deliver Police Department Uniforms, for the unit prices bid, for a twelve (12) month period, in complete accordance with the OWNER'S specifications, conditions and prices stated in the Bid Form dated November 28, 2017.

### **AGREEMENT**

This Agreement shall consist of the Purchase Agreement, Notice to Bidders, Instructions to Bidders, Conflict of Interest, Special Conditions, Specifications, and the Bid Form. These items shall form the Agreement and are as fully a part of the Agreement as if attached to the Agreement.

This contract represents the entire and integrated agreement between the OWNER and the SUPPLIER and supersedes all prior negotiations, representations or agreements, whether written or oral.

The SUPPLIER agrees to furnish and deliver to the OWNER Police Department Uniforms, for the unit prices bid, as stated on the Bid Form for the duration of the contract.

**TERM**

The SUPPLIER shall supply Police Department Uniforms, on an “as needed” basis for a twelve (12) month period beginning January 1, 2018 and continuing through December31, 2019.

The OWNER will have the option to extend the contract for two (2) additional one (1) year period of this contract term when prices and conditions remain unchanged.

**PAYMENT**

The OWNER agrees to make payments in the full amount of the invoice within thirty (30) days following receipt of an invoice.

The amounts to be paid are based on the SUPPLIER’S Bid Form attached hereto and subject to the conditions which are described in the contract documents.

In WITNESS THEREOF, the parties of these presents have executed this agreement in triplicate in the year and day first above written.

**LONE STAR UNIFORMS / GALLS, INC**  
**SUPPLIER**

**CITY OF TEXAS CITY**  
**OWNER**

\_\_\_\_\_  
R. Michael Andrews  
CFO

\_\_\_\_\_  
Matthew T. Doyle  
MAYOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

SEAL

SEAL

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Laura Boyd  
Director of Finance

**BID TABULATION****BID #2018-039****Police Department Uniforms Annual Contract****Bid Opening: Thursday, November 30, 2017 @ 2:00 p.m.**

| <b>QTY</b> | <b>DESCRIPTION</b>   | <b>Lone Star Uniforms</b> |           | <b>Cop Stop</b>         | <b>Central Police Supply</b> |
|------------|--|---------------------------|-----------|-------------------------|------------------------------|
| 12 each    | Standard Duty – Patrol Short Sleeve Shirt-Light Blue Female w/Zipper Elbeco #Z9813 | Yearly                    | 432.00    | <b>NO BID SUBMITTED</b> | <b>NO BID SUBMITTED</b>      |
| 4 each     | Standard Duty - Patrol Long Sleeve Shirt-Light Blue Female w/Zipper Elbeco #Z9313  | Yearly                    | 152.00    | 0.00                    | 0.00                         |
| 200 each   | Standard Duty – Patrol Short Sleeve Shirt-Light Blue Male w/Zipper Elbeco #Z3313-3 | Yearly                    | 7,200.00  | 0.00                    | 0.00                         |
| 200 each   | Standard Duty – Patrol Long Sleeve Shirt-Light Blue Male w/Zipper Elbeco #Z313     | Yearly                    | 7,600.00  | 0.00                    | 0.00                         |
| 100 each   | Standard Duty – Patrol Trousers Male/Female Elbeco                                 | Yearly                    | 3,600.00  | 0.00                    | 0.00                         |
| 10 each    | Uniform Hat  | Yearly                    | 430.00    | 0.00                    | 0.00                         |
| 25 each    | Raincoat with “Police” screen printed on back Neese 1650C or Equal                 | Yearly                    | 350.00    | 0.00                    | 0.00                         |
| 25 each    | Convertible Jacket Blauer 6026 or Equal  | Yearly                    | 2,375.00  | 0.00                    | 0.00                         |
| 20 each    | Badge-Patrolman Rhodium Blackinton #B879   | Yearly                    | 1,900.00  | 0.00                    | 0.00                         |
| 20 each    | Badge – Sergeant & above Gold Blackinton # B879                                    | Yearly                    | 1,700.00  | 0.00                    | 0.00                         |
| 20 each    | Badge – Hat B720 Must match # B879 Badge   | Yearly                    | 1,700.00  | 0.00                    | 0.00                         |
| 20 each    | Uniform Tie Samuel Broome #90010   | Yearly                    | 100.00    | 0.00                    | 0.00                         |
| 20 each    | Name Plate Blackinton Style J1   | Yearly                    | 200.00    | 0.00                    | 0.00                         |
| 20 each    | Collar Brass Blackinton Style #15 cut out letters                                  | Yearly                    | 560.00    | 0.00                    | 0.00                         |
| 20 each    | Body Armor Point Blank Vision w/ Thor Shield                                       | Yearly                    | 13,900.00 | 0.00                    | 0.00                         |
| 20 each    | Reflective Vest Blauer style # 339   | Yearly                    | 700.00    | 0.00                    | 0.00                         |
| 20 each    | Duty Belt Bianchi Accumold   | Yearly                    | 840.00    | 0.00                    | 0.00                         |
| 20 each    | Holster – Duty Safariland 6280   | Yearly                    | 2,960.00  | 0.00                    | 0.00                         |
| 20 each    | Holster – <u>No Light</u> Duty Safariland 6280                                     | Yearly                    | 2,700.00  | 0.00                    | 0.00                         |
| 20 each    | Mag Case – double Bianchi AccuMold   | Yearly                    | 480.00    | 0.00                    | 0.00                         |
| 20 each    | Cuff Case Bianchi AccuMold   | Yearly                    | 420.00    | 0.00                    | 0.00                         |
| 20 each    | Cuff Case Bianchi AccuMold   | Yearly                    | 420.00    | 0.00                    | 0.00                         |
| 20 each    | Keepers Bianchi AccuMold   | Yearly                    | 220.00    | 0.00                    | 0.00                         |

| <b>QTY</b> | <b>DESCRIPTION</b>  | <b>Lone Star Uniforms</b> |                    | <b>Cop Stop</b> | <b>Central Police Supply</b> |
|------------|---|---------------------------|--------------------|-----------------|------------------------------|
| 20 each    | Flashlight Holder Ring SL20   | Yearly                    | 130.00             | 0.00            | 0.00                         |
| 20 each    | Baton 21" Monadnock expandable w/friction lock                          | Yearly                    | 2,500.00           | 0.00            | 0.00                         |
| 20 each    | Baton Holder Bianchi AccuMold   | Yearly                    | 560.00             | 0.00            | 0.00                         |
| 20 each    | OC Case – for 2oz canister Bianchi AccuMold                             | Yearly                    | 300.00             | 0.00            | 0.00                         |
| 20 each    | Flashlight Holder – for Stinger flashlight                              | Yearly                    | 440.00             | 0.00            | 0.00                         |
| 20 each    | Flashlight – Stinger w/AC charger                                       | Yearly                    | 2,000.00           | 0.00            | 0.00                         |
| 20 each    | Flashlight – Streamlight 20SL LED                                       | Yearly                    | 2,500.00           | 0.00            | 0.00                         |
| 20 each    | Radio Case Bianchi AccuMold   | Yearly                    | 520.00             | 0.00            | 0.00                         |
| 20 each    | Handcuffs – Smith & Wesson Nickel Chained                               | Yearly                    | 400.00             | 0.00            | 0.00                         |
| 20 each    | Detention, ID & Communications Shirt – 5.11 Tactical Series Male/Female | Yearly                    | 840.00             | 0.00            | 0.00                         |
| 20 each    | Detention, ID & Communications Pants – 5.11 Tactical Series Male/Female | Yearly                    | 840.00             | 0.00            | 0.00                         |
| 20 each    | Detention, ID & Communications Jacket – Blauer 6026 or equal            | Yearly                    | 2,375.00           | 0.00            | 0.00                         |
| 50 each    | K-9 BDU Shirt Male Proper or equal                                      | Yearly                    | 2,400.00           | 0.00            | 0.00                         |
| 50 each    | K-9 BDU Pants Male Proper or equal                                      | Yearly                    | 1,900.00           | 0.00            | 0.00                         |
| 50 each    | SWAT BDU Shirt Male Proper or equal                                     | Yearly                    | 2,400.00           | 0.00            | 0.00                         |
| 50 each    | SWAT BDU Pants Male Proper or equal                                     | Yearly                    | 1,900.00           | 0.00            | 0.00                         |
| 50 each    | Standard Duty – Patrol Short Sleeve Knit Shirt Warm Weather - Unisex    | Yearly                    | 2,400.00           | 0.00            | 0.00                         |
| 20 each    | Service Award Medal of Honor  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Medal of Valor  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Life Saving   | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Purple Heart  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Community Service   | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Master Peace Officer                                      | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Field Training Officer                                    | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 2 years   | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 5 years   | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 10 years  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 15 years  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 20 years  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 25 years  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award 30 years  | Yearly                    | 200.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Bar Holder 2 ribbon                                       | Yearly                    | 240.00             | 0.00            | 0.00                         |
| 20 each    | Service Award Bar Holder 3 ribbon                                       | Yearly                    | 240.00             | 0.00            | 0.00                         |
|            | <b>Yearly Totals</b>  |                           | <b>\$78,604.00</b> | <b>\$0.00</b>   | <b>\$0.00</b>                |

**CITY COMMISSION REGULAR MTG**

**(6) (c)**

**Meeting Date:** 12/20/2017

**Submitted For:** Nick Finan, Management Services

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** City Secretary

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-088, retaining Lloyd Gosselink, et. al, to pursue collection of disputed cable franchise fees. (City Secretary)

**BACKGROUND**

Almost two years ago, the city had an outside auditor perform an audit of Comcast payments. Over a four year period (maximum we can go back), the auditor indicated a \$156,000 deficiencies on payments. It was broken down into categories - Sales, services, promotions, etc. Comcast disputes that the term gross revenues includes some of the fees our attorneys have determined are to be included. We have responded and hoped for some resolution up to this point. We suggested presenting the issue to the Gulf Coast Coalition of Cities on Franchise Utilities. 14 Cities had decided to have an audit to see if it common. They all found similar underpayments. At this point, it appears the 14 cities or the bulk of them, will retain Lloyd Gosselink to seek necessary remedy to obtain a resolution. By having the 14 cities participate, we expect our share to be \$18,645. Other cities indicating their desire to pursue include Pearland, Sugarland, League City, Alvin, and Galveston. See the attached memo for more details.

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

Memo

Petition

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**DRAFT  
RESOLUTION NO. 17-088**

**A RESOLUTION TO RETAIN LLOYD GOSSELINK, ET. AL., TO PURSUE VARIOUS ACTIONS ON CABLE FRANCHISE DISPUTE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, The City of Texas City retained Newgen Strategies & Solutions to perform an audit of the cable franchise payments that the City received; and

**WHEREAS**, The audit performed indicated deficiencies in payments in excess of \$150,000; and

**WHEREAS**, the City of Texas City notified the cable operator, Comcast, of the deficiency and attempted a resolution to the deficiency without any success; and

**WHEREAS**, The City of Texas City, in working with other cities with similar disputes on the same issues, has decided to retain Lloyd Gosselink, et. al., a law firm that specializes in franchise and utility issues; and

**WHEREAS**, The City of Texas City desires to utilize all available recourse in working with Lloyd Gosselink, et. al., and the other cities in the region.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** The City Commission of the City of Texas City authorize the Mayor to retain Lloyd Gosselink, et. al. to pursue the collection of disputed uncollected fees.

**SECTION 2:** The City of Texas City contribute \$18,645.00 as its contribution to participate with fourteen (14), give or take, cities within the region.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of December 2017.**

\_\_\_\_\_  
Matthew T. Doyle, Mayor  
City of Texas City, Texas

**ATTEST:**

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James Hartshorn  
City Secretary

**APPROVED AS TO FORM:**

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Russell F. Plackemeier  
City Attorney

## MEMORANDUM

TO: Representatives of Comcast Cities

FROM: Thomas Brocato  
Jose E. de la Fuente

DATE: December 8, 2017

RE: Anticipated franchise fee litigation

### EXECUTIVE SUMMARY

This memorandum provides information about a claim that is anticipated to be filed by a group of fourteen (and possibly more) cities, to the extent they choose to participate, against Comcast Cable (“Comcast”) for past underpayment of cable services franchise fees owed pursuant to Texas law. Importantly, the claim would seek both (1) recovery of damages for past underpayments and (2) to establish the proper method of accounting for those fees so as to eliminate future underpayments. Thus, the case is worth both the amount of money owed thus far and the difference in the amount of future fees that would be paid for the foreseeable future.

The anticipated arrangement would be a suit filed against Comcast by all of the cities collectively in a single case, with legal fees to be paid on a pro-rata share based on each city’s share of the current fees owed.

### THE POTENTIAL CLAIM

This potential claim relates to two goals: (1) recovering past underpayments of cable services franchise fees by Comcast and (2) establishing the proper method of accounting for such fees in the future.

Specifically, the potential claim is for wrongfully withheld/unpaid cable services franchise fees that Comcast owes to a group of fourteen cities (see attached chart). Generally, after engaging Connie Cannady with NewGen Strategies to analyze Comcast’s records for the period from 2013-2017 (with some variation for specific cities) in light of Texas law requiring payments to cities based on Comcast’s “gross revenues” (a term defined by law at §66.002 of the Public Utility Regulatory Act), it was determined that while Comcast appropriately remitted franchise fees on the majority of its revenue, there are four specific issues that led to underpayment.

These are:

1. Comcast inappropriately allocated late fees to other lines of business;
2. Comcast inappropriately allocated other per event fees such as fees for Non-sufficient Funds (NSF), convenience fees and early termination fees to other lines of business;
3. Comcast inappropriately allocated whole house maintenance fees to other lines of business; and
4. Comcast excluded Spotlight-reported (Spotlight is an entity involved in Comcast's advertising transactions) amounts for commissions on advertising.

The total amount of underpayment for the fourteen cities examined is \$873,644.66 (see the spreadsheet attached as Exhibit 1), which translates to a collective annual underpayment of nearly \$220,000.00 per year. Presuming that Comcast continues to interpret its payment obligations as it currently does, this indicates that a similar underpayment would continue to take place in each coming year.

A similar suit was recently filed by the City of San Antonio against Time Warner Cable (San Antonio handled this filing in-house) seeking in excess of \$6,000,000.00 in unpaid franchise fees citing very similar accounting issues as raised here (a copy of the Petition is attached as Exhibit 2; we note that shortly after filing, the matter was referred to Bankruptcy Court, with no further activity). We anticipate that the claims and causes of action would be generally similar to those reflected in the San Antonio case (San Antonio also sought payment for unreported third party advertising fees; those fees may be available here, but further analysis would be required). We further note that the goal would be to reach a negotiated settlement, and settlement would be pursued diligently after suit is filed; however, we believe that filing suit before negotiation is tactically and strategically wise.

### **BRIEF ANALYSIS OF THE CLAIMS**

We believe that each issue listed above has merit, and supports a claim by the cities for underpayment. A short explanation of each issue is provided below; the issues are of course more complex than can be provided in such short explanation, but we wanted to provide a simple summary for your consideration.

#### **1. Allocation of Late Fees Collected from Subscribers**

The issue here is Comcast's improper allocation of late fees charged to subscribers to their cable service gross revenue. Comcast allocates only a portion of the total late fees collected each month to cable service gross revenue. The Company's allocation methodology is based on the overall percentage that video revenue is to

total revenue that includes video, high speed internet, telephony and security services. Instead, all late fee receipts, which are charged on a “per event” basis, without regard to whether a cable subscriber also receives additional services, should be considered cable service gross revenue for purposes of computing cable service franchise fees, unless otherwise identified as being directly associated with non-cable subscribers.

**2. Allocation of NSF Fees, Convenience Fees, and Early Termination Fees Collected from Subscribers**

These are additional fees that Comcast charges its customers, and they suffer from the same improper allocation methodology as the late fees described above.

**3. Allocation of Whole House Wire Maintenance Fees Collected from Subscribers**

Whole house wire maintenance fees are monthly recurring flat fees for subscribers who choose to have “insurance” on the repair of any inside wiring. The fee is flat and is not tied to any level of revenue. As with late fees and event-related fees, Comcast allocates a portion of the maintenance revenue to video service based on video revenue as a percentage of total revenue. Without definitive evidence that the fee is somehow directly related to each of the services offered, Comcast’s allocation to cable service based on a percentage of revenue is improper.

**4. Commissions on Advertising**

Comcast has improperly calculated the fees owed based on net advertising revenue (after commissions are paid to ad agencies or reps), when the fees should be calculated based on gross revenue. The definition of “gross revenues” in PURA §66.002(6)(A) specifically states that commissions on advertising will not be netted against the advertising revenue for purposes of computing franchise fees. This is, however, a complicated and disputed issue incorporating complex accounting analysis.

Comcast provided supporting documentation from Spotlight (a Comcast affiliate) concerning the net amount of advertising revenue on which franchise fees were paid to the City. Based on the limited information provided by Comcast, we have estimated the total amount of the commissions paid by Spotlight to third party ad agencies and ad reps based on prior studies where Comcast provided supporting documentation concerning the amount of commissions paid, and we have used an average commission rate to calculate the amount of additional fees owed.

## **THE LITIGATION ARRANGEMENT AND ESTIMATED COSTS**

We have prepared an estimated budget for litigating these claims. This prospective budget includes numerous assumptions, including an assumption that the opposition will fight every step of litigation and force the matter to go all the way to trial. We expect that the most likely litigation path will involve filing a detailed petition in state court (by all plaintiffs collectively in a venue of our choosing, after client consultation), engaging in certain early procedural fights (venue and the like), conducting negotiations towards settlement, and preparing a detailed and direct motion for summary judgment on the issue of Comcast's liability. If the cities can obtain a favorable ruling on that motion, that may open the door to more favorable settlement discussions.

We would also continue the engagement of Connie Cannady as a third-party expert to further examine the claim, evidence, and the relevant accounting practices, and provide necessary testimonial support (which makes up approximately \$20,000 of our estimate). As for the remaining path of the case, this estimated budget accounts for preparing and/or responding to initial dispositive motions to dismiss, motions for summary judgments, a few depositions, written discovery, mediation, and a two day trial. Our estimate for taking such a case to and through trial is \$190,000 (again, inclusive of additional expert fees). Note that this number could be significantly less if the matter is resolved early in litigation. Likewise, it could end up being higher if the opposition employs more dilatory tactics that require more attorney time in response. We presently anticipate that the costs would be spread among multiple plaintiffs who all have similar claims. Of course, each additional plaintiff added would further defray costs for the other plaintiffs. We have prepared a simple chart showing the allocation of litigation costs on a per-city basis, based on this \$190,000 estimated budget, and presuming that these fourteen cities participate (see the chart attached to this memorandum as Exhibit 3).

Finally, in the event of an appeal, we would estimate an additional \$20,000 in fees through the court of appeals, and another \$20,000 if it makes it all the way to the Supreme Court.

# **EXHIBIT 1**

| <u>City</u>    | <u>Ad Sales</u>      |                     |                      |                      |                    |                              |
|----------------|----------------------|---------------------|----------------------|----------------------|--------------------|------------------------------|
|                | <u>Underpayment</u>  | <u>Ad Sales Var</u> | <u>Various Fees</u>  | <u>Total</u>         | <u>Interest</u>    | <u>Total Fees + Interest</u> |
| Alvin          | \$ 12,327.59         | \$ 163.22           | \$ 24,718.14         | \$ 37,208.94         | 238.76             | \$ 37,447.71                 |
| Dickinson      | 16,646.85            | 236.69              | 31,100.69            | 47,984.23            | 308.79             | 48,293.02                    |
| Friendswood    | 19,778.69            | 205.58              | 23,250.38            | 43,234.65            | 279.27             | 43,513.92                    |
| Galveston      | 53,877.01            | (702.94)            | 69,589.13            | 122,763.20           | 794.29             | 123,557.49                   |
| Humble         | 18,114.42            | 306.64              | 50,105.75            | 68,526.81            | 434.44             | 68,961.25                    |
| Jersey Village | 3,533.35             | (108.92)            | 5,938.45             | 9,362.88             | 57.77              | 9,420.65                     |
| La Marque      | 12,616.66            | 151.69              | 27,737.37            | 40,505.72            | 259.78             | 40,765.50                    |
| Lake Jackson   | 19,567.46            | (279.40)            | 24,145.96            | 43,434.02            | 280.77             | 43,714.79                    |
| League City    | 34,575.38            | (232.91)            | 54,643.76            | 88,986.24            | 432.53             | 89,418.77                    |
| Pearland       | 38,283.64            | (581.31)            | 59,879.40            | 97,581.73            | 619.85             | 98,201.58                    |
| Rosenberg      | 12,437.68            | 237.33              | 30,350.72            | 43,025.72            | 277.53             | 43,303.24                    |
| Santa Fe       | 10,223.23            | 151.20              | 18,962.96            | 29,337.38            | 188.75             | 29,526.13                    |
| Sugar Land     | 48,491.87            | 566.52              | 62,016.28            | 111,074.67           | 710.77             | 111,785.44                   |
| Texas City     | 40,186.68            | -                   | 45,329.93            | 85,516.61            | 218.56             | 85,735.17                    |
| <b>Total</b>   | <b>\$ 340,660.50</b> | <b>\$ 113.40</b>    | <b>\$ 527,768.91</b> | <b>\$ 868,542.81</b> | <b>\$ 5,101.85</b> | <b>\$ 873,644.66</b>         |

Findings for 4th Q 2010-3rd Q 2014

# **EXHIBIT 2**

CAUSE NO. 2017CI20297

CITY OF SAN ANTONIO,  
*Plaintiff*

v.

TIME WARNER CABLE TEXAS, LLC,  
d/b/a SPECTRUM AND CHARTER  
COMMUNICATIONS,  
*Defendant(s)*

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IN THE DISTRICT COURT

225 JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

The CITY OF SAN ANTONIO, hereinafter referred to as "Plaintiff," or "City," files this Plaintiff's Original Petition against TIME WARNER CABLE TEXAS, LLC D/B/A SPECTRUM AND CHARTER COMMUNICATIONS, hereinafter referred to as "Defendant," or "TWC," seeking unpaid franchise fees in excess of One Million Dollars and would show the Court as follows:

**I.**

**DISCOVERY CONTROL PLAN**

1. The City intends to conduct discovery under a Level 3 Discovery Control Plan as more fully set out in Texas Rule of Civil Procedure 190.4.

**II.**

**PARTIES**

2. The City of San Antonio is a home-rule municipality chartered and incorporated in Bexar County and situated predominately in Bexar County, Texas.

3. Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications is a Delaware corporation with its principal place of business at 12405 Powerscourt Dr., St. Louis, Missouri 63131 and doing business in Texas and in the City of San Antonio. Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th St., Suite 620, Austin, Texas 78701-3136. A request is made for a summons to be issued for service.

### **III.**

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction of this cause under the provisions of Chapter 66 of the Texas Utility Code §66.005(b) and §66.015(a) (Vernon 2008). The subject matter of this lawsuit is within the Court's jurisdiction. Pursuant to Texas Rule of Civil Procedure 47(c)(5), the City states that it seeks monetary relief over One Million Dollars (\$1,000,000.00). The City also seeks judgment for all other relief to which it is justly entitled.
5. Venue is proper in Bexar County pursuant to §15.002 of the Texas Civil Practice and Remedies Code because all or part of the events or omissions forming the basis of the lawsuit occurred in Bexar County, Texas.
6. As of the time of filing, damages are within the jurisdictional limits of the Court.

#### **IV.**

#### **FACTUAL BACKGROUND**

7. For many years, cable companies were the sole provider of wire-based video programming to city residents. Until 2005, a cable company that wanted to serve customers within a Texas city did so by obtaining a local franchise agreement from that city. Federal law required a local authority (e.g., a state or local government) to issue a franchise agreement, and Texas law provided for compensation for the use of the city's rights-of way.
8. The City of San Antonio, prior to 2005, negotiated a cable franchise agreement with Defendant and other cable providers. In exchange for access to municipal rights-of-way ("ROW") necessary for the deployment of the cable system infrastructure, TWC and other cable providers paid the City of San Antonio and other municipalities a franchise fee, among other in-kind contributions, including the operation of public, educational and government ("PEG") access channels. These negotiations resulted in what were commonly termed "Municipal Franchise Agreements." Municipal Franchise Agreements commonly included provisions establishing the right of municipal government to conduct audits of the franchise fees paid to the municipality.
9. Because of ever-growing technological capabilities, telecommunications companies now also have the ability to provide video programming. Those companies wanted the local franchise system reformed so that they would not have to obtain hundreds of franchises to implement their new technology. Cities wanted to ensure that all technologies and services that use the public ROW would pay a fair and equitable fee for use of the public's land. In addition, cities wanted to ensure they retained police power authority

over their ROW and were still able to provide PEG programming to their citizens. As a result, in 2005, the legislature passed Senate Bill 5, which created a new Chapter 66 of the Public Utilities Code.

10. In 2005, the State Legislature passed into law Chapter 66 of the Texas Public Utility Regulatory Act ("PURA" or the "Act"), which fundamentally changed the way cable providers gained access to municipal ROW. Effective September 1, 2005, following the expiration of a Municipal Franchise Agreement, the State of Texas required cable providers to provide cable or video service in a municipality pursuant to a State Issued Certificate of Franchise Agreement ("SICFA") approved by the Texas Public Utility Commission ("PUC").
11. Chapter 66 requires an entity seeking to provide cable or video programming services in Texas to file an application with the PUC for the SICFA, and requires the PUC to issue a certificate of franchise provided that the applicant: (a) agrees to comply with all federal laws and regulations; (b) agrees to comply with all city regulations regarding the use and occupation of the public ROW, including police powers of the city; and (c) provides a description of the service area footprint to be served within the municipality. TEX. UTIL. CODE ANN. §66.003.
12. A SICFA authorizes a cable provider to use municipal ROW provided the cable provider makes a quarterly franchise payment to each city in which it provides service and that the payment be equal to five percent (5%) of "gross revenues" (as the term is defined in Chapter 66), earned by the franchise holder in that city. *See* TEX. UTIL. CODE ANN. §66.005. In addition, Chapter 66 provides that the holder of the SICFA shall pay each city an amount equal to one percent (1%) of the provider's "gross revenues" to support

PEG access channels (collectively, the five (5%) and the one (1%) percent will be known as the "Franchise Fees"). See TEX. UTIL. CODE ANN. §66.006. The Municipal Franchise Agreement between the City and TWC expired on December 31, 2005.

13. On January 1, 2006, TWC began operating in San Antonio under SICFA No. 90007, authorized by the PUC pursuant to Chapter 66 of PURA. TEX. UTIL. CODE ANN. §66.004. Texas law authorizes municipalities to review the business records of the cable service provider to ensure the cable service provider is complying with its payment obligations. *Id.* §66.005(b) and §66.006(b). The City monitors TWC's compliance of Chapter 66 of the Act through an audit.
14. In 2009, the City exercised its rights under Chapter 66 of the Act by initiating an audit of the Franchise Fees paid by TWC based on TWC's "gross revenues" received from subscribers residing within San Antonio's city limits. The purpose of this audit was to determine if TWC was in compliance with Chapter 66. The audit was intended to cover the period of 2006, the year that TWC began operating under its SICFA authorized by the Texas PUC, through 2009.
15. More specifically, in February 2009, the City requested TWC submit to a routine audit to determine if TWC properly calculated and remitted the Franchise Fees for all subscribers inside the San Antonio city limits. TWC refused to release the data necessary to enable the City to conduct an audit citing privacy statutes amongst other reasons.
16. On October 5, 2009, the City filed a Petition for Writ of Mandamus to Compel Production and Examination of TWC's Business Books and Records in state district court in San Antonio. On April 18, 2011, the Court issued an Order (the "Order")

compelling TWC to produce relevant financial documents listed in the Order within 60 days as set forth in the Order.

17. The City and TWC met in person or talked on various occasions about the City's audit, TWC's calculation of "gross revenues" and TWC's failure to remit all owing Franchise Fees to the City. TWC continued to intentionally avoid producing the documents needed to conduct a complete and accurate audit. More egregiously, TWC would produce incomplete and incorrect documents.
18. TWC failed to fully adhere to the Order, thereby hindering the audit review through 2011-2012. Specifically, TWC failed to make personnel available to answer clarifying questions as required by the Order; did not provide follow-up information; provided contradictory information; and did not produce certain information listed in the Order. For example, TWC's failure to correctly associate subscriber accounts within the correct city resulted in TWC producing unreliable subscriber transaction billing data and pass-by data to the City.
19. In 2014, three years after the Order, the City conducted and finalized the audit based on the incomplete documentation TWC provided the City. The City determined TWC owes it unpaid Franchise Fees related to five categories, set forth in more detail below:
  - 1) Under-reported Subscriber Revenue;
  - 2) Under-reported Advertising Revenue;
  - 3) Incorrect Calculation Methodology;
  - 4) Under-reported Package Early Termination Fees;
  - and 5) Unreported Third-Party Advertising Fees.
20. Under-reported Subscriber Revenue: TWC did not include all cable subscriber revenue in its calculation of Franchise Fees due to the City. Examples of errors committed by TWC were: 1) addresses assigned to other municipalities (franchises) that should have

been assigned to the City and addresses assigned to the City that should have been assigned to other municipalities (franchises); and 2) revenue was in accounts that did not match any addresses reflected in the pass-by data (e.g., a list of addresses that are potentially serviceable). Indeed, TWC provided data for the first quarter 2006 twice and for the fourth quarter 2008 three times, each with significantly different results. If TWC's pass-by data were reliable, each of the datasets for a given time period would essentially be the same. Because the data is not reliable, the City cannot be assured TWC accurately calculated and remitted Franchise Fees.

21. **Under-reported Advertising Revenue:** TWC committed a number of errors in their methodology when calculating "gross revenues" for the purpose of remitting the Franchise Fees due to the City. These errors included, but were not limited to, 1) netting commissions against accounting revenue in violation of Section 66.002(6)(A); 2) allocating advertising, home shopping and product launch revenue based on the ratio of "paid" subscribers (basic cable less fees), rather than on the ratio of all subscribers as required by Section 66.002(6)(A); 3) providing insufficient information on national advertising, associated commissions, and the allocation methodology for these revenues; and 4) not using accurate ratios of San Antonio cable subscribers to all TWC cable subscribers in its allocation of non-subscriber revenue (TWC did not account for bulk accounts e.g., apartment complexes that procure cable services for all tenants).
22. **Incorrect Calculation Methodology:** TWC used two different methods for calculating the Franchise Fees it owed the City during the audit period. TWC excluded certain types of revenue from its calculation of "gross revenues" under both methods. These errors included, but were not limited to, TWC omitting Franchise Fees collected from

subscribers in its calculation of gross revenues and failing to subtract the associated bad debt from its calculations of gross revenue. Franchise fees collected from subscribers fall directly under the definition of "gross revenue" in Section 66.002(A-B) of the Texas Utilities Code, as do customer development program adjustments, hotel on demand purchases, VOD adjustments and Refer-A-Friend Discounts (also known as contra-revenue). As a result of TWC excluding these types of revenue from its calculation of "gross revenue", TWC under-paid its Franchise Fees to the City.

23. **Under-reported Package Early Termination Fees:** TWC began to report package early termination fees in August 2008. TWC did not report package early termination fees for the period from January 2006 through July 2008.
24. **Unreported Third-Party Advertising Fees:** Beginning in 2012, TWC separated advertising revenue into two categories: 1) regular advertising; and 2) third-party advertising. TWC omitted third-party advertising fee revenue and the related commissions from its "gross revenue" before calculating the Franchise Fees owed to the City in violation of Section 66.002(6)(A).
25. As a result of TWC's failure to properly account for and remit the Franchise Fees as required by the Act, the City suffered damages. More specifically, TWC's improper accounting, incorrect methodology and other errors and omissions resulted in TWC owing the City in excess of Six Million Dollars (\$6,000,000.00) in unpaid Franchise Fees, not including interest from 2006 through the time of filing this lawsuit.

V.

**PLAINTIFF'S CAUSES OF ACTION**

**i. Declaratory Judgment**

26. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth therein.
27. Texas Civil Practice & Remedies Code Section 37.001 *et. seq.* provides a way to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations ....” A person “whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE §37.004.
28. Due to the fact that TWC owes the City Franchise Fees there is an actual and present justiciable controversy regarding TWC’s legal obligations and responsibilities to the City under the Act. The facts alleged herein show there is a substantial controversy between the City and TWC regarding the classification and calculation of “gross revenue” under the Act.
29. Pursuant to the Act, TWC must include all: 1) subscriber revenue; 2) advertising revenue; 3) early package termination fees; and 4) third-party advertising revenue in its calculation of “gross revenue”. As a result of TWC’s failure to correctly calculate the Franchise Fees based on the additional “gross revenue” resulting from the inclusion of the subscriber, advertising, third-party advertising revenues and early package termination fees, the City has not received the total Franchise Fees it is entitled to under the Act.

30. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, the City seeks a declaration from the Court that for the period of 2006 through the present:

a. The definition of "gross revenue" found in Chapter 66 of the Act, includes, but is not limited to:

- i. Any amounts of advertising revenue and commissions shown on TWC's books and records;
- ii. Any other amounts of contra-revenue. This includes: Refer-A-Friend Discounts, VOD adjustments, hotel on demand purchases, and restocking fees;
- iii. Any revenue derived from unreturned equipment;
- iv. Any Franchise Fees collected from subscribers and other customers;
- v. Any FCC end-user fees; and
- vi. Any revenue generated from new cable services.

b. TWC shall provide the following as "support" for quarterly payments as required under Sections 66.005 and 66.006 of the Act.

- i. Electronic download of the General Ledger and revenue account structure with descriptions. The format of such files can be agreed to between TWC and the City, but at a minimum data will be provided in pipe delineated files;
- ii. Reconciliation of basis of payments to the City with the General Ledger accounts in the franchise area and for other revenue accounts;
- iii. Calculations showing the allocation of advertising and revenue that is not recorded to specific franchise areas;

- iv. Monthly subscriber accounts in San Antonio and in other areas served by the San Antonio system, including the number of subscribers in any bulk account; and
- v. Pass-by data for each quarter.

**ii. Statutory Violations**

- 31. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.
- 32. Section 66.005 of the Texas Utilities Code requires TWC to pay the City a franchise fee of five percent based upon gross revenue as defined in Chapter 66. Section 66.005(b) further states that “[a] municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.
- 33. Section 66.006 of the Texas Utilities Code requires TWC to pay the City a PEG fee of one percent of TWC’s gross revenue as defined in Chapter 66. Section 66.006 further states that payments are to be paid in the same manner outlined in Section 66.005(b).
- 34. TWC has not properly calculated the Franchise Fees owed to the City. TWC under-reported and omitted revenue. TWC also used an incorrect methodology to calculate revenue and the Franchise Fees owed to the City. These actions are in violation of Sections 66.005 and 66.006 of the Texas Utilities Code. As a result of these violations, TWC should be required to properly calculate its gross revenue and remit all amounts owed to the City.

**iii. Conversion**

- 35. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

36. Pursuant to Sections 66.005(b) and 66.006(b) of the Act, the City has a lawful right to TWC's full payment of the Franchise Fees due to the City within 45 days of the end of each quarter for the preceding calendar quarter. The funds owed to the City were personal property.

37. TWC unlawfully exercised dominion and control over the City's personal property by failing to calculate and refusing to remit payment for all Franchise Fees due to the City. As a result of TWC's failure to calculate and remit the Franchise Fees, the City has been injured.

**iv. Money Had and Received/Accounting**

38. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

39. As a result of TWC's unlawful conduct, TWC holds money that in equity and good conscience belongs to the City. More specifically, TWC has not paid the City the full amount of Franchise Fees owing pursuant to the Act. The City has been damaged by TWC's conduct. TWC should be ordered to account for and immediately remit these funds to the City.

**v. Request for Accounting**

40. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

41. TWC holds, possesses, or controls funds and will continue to hold, possesses, or control future funds, from "gross revenues" stemming from the administration of video programming services within the City of San Antonio to which the City is entitled.

42. Even after previous litigation, discussions and written demands, TWC refuses to provide a simple accounting of its calculation of "gross revenues" to determine the amount of Franchise Fees owed to the City.

43. The City is entitled to an accounting from TWC to determine the actual Franchise Fees it is owed.

**vi. Request for Constructive Trust**

44. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

45. TWC holds, possesses, or controls funds and will continue to hold, possess, or control future funds, from "gross revenues" stemming from the administration of video programming services within the City of San Antonio to which the City is entitled.

46. The City is entitled to the creation of a constructive trust to protect and manage such funds for the proper and equitable distribution of such funds and to prevent unjust enrichment for TWC.

**vii. Attorney Fees**

47. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

48. The City is entitled to its costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code Section 37.009. Accordingly, the City seeks to recover all of its court costs and attorneys' fees associated with prosecuting its claims, both at the trial court level and on any appeal.

**VI.**

**DAMAGES AND REMEDIES**

49. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.
50. As a result of TWC's unjust enrichment in the funds rightfully belonging to the City, the City requests that the Court impose a constructive trust over those the funds held by TWC rightfully belonging to the City.
51. As a direct and proximate result of TWC's actions, the City has and will continue to suffer damages and is entitled to recover its actual damages, exemplary damages, attorney's fees, pre- and post-judgment interest and costs.
52. The City requests that the Court order TWC to conduct an accounting of its calculation of "gross revenues" on which it basis its payment of Franchise Fees to the City.
53. The City prays for the entry of Final Judgment against TWC; for actual damages in an amount greater than Six Million (\$6,000,000.00) Dollars not including interest, exemplary damages, costs and attorney's fees

**VII.**

**TRIAL BY JURY**

54. Plaintiff, City of San Antonio, demands trial by jury pursuant to TEX. R. CIV. P. 216.

**VIII.**

**REQUESTS FOR DISCLOSURE**

55. Under Texas Rule of Civil Procedure 194, Plaintiff hereby requests that Defendant disclose, within fifty (50) days of service of this petition and request, the information or material described in Rule 194.2(a) through (k) of the Texas Rules of Civil Procedure.

**IX.**

**PRAYER**

56. WHEREFORE, PREMISES CONSIDERED, the City asks this Court to set this matter for hearing and, upon final hearing award the City actual damages, exemplary damages, costs, and such other and further relief to which it is justly entitled (including prejudgment and post-judgment interest at the maximum legal rate and as provided by law) at law and/or equity. The City also seeks an accounting of TWC's gross revenues and the creation of a constructive trust. Further, the City seeks all available penalties pursuant to Section 66.015 of the Texas Utilities Code. Pursuant to Texas Rule of Civil Procedure 47(d), the City also demands judgment for all other relief to which it deems itself entitled.

Respectfully Submitted,

**CITY OF SAN ANTONIO**  
Andrew Segovia  
City Attorney  
SBN: 24103187  
Office of the City Attorney  
Litigation Division  
Frost Bank Tower  
100 W. Houston St., 18<sup>th</sup> Floor  
San Antonio, Texas 78205



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**ATTORNEYS FOR PLAINTIFF**  
**CITY OF SAN ANTONIO**

# **EXHIBIT 3**

| <b>CITY</b>    | <b>TOTAL FEES<br/>+ INTEREST</b> | <b>PERCENTAGE<br/>OF \$873,644.66</b> | <b>SAME<br/>PERCENTAGE<br/>OF \$190,000</b> |
|----------------|----------------------------------|---------------------------------------|---|
| Alvin          | \$37,447.71                      | 4.29%                                 | \$8,144.12                                  |
| Dickinson      | \$48,293.02                      | 5.53%                                 | \$10,502.75                                 |
| Friendswood    | \$43,513.92                      | 4.98%                                 | \$9,463.40                                  |
| Galveston      | \$123,557.49                     | 14.14%                                | \$26,871.25                                 |
| Humble         | \$68,961.25                      | 7.89%                                 | \$14,997.67                                 |
| Jersey Village | \$9,420.65                       | 1.08%                                 | \$2,048.80                                  |
| La Marque      | \$40,765.50                      | 4.67%                                 | \$8,865.67                                  |
| Lake Jackson   | \$43,714.79                      | 5.00%                                 | \$9,507.08                                  |
| League City    | \$89,418.77                      | 10.24%                                | \$19,446.77                                 |
| Pearland       | \$98,201.58                      | 11.24%                                | \$21,356.85                                 |
| Rosenberg      | \$43,303.24                      | 4.96%                                 | \$9,417.58                                  |
| Santa Fe       | \$29,526.13                      | 3.38%                                 | \$6,421.33                                  |
| Sugar Land     | \$111,785.44                     | 12.80%                                | \$24,311.07                                 |
| Texas City     | \$85,735.17                      | 9.81%                                 | \$18,645.66                                 |
| <b>TOTALS</b>  | <b>\$873,644.66</b>              | <b>100.00%</b>                        | <b>\$190,000.00</b>                         |

CAUSE NO. 2017CI20297

CITY OF SAN ANTONIO,  
*Plaintiff*

v.

TIME WARNER CABLE TEXAS, LLC,  
d/b/a SPECTRUM AND CHARTER  
COMMUNICATIONS,  
*Defendant(s)*

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

225 JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

The CITY OF SAN ANTONIO, hereinafter referred to as "Plaintiff," or "City," files this Plaintiff's Original Petition against TIME WARNER CABLE TEXAS, LLC D/B/A SPECTRUM AND CHARTER COMMUNICATIONS, hereinafter referred to as "Defendant," or "TWC," seeking unpaid franchise fees in excess of One Million Dollars and would show the Court as follows:

**I.**

**DISCOVERY CONTROL PLAN**

1. The City intends to conduct discovery under a Level 3 Discovery Control Plan as more fully set out in Texas Rule of Civil Procedure 190.4.

**II.**

**PARTIES**

2. The City of San Antonio is a home-rule municipality chartered and incorporated in Bexar County and situated predominately in Bexar County, Texas.

3. Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications is a Delaware corporation with its principal place of business at 12405 Powerscourt Dr., St. Louis, Missouri 63131 and doing business in Texas and in the City of San Antonio. Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th St., Suite 620, Austin, Texas 78701-3136. A request is made for a summons to be issued for service.

### **III.**

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction of this cause under the provisions of Chapter 66 of the Texas Utility Code §66.005(b) and §66.015(a) (Vernon 2008). The subject matter of this lawsuit is within the Court's jurisdiction. Pursuant to Texas Rule of Civil Procedure 47(c)(5), the City states that it seeks monetary relief over One Million Dollars (\$1,000,000.00). The City also seeks judgment for all other relief to which it is justly entitled.
5. Venue is proper in Bexar County pursuant to §15.002 of the Texas Civil Practice and Remedies Code because all or part of the events or omissions forming the basis of the lawsuit occurred in Bexar County, Texas.
6. As of the time of filing, damages are within the jurisdictional limits of the Court.

#### **IV.**

#### **FACTUAL BACKGROUND**

7. For many years, cable companies were the sole provider of wire-based video programming to city residents. Until 2005, a cable company that wanted to serve customers within a Texas city did so by obtaining a local franchise agreement from that city. Federal law required a local authority (e.g., a state or local government) to issue a franchise agreement, and Texas law provided for compensation for the use of the city's rights-of way.
8. The City of San Antonio, prior to 2005, negotiated a cable franchise agreement with Defendant and other cable providers. In exchange for access to municipal rights-of-way ("ROW") necessary for the deployment of the cable system infrastructure, TWC and other cable providers paid the City of San Antonio and other municipalities a franchise fee, among other in-kind contributions, including the operation of public, educational and government ("PEG") access channels. These negotiations resulted in what were commonly termed "Municipal Franchise Agreements." Municipal Franchise Agreements commonly included provisions establishing the right of municipal government to conduct audits of the franchise fees paid to the municipality.
9. Because of ever-growing technological capabilities, telecommunications companies now also have the ability to provide video programming. Those companies wanted the local franchise system reformed so that they would not have to obtain hundreds of franchises to implement their new technology. Cities wanted to ensure that all technologies and services that use the public ROW would pay a fair and equitable fee for use of the public's land. In addition, cities wanted to ensure they retained police power authority

over their ROW and were still able to provide PEG programming to their citizens. As a result, in 2005, the legislature passed Senate Bill 5, which created a new Chapter 66 of the Public Utilities Code.

10. In 2005, the State Legislature passed into law Chapter 66 of the Texas Public Utility Regulatory Act ("PURA" or the "Act"), which fundamentally changed the way cable providers gained access to municipal ROW. Effective September 1, 2005, following the expiration of a Municipal Franchise Agreement, the State of Texas required cable providers to provide cable or video service in a municipality pursuant to a State Issued Certificate of Franchise Agreement ("SICFA") approved by the Texas Public Utility Commission ("PUC").
11. Chapter 66 requires an entity seeking to provide cable or video programming services in Texas to file an application with the PUC for the SICFA, and requires the PUC to issue a certificate of franchise provided that the applicant: (a) agrees to comply with all federal laws and regulations; (b) agrees to comply with all city regulations regarding the use and occupation of the public ROW, including police powers of the city; and (c) provides a description of the service area footprint to be served within the municipality. TEX. UTIL. CODE ANN. §66.003.
12. A SICFA authorizes a cable provider to use municipal ROW provided the cable provider makes a quarterly franchise payment to each city in which it provides service and that the payment be equal to five percent (5%) of "gross revenues" (as the term is defined in Chapter 66), earned by the franchise holder in that city. See TEX. UTIL. CODE ANN. §66.005. In addition, Chapter 66 provides that the holder of the SICFA shall pay each city an amount equal to one percent (1%) of the provider's "gross revenues" to support

PEG access channels (collectively, the five (5%) and the one (1%) percent will be known as the "Franchise Fees"). See TEX. UTIL. CODE ANN. §66.006. The Municipal Franchise Agreement between the City and TWC expired on December 31, 2005.

13. On January 1, 2006, TWC began operating in San Antonio under SICFA No. 90007, authorized by the PUC pursuant to Chapter 66 of PURA. TEX. UTIL. CODE ANN. §66.004. Texas law authorizes municipalities to review the business records of the cable service provider to ensure the cable service provider is complying with its payment obligations. *Id.* §66.005(b) and §66.006(b). The City monitors TWC's compliance of Chapter 66 of the Act through an audit.
14. In 2009, the City exercised its rights under Chapter 66 of the Act by initiating an audit of the Franchise Fees paid by TWC based on TWC's "gross revenues" received from subscribers residing within San Antonio's city limits. The purpose of this audit was to determine if TWC was in compliance with Chapter 66. The audit was intended to cover the period of 2006, the year that TWC began operating under its SICFA authorized by the Texas PUC, through 2009.
15. More specifically, in February 2009, the City requested TWC submit to a routine audit to determine if TWC properly calculated and remitted the Franchise Fees for all subscribers inside the San Antonio city limits. TWC refused to release the data necessary to enable the City to conduct an audit citing privacy statutes amongst other reasons.
16. On October 5, 2009, the City filed a Petition for Writ of Mandamus to Compel Production and Examination of TWC's Business Books and Records in state district court in San Antonio. On April 18, 2011, the Court issued an Order (the "Order")

compelling TWC to produce relevant financial documents listed in the Order within 60 days as set forth in the Order.

17. The City and TWC met in person or talked on various occasions about the City's audit, TWC's calculation of "gross revenues" and TWC's failure to remit all owing Franchise Fees to the City. TWC continued to intentionally avoid producing the documents needed to conduct a complete and accurate audit. More egregiously, TWC would produce incomplete and incorrect documents.
18. TWC failed to fully adhere to the Order, thereby hindering the audit review through 2011-2012. Specifically, TWC failed to make personnel available to answer clarifying questions as required by the Order; did not provide follow-up information; provided contradictory information; and did not produce certain information listed in the Order. For example, TWC's failure to correctly associate subscriber accounts within the correct city resulted in TWC producing unreliable subscriber transaction billing data and pass-by data to the City.
19. In 2014, three years after the Order, the City conducted and finalized the audit based on the incomplete documentation TWC provided the City. The City determined TWC owes it unpaid Franchise Fees related to five categories, set forth in more detail below:
  - 1) Under-reported Subscriber Revenue;
  - 2) Under-reported Advertising Revenue;
  - 3) Incorrect Calculation Methodology;
  - 4) Under-reported Package Early Termination Fees;
  - and 5) Unreported Third-Party Advertising Fees.
20. Under-reported Subscriber Revenue: TWC did not include all cable subscriber revenue in its calculation of Franchise Fees due to the City. Examples of errors committed by TWC were: 1) addresses assigned to other municipalities (franchises) that should have

been assigned to the City and addresses assigned to the City that should have been assigned to other municipalities (franchises); and 2) revenue was in accounts that did not match any addresses reflected in the pass-by data (e.g., a list of addresses that are potentially serviceable). Indeed, TWC provided data for the first quarter 2006 twice and for the fourth quarter 2008 three times, each with significantly different results. If TWC's pass-by data were reliable, each of the datasets for a given time period would essentially be the same. Because the data is not reliable, the City cannot be assured TWC accurately calculated and remitted Franchise Fees.

21. **Under-reported Advertising Revenue:** TWC committed a number of errors in their methodology when calculating "gross revenues" for the purpose of remitting the Franchise Fees due to the City. These errors included, but were not limited to, 1) netting commissions against accounting revenue in violation of Section 66.002(6)(A); 2) allocating advertising, home shopping and product launch revenue based on the ratio of "paid" subscribers (basic cable less fees), rather than on the ratio of all subscribers as required by Section 66.002(6)(A); 3) providing insufficient information on national advertising, associated commissions, and the allocation methodology for these revenues; and 4) not using accurate ratios of San Antonio cable subscribers to all TWC cable subscribers in its allocation of non-subscriber revenue (TWC did not account for bulk accounts e.g., apartment complexes that procure cable services for all tenants).
22. **Incorrect Calculation Methodology:** TWC used two different methods for calculating the Franchise Fees it owed the City during the audit period. TWC excluded certain types of revenue from its calculation of "gross revenues" under both methods. These errors included, but were not limited to, TWC omitting Franchise Fees collected from

subscribers in its calculation of gross revenues and failing to subtract the associated bad debt from its calculations of gross revenue. Franchise fees collected from subscribers fall directly under the definition of "gross revenue" in Section 66.002(A-B) of the Texas Utilities Code, as do customer development program adjustments, hotel on demand purchases, VOD adjustments and Refer-A-Friend Discounts (also known as contra-revenue). As a result of TWC excluding these types of revenue from its calculation of "gross revenue", TWC under-paid its Franchise Fees to the City.

23. **Under-reported Package Early Termination Fees:** TWC began to report package early termination fees in August 2008. TWC did not report package early termination fees for the period from January 2006 through July 2008.
24. **Unreported Third-Party Advertising Fees:** Beginning in 2012, TWC separated advertising revenue into two categories: 1) regular advertising; and 2) third-party advertising. TWC omitted third-party advertising fee revenue and the related commissions from its "gross revenue" before calculating the Franchise Fees owed to the City in violation of Section 66.002(6)(A).
25. As a result of TWC's failure to properly account for and remit the Franchise Fees as required by the Act, the City suffered damages. More specifically, TWC's improper accounting, incorrect methodology and other errors and omissions resulted in TWC owing the City in excess of Six Million Dollars (\$6,000,000.00) in unpaid Franchise Fees, not including interest from 2006 through the time of filing this lawsuit.

V.

**PLAINTIFF'S CAUSES OF ACTION**

**i. Declaratory Judgment**

26. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth therein.
27. Texas Civil Practice & Remedies Code Section 37.001 *et. seq.* provides a way to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations ....” A person “whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE §37.004.
28. Due to the fact that TWC owes the City Franchise Fees there is an actual and present justiciable controversy regarding TWC’s legal obligations and responsibilities to the City under the Act. The facts alleged herein show there is a substantial controversy between the City and TWC regarding the classification and calculation of “gross revenue” under the Act.
29. Pursuant to the Act, TWC must include all: 1) subscriber revenue; 2) advertising revenue; 3) early package termination fees; and 4) third-party advertising revenue in its calculation of “gross revenue”. As a result of TWC’s failure to correctly calculate the Franchise Fees based on the additional “gross revenue” resulting from the inclusion of the subscriber, advertising, third-party advertising revenues and early package termination fees, the City has not received the total Franchise Fees it is entitled to under the Act.

30. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, the City seeks a declaration from the Court that for the period of 2006 through the present:

a. The definition of "gross revenue" found in Chapter 66 of the Act, includes, but is not limited to:

- i. Any amounts of advertising revenue and commissions shown on TWC's books and records;
- ii. Any other amounts of contra-revenue. This includes: Refer-A-Friend Discounts, VOD adjustments, hotel on demand purchases, and restocking fees;
- iii. Any revenue derived from unreturned equipment;
- iv. Any Franchise Fees collected from subscribers and other customers;
- v. Any FCC end-user fees; and
- vi. Any revenue generated from new cable services.

b. TWC shall provide the following as "support" for quarterly payments as required under Sections 66.005 and 66.006 of the Act.

- i. Electronic download of the General Ledger and revenue account structure with descriptions. The format of such files can be agreed to between TWC and the City, but at a minimum data will be provided in pipe delineated files;
- ii. Reconciliation of basis of payments to the City with the General Ledger accounts in the franchise area and for other revenue accounts;
- iii. Calculations showing the allocation of advertising and revenue that is not recorded to specific franchise areas;

- iv. Monthly subscriber accounts in San Antonio and in other areas served by the San Antonio system, including the number of subscribers in any bulk account; and
- v. Pass-by data for each quarter.

**ii. Statutory Violations**

- 31. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.
- 32. Section 66.005 of the Texas Utilities Code requires TWC to pay the City a franchise fee of five percent based upon gross revenue as defined in Chapter 66. Section 66.005(b) further states that “[a] municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.
- 33. Section 66.006 of the Texas Utilities Code requires TWC to pay the City a PEG fee of one percent of TWC’s gross revenue as defined in Chapter 66. Section 66.006 further states that payments are to be paid in the same manner outlined in Section 66.005(b).
- 34. TWC has not properly calculated the Franchise Fees owed to the City. TWC under-reported and omitted revenue. TWC also used an incorrect methodology to calculate revenue and the Franchise Fees owed to the City. These actions are in violation of Sections 66.005 and 66.006 of the Texas Utilities Code. As a result of these violations, TWC should be required to properly calculate its gross revenue and remit all amounts owed to the City.

**iii. Conversion**

- 35. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

36. Pursuant to Sections 66.005(b) and 66.006(b) of the Act, the City has a lawful right to TWC's full payment of the Franchise Fees due to the City within 45 days of the end of each quarter for the preceding calendar quarter. The funds owed to the City were personal property.

37. TWC unlawfully exercised dominion and control over the City's personal property by failing to calculate and refusing to remit payment for all Franchise Fees due to the City. As a result of TWC's failure to calculate and remit the Franchise Fees, the City has been injured.

**iv. Money Had and Received/Accounting**

38. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

39. As a result of TWC's unlawful conduct, TWC holds money that in equity and good conscience belongs to the City. More specifically, TWC has not paid the City the full amount of Franchise Fees owing pursuant to the Act. The City has been damaged by TWC's conduct. TWC should be ordered to account for and immediately remit these funds to the City.

**v. Request for Accounting**

40. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

41. TWC holds, possesses, or controls funds and will continue to hold, possesses, or control future funds, from "gross revenues" stemming from the administration of video programming services within the City of San Antonio to which the City is entitled.

42. Even after previous litigation, discussions and written demands, TWC refuses to provide a simple accounting of its calculation of "gross revenues" to determine the amount of Franchise Fees owed to the City.

43. The City is entitled to an accounting from TWC to determine the actual Franchise Fees it is owed.

**vi. Request for Constructive Trust**

44. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

45. TWC holds, possesses, or controls funds and will continue to hold, possess, or control future funds, from "gross revenues" stemming from the administration of video programming services within the City of San Antonio to which the City is entitled.

46. The City is entitled to the creation of a constructive trust to protect and manage such funds for the proper and equitable distribution of such funds and to prevent unjust enrichment for TWC.

**vii. Attorney Fees**

47. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

48. The City is entitled to its costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code Section 37.009. Accordingly, the City seeks to recover all of its court costs and attorneys' fees associated with prosecuting its claims, both at the trial court level and on any appeal.

**VI.**

**DAMAGES AND REMEDIES**

49. The City incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.
50. As a result of TWC's unjust enrichment in the funds rightfully belonging to the City, the City requests that the Court impose a constructive trust over those the funds held by TWC rightfully belonging to the City.
51. As a direct and proximate result of TWC's actions, the City has and will continue to suffer damages and is entitled to recover its actual damages, exemplary damages, attorney's fees, pre- and post-judgment interest and costs.
52. The City requests that the Court order TWC to conduct an accounting of its calculation of "gross revenues" on which it basis its payment of Franchise Fees to the City.
53. The City prays for the entry of Final Judgment against TWC; for actual damages in an amount greater than Six Million (\$6,000,000.00) Dollars not including interest, exemplary damages, costs and attorney's fees

**VII.**

**TRIAL BY JURY**

54. Plaintiff, City of San Antonio, demands trial by jury pursuant to TEX. R. CIV. P. 216.

**VIII.**

**REQUESTS FOR DISCLOSURE**

55. Under Texas Rule of Civil Procedure 194, Plaintiff hereby requests that Defendant disclose, within fifty (50) days of service of this petition and request, the information or material described in Rule 194.2(a) through (k) of the Texas Rules of Civil Procedure.

**IX.**

**PRAYER**

56. WHEREFORE, PREMISES CONSIDERED, the City asks this Court to set this matter for hearing and, upon final hearing award the City actual damages, exemplary damages, costs, and such other and further relief to which it is justly entitled (including prejudgment and post-judgment interest at the maximum legal rate and as provided by law) at law and/or equity. The City also seeks an accounting of TWC's gross revenues and the creation of a constructive trust. Further, the City seeks all available penalties pursuant to Section 66.015 of the Texas Utilities Code. Pursuant to Texas Rule of Civil Procedure 47(d), the City also demands judgment for all other relief to which it deems itself entitled.

Respectfully Submitted,

**CITY OF SAN ANTONIO**  
Andrew Segovia  
City Attorney  
SBN: 24103187  
Office of the City Attorney  
Litigation Division  
Frost Bank Tower  
100 W. Houston St., 18<sup>th</sup> Floor  
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**ATTORNEYS FOR PLAINTIFF**  
**CITY OF SAN ANTONIO**

**CITY COMMISSION REGULAR MTG**

**(6) (d)**

**Meeting Date:** 12/20/2017

Emergency Levee Repair

**Submitted For:** Mike McKinley, Public Works

**Submitted By:** Mike McKinley, Public Works

**Department:** Purchasing

---

**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-089, approving a contract for Emergency Levee Repairs Project. (Purchasing)

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

Recommendation Letter

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**RESOLUTION NO. 17-089**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH MILLIS EQUIPMENT, LLC, FOR THE EMERGENCY LEVEE REPAIRS PROJECT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

**WHEREAS**, On November 14, 2017, eleven bids were received by ARKK Engineering for the Emergency Levee Repairs Project; and

**WHEREAS**, the lowest bid received meeting all specifications was submitted by Millis Equipment, LLC, of Missouri City, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS, THAT:**

**SECTION 1.** That the successful bidder for the Emergency Levee Repairs Project is Millis Equipment, LLC, of Missouri City, Texas, for the unit prices set forth on the Letter of Recommendation, attached hereto as **Exhibit "A"**, and made a part hereof.

**SECTION 2:** That the Mayor is hereby authorized to enter into an annual contract with Millis Equipment, LLC.

**SECTION 3:** This resolution shall become effective immediately from and after its passage.

**PASSED AND ADOPTED this 20th day of December, 2017.**

\_\_\_\_\_  
Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
James Hartshorn  
City Secretary

\_\_\_\_\_  
Russell F. Plackemeier  
City Attorney



December 5, 2017

Mr. Tom Kessler, P.E.  
Director of Public Works  
City of Texas City  
301 6<sup>th</sup> Street North  
Texas City, Texas 77592

Re: **Letter of Recommendation for Emergency Levee Repairs Project**  
City of Texas City  
ARKK Job No. 17-038

Dear Mr. Kessler:

On November 14, 2017 eleven (11) bids were received for Emergency Levee Repairs Project located in Texas City, Texas.

Bid Tabulation Sheet – Eleven (11) construction firms participated in the bidding process. The bids were checked for mathematical errors and/or bid irregularities. The bids for the project are as follows:

| <b><u>BIDDER</u></b>            | <b><u>BASE BID</u></b> |
|---------------------------------|------------------------|
| Millis Equipment, LLC           | \$ 1,058,473.78        |
| DezTex Industrial Services, LLC | \$ 1,069,034.17        |
| Feller Enterprises              | \$ 1,111,850.00        |
| SER Construction Partners, LLC  | \$ 1,174,216.00        |
| Trey Industries                 | \$ 1,211,113.20        |
| Diffco, LLC                     | \$ 1,211,426.00        |
| Wadecon, LLC                    | \$ 1,241,320.00        |
| Lester Contracting, Inc.        | \$ 1,283,300.00        |
| Piling, Inc.                    | \$ 1,339,510.00        |
| Fused Industries, LLC           | \$ 1,614,280.00        |
| Allco, LLC                      | \$ 1,721,297.08        |

A copy of the bid tabulation is attached:

Millis Equipment, LLC. submitted a List of Qualifications, Subcontractors and Major Suppliers for this project. The references provided by the Contractor were contacted and information on their performance and capabilities to perform similar work obtained. The references indicated Millis Equipment, LLC. completed their work in a timely manner and were satisfied with their work.


City staff and ARKK met with representatives of Millis Equipment, LLC. to discuss the project requirements and expectations. Millis Equipment, LLC.'s staff indicated that they are familiar with the project requirements and have the experience and personnel available to finish this project. They also indicated that they have performed similar work and are committed to meeting City's expectations.

For these reasons, we recommend that the City of Texas City award the Emergency Levee Repair Project to **Millis Equipment, LLC. for a total amount of \$1,058,473.78.**

If you have any questions, please contact me.

Sincerely,

ARKK ENGINEERS, LLC



Mr. Madhu Kilambi, P.E.  
Senior Project Manager

City of Texas City, Texas  
Emergency Levee Repairs Bid Tab

| ITEM NO.  | ITEM DESCRIPTION   | UNIT | QUAN. | Millis Equipment, LLC  |               | DezTex Industrial Services LLC |               | Feller Enterprises     |               | SER Construction Partners, LLC |               |
|---|--|------|-------|------------------------|---------------|--------------------------------|---------------|------------------------|---------------|--------------------------------|---------------|
| <b>BASE BID ITEMS</b>                           |  |      |       |                        |               |                                |               |                        |               |                                |               |
| 1   | Mobilization, including Performance Bond, Payment Bond, (Max Amount is 5% of Total Bid)  | LS   | 1     | \$ 26,922.18           | \$ 26,922.18  | \$ 47,334.17                   | \$ 47,334.17  | \$ 50,000.00           | \$ 50,000.00  | \$ 58,000.00                   | \$ 58,000.00  |
| 2   | Furnish Riprap material, 90 lb. Bed Stone, (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:  | TON  | 3,720 | \$ 81.96               | \$ 304,891.20 | \$ 90.00                       | \$ 334,800.00 | \$ 85.00               | \$ 316,200.00 | \$ 94.00                       | \$ 349,680.00 |
| 3   | Furnish Riprap material, 36-inch Riprap (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:   | TON  | 5,470 | \$ 90.29               | \$ 493,886.30 | \$ 90.00                       | \$ 492,300.00 | \$ 85.00               | \$ 464,950.00 | \$ 94.00                       | \$ 514,180.00 |
| 4   | Installation of Riprap materials, Location No. 1 (Inner Levee West of 29th Street), Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of:    | TON  | 8,900 | \$ 24.27               | \$ 216,003.00 | \$ 20.00                       | \$ 178,000.00 | \$ 30.00               | \$ 267,000.00 | \$ 24.00                       | \$ 213,600.00 |
| 5   | Installation of Riprap materials, Location No. 2 Screw Pump Station Discharge Channel, Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of: | TON  | 290   | \$ 40.59               | \$ 11,771.10  | \$ 40.00                       | \$ 11,600.00  | \$ 30.00               | \$ 8,700.00   | \$ 116.40                      | \$ 33,756.00  |
| 6   | Miscellaneous Allowance as approved by the City, Complete in Place, the Sum of:  | LS   | 1     | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00                    | \$ 5,000.00   | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00                    | \$ 5,000.00   |
| <b>TOTAL AMOUNT BID:</b>                        |  |      |       | <b>\$ 1,058,473.78</b> |               | <b>\$ 1,069,034.17</b>         |               | <b>\$ 1,111,850.00</b> |               | <b>\$ 1,174,216.00</b>         |               |
| <b>MATHEMATICAL ERROR CORRECTED BY ENGINEER</b> |  |      |       |                        |               |                                |               |                        |               |                                |               |

| ITEM NO.  | ITEM DESCRIPTION   | UNIT | QUAN. | Trey Industries        |               | Diffco, LLC            |               | Wadecon, LLC           |               | Lester Contracting, Inc |               |
|---|--|------|-------|------------------------|---------------|------------------------|---------------|------------------------|---------------|-------------------------|---------------|
| <b>BASE BID ITEMS</b>                           |  |      |       |                        |               |                        |               |                        |               |                         |               |
| 1   | Mobilization, including Performance Bond, Payment Bond, (Max Amount is 5% of Total Bid)  | LS   | 1     | \$ 60,304.00           | \$ 60,304.00  | \$ 54,000.00           | \$ 54,000.00  | \$ 60,000.00           | \$ 60,000.00  | \$ 60,000.00            | \$ 60,000.00  |
| 2   | Furnish Riprap material, 90 lb. Bed Stone, (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:  | TON  | 3,720 | \$ 100.00              | \$ 372,000.00 | \$ 81.90               | \$ 304,668.00 | \$ 78.00               | \$ 290,160.00 | \$ 90.00                | \$ 334,800.00 |
| 3   | Furnish Riprap material, 36-inch Riprap (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:   | TON  | 5,470 | \$ 100.00              | \$ 547,000.00 | \$ 81.90               | \$ 447,993.00 | \$ 78.00               | \$ 426,660.00 | \$ 90.00                | \$ 492,300.00 |
| 4   | Installation of Riprap materials, Location No. 1 (Inner Levee West of 29th Street), Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of:    | TON  | 8,900 | \$ 24.68               | \$ 219,652.00 | \$ 43.50               | \$ 387,150.00 | \$ 50.00               | \$ 445,000.00 | \$ 42.00                | \$ 373,800.00 |
| 5   | Installation of Riprap materials, Location No. 2 Screw Pump Station Discharge Channel, Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of: | TON  | 290   | \$ 24.68               | \$ 7,157.20   | \$ 43.50               | \$ 12,615.00  | \$ 50.00               | \$ 14,500.00  | \$ 60.00                | \$ 17,400.00  |
| 6   | Miscellaneous Allowance as approved by the City, Complete in Place, the Sum of:  | LS   | 1     | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00             | \$ 5,000.00   |
| <b>TOTAL AMOUNT BID:</b>                        |  |      |       | <b>\$ 1,211,113.20</b> |               | <b>\$ 1,211,426.00</b> |               | <b>\$ 1,241,320.00</b> |               | <b>\$ 1,283,300.00</b>  |               |
| <b>MATHEMATICAL ERROR CORRECTED BY ENGINEER</b> |  |      |       |                        |               |                        |               |                        |               |                         |               |

| ITEM NO.  | ITEM DESCRIPTION   | UNIT | QUAN. | Piling, Inc.           |               | FUSED Industries, LLC  |               | Allco LLC              |               |
|---|--|------|-------|------------------------|---------------|------------------------|---------------|------------------------|---------------|
| <b>BASE BID ITEMS</b>                           |  |      |       |                        |               |                        |               |                        |               |
| 1   | Mobilization, including Performance Bond, Payment Bond, (Max Amount is 5% of Total Bid)  | LS   | 1     | \$ 65,180.00           | \$ 65,180.00  | \$ 82,000.00           | \$ 82,000.00  | \$ 80,122.78           | \$ 80,122.78  |
| 2   | Furnish Riprap material, 90 lb. Bed Stone, (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:  | TON  | 3,720 | \$ 78.00               | \$ 290,160.00 | \$ 112.00              | \$ 416,640.00 | \$ 86.00               | \$ 319,920.00 |
| 3   | Furnish Riprap material, 36-inch Riprap (Limestone), as produced by Gulf Coast Limestone or approved equal, Complete in Place, the Sum of:   | TON  | 5,470 | \$ 78.00               | \$ 426,660.00 | \$ 112.00              | \$ 612,640.00 | \$ 86.00               | \$ 470,420.00 |
| 4   | Installation of Riprap materials, Location No. 1 (Inner Levee West of 29th Street), Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of:    | TON  | 8,900 | \$ 56.56               | \$ 503,410.00 | \$ 54.00               | \$ 480,600.00 | \$ 88.45               | \$ 787,205.00 |
| 5   | Installation of Riprap materials, Location No. 2 Screw Pump Station Discharge Channel, Includes labor, equipment, unloading, placement, and all items required for the riprap installation, Complete in Place, the Sum of: | TON  | 290   | \$ 169.31              | \$ 49,100.00  | \$ 60.00               | \$ 17,400.00  | \$ 202.17              | \$ 58,629.30  |
| 6   | Miscellaneous Allowance as approved by the City, Complete in Place, the Sum of:  | LS   | 1     | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00            | \$ 5,000.00   | \$ 5,000.00            | \$ 5,000.00   |
| <b>TOTAL AMOUNT BID:</b>                        |  |      |       | <b>\$ 1,339,510.00</b> |               | <b>\$ 1,614,280.00</b> |               | <b>\$ 1,721,297.08</b> |               |
| <b>MATHEMATICAL ERROR CORRECTED BY ENGINEER</b> |  |      |       |                        |               |                        |               |                        |               |

**CITY COMMISSION REGULAR MTG**

**(6) (e)**

**Meeting Date:** 12/20/2017

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** City Secretary

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-090, appointing and/or re-appointing board members to the Houston-Galveston Area Council. (City Secretary).

**BACKGROUND**

Every year the Houston-Galveston Area Council of Governments (HGAC) requests that the participating cities appoint or reappoint representatives to the board and an alternate representative. Mayor Doyle is requesting we re-appoint the current members Dee Ann Haney as the primary representative and Phil Roberts as the alternate.

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

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**RESOLUTION 17-090**

**A RESOLUTION REAPPOINTING A REPRESENTATIVE AND AN ALTERNATE TO THE BOARD OF DIRECTORS OF THE HOUSTON- GALVESTON AREA COUNCIL; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, a yearly appointment is necessary for the Board of Directors of the Houston-Galveston Area Council (HGAC); and

**WHEREAS**, Commissioner Dee Ann Haney and Commissioner Phil Roberts have both agreed to serve on the Houston-Galveston Area Council for the calendar year 2018.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City, Texas, hereby reappoints Commissioner Dee Ann Haney as the City of Texas City Representative and Commissioner Phil Roberts as Alternate Representative to the Board of Directors of the Houston-Galveston Area Council for the calendar year 2018.

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of December, 2017.**

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Matthew Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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James Hartshorn  
City Secretary

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Russell F. Plackemeier  
City Attorney

**DESIGNATION OF REPRESENTATIVES  
HOUSTON-GALVESTON AREA COUNCIL  
2018 GENERAL ASSEMBLY  
AND  
BOARD OF DIRECTORS**

\*\*\*\*\*

**BE IT RESOLVED**, by the City Council of Texas City, Texas that the following be and are hereby designated as the representative and alternate of the General Assembly of the Houston-Galveston Area Council for the year 2018:

REPRESENTATIVE Dee Ann Haney

ALTERNATE Phil Roberts

**FURTHER THAT**, they are hereby, designated as the representative and alternate to the Board of Directors of the Houston-Galveston Area Council for the year 2018.

**THAT**, the Executive Director of the Houston-Galveston Area Council be notified of the designation of the hereinabove named delegate and alternate.

**PASSED AND ADOPTED**, this 20th day of December, 2017.

\_\_\_\_\_  
Matthew Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
James Hartshorn  
City Secretary

\_\_\_\_\_  
Russell F. Plackemeier  
City Attorney

**CITY COMMISSION REGULAR MTG**

**(6) (f)**

**Meeting Date:** 12/20/2017

Bid # 2018-040 Recycled Crushed Concrete Annual Contract

**Submitted For:** Mike McKinley, Public Works      **Submitted By:** Mike McKinley, Public Works

**Department:** Public Works

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-091, Approve and award Bid # 2018-040 Recycled Crushed Concrete Annual Contract.

**BACKGROUND**

On November 16, 2017, a notice to bidders was advertised and bid packets were mailed out to area vendors. Bids were opened on Thursday, December 06, 2017 at 2 pm.

A bid tabulation is attached for your review.

**ANALYSIS**

The lowest responsible bid meeting all specifications was received from Cherry Crushed Concrete Inc. in Houston, Texas for the unit prices bid.

It is the recommendation of the Public Works Department to award Bid # 2018-040 Recycled Crushed Concrete Annual Contract to Cherry Crushed Concrete Inc., for the unit prices bid and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you.

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution  
Exhibit A

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**RESOLUTION NO. 17-091**

**A RESOLUTION AWARDING A BID AND AUTHORIZING THE MAYOR TO ENTER INTO AN ANNUAL CONTRACT FOR RECYCLED CRUSHED CONCRETE; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, on November 16, 2017, bids were mailed to area vendors for recycled crushed concrete annual contract, Bid No. 2018-040; and

**WHEREAS**, bids opened on December 6, 2017, and the lowest bid received meeting specifications was submitted by Cherry Crushed Concrete, Inc., Houston, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the successful bidder for recycled crushed concrete annual contract, Bid No. 2018-040, is Cherry Crushed Concrete, Inc., Houston, Texas, for the unit prices set forth on the Bid Tabulation, attached hereto as **Exhibit "A"**, and made a part hereof.

**SECTION 2:** That the Mayor is hereby authorized to enter into an annual contract with Cherry Crushed Concrete, Inc.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of December, 2017.**

\_\_\_\_\_  
Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
James Hartshorn  
City Secretary

\_\_\_\_\_  
Russell F. Plackemeier  
City Attorney

**BID TABULATION**

**2018-040 RECYCLED CRUSHED CONCRETE**

Bid Opening: Thursday, December 06, 2017 at 2 p.m.

| <b><u>BIDDER</u></b>               | <b><u>Delivered to Texas City<br/>in Tandem Dump</u></b> | <b><u>Picked Up by<br/>City Truck</u></b> | <b><u>Delivered in<br/>Trailer Truck</u></b> |
|------------------------------------|--|---|--|
| Southern Crushed<br>Concrete       | \$22.71 / Ton  | \$18.45 / Ton                             | \$21.96 / Ton                                |
| <b>Cherry Crushed<br/>Concrete</b> | <b>\$20.80 / Ton</b>                                     | <b>\$17.00 / Ton</b>                      | <b>\$20.80 / Ton</b>                         |
| Century Asphalt                    | \$27.60 / Ton  | \$17.90 / Ton                             | \$25.80 / Ton                                |
|                                    |  |   |  |
|                                    |  |   |  |
|                                    |  |   |  |

**CITY COMMISSION REGULAR MTG**

**(6) (g)**

**Meeting Date:** 12/20/2017

2017/18 Public Consulting Group Extension of Service Contract

**Submitted For:** David Zacherl, Fire Department

**Submitted By:** Cindy Baker, Fire Department

**Department:** Fire Department

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-092, authorizing the Mayor to execute an extension of the agreement for professional services with Public Consulting Group, Inc. (Fire Department)

**BACKGROUND**

On January 21, 2015 the City Commission authorized the Mayor to enter into an agreement with Public Consulting Group, Inc. to provide professional services related to supplemental Medicare and Medicaid Services. The agreement permits extension of the original two year agreement for three additional twelve month periods. This requested extension would cover the first 12 month period of extension.

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

Am

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**RESOLUTION NO. 17-092**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXTEND THE AGREEMENT WITH PUBLIC CONSULTING GROUP, INC FOR PROFESSIONAL SERVICES RELATED TO THE ADMINISTRATION OF THE FEDERAL GOVERNMENT AMBULANCE SUPPLEMENTAL PAY PROGRAM DESIGNED TO PROVIDE ADDITIONAL REVENUE TO THE FIRE DEPARTMENT EMS PROGRAM; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, The Centers for Medicare and Medicaid Services (CMS) allows states to establish alternative payment methodologies (Supplemental Payments) for certain classes of providers pursuant to 42 CFR 447.321, section 1902(a)(30) of the Social Security Act, and

**WHEREAS**, the alternative payment methodologies would supplement current Medicaid payments received by the City of Texas City, and would be based on cost reimbursement for Medicaid-eligible costs, and

**WHEREAS**, Public Consulting Group, Inc. possesses professional skills that can assist the City of Texas City in analyzing and reporting costs to secure supplemental CMS payments, and

**WHEREAS**, the City of Texas City previously engaged Public Consulting Group, Inc. as an independent contractor to perform certain professional services in connection with this initiative in January, 2015, and

**WHEREAS**, the agreement permits extension by mutual consent of the Party's;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City hereby authorizes the Mayor to extend the Agreement with Public Consulting Group, Inc. in substantially the same form attached hereto as **Exhibit "A"**, and made part thereof.

**PASSED AND ADOPTED this 20th day of December, 2017.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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James Hartshorn  
City Secretary

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Russell F. Plackemeier  
City Attorney



## AMENDMENT NO. 1 TO THE CONTRACTOR AGREEMENT

This First Amendment (the “Amendment”) to that certain Contractor Agreement entered by City of Texas City, Texas (“CITY”) and Public Consulting Group, Inc. (“PCG”), as of January 22, 2015 (the “Agreement”), is made effective as of December 20, 2017.

**WHEREAS**, the parties agree to amend the Agreement pursuant to Attachment B of the Contractor Agreement to extend the agreement for contractor services for a 12-month period.;

**NOW, THEREFORE**, in consideration of the foregoing, the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. The parties agree that the Contractor Agreement shall be extended for a 12-month period. With this amendment, PCG will provide Texas City with professional services to assist the City in collecting additional revenue from the Ambulance Supplemental Payment Program for Fiscal Year 2017 (October 1, 2016 – September 30, 2017). This is the first option exercised on the agreement and two additional one year options remain.
2. Conflict in Terms. Except as amended and/or modified by this Amendment, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this Amendment. Whether or not specifically amended by this Amendment, all of the terms and provisions of the Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.
3. Authorship. The Parties agree that the terms of this Amendment result from negotiations between them. This Amendment will not be construed in favor of or against either Party by reason of authorship.
4. Severability. If any provision in this Amendment is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions in this Amendment shall continue in full force and effect.
5. Waiver. The failure of a party to enforce a provision of this Amendment shall not constitute a waiver with respect to that provision or any other provision of this Amendment.
6. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart.



7. Authority. Each Party to this Amendment, and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such Party.
  
8. Entire Agreement; Non-Reliance. The Agreement, as amended by this Amendment, constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings or representations with respect thereto. Neither Party is relying upon any agreement or representation by the other Party except as set forth in the Agreement, as amended by this Amendment.
  
9. Applicable Law, Jurisdiction, and Venue. This Amendment is to be construed, interpreted, and enforced under and in accordance with the same governing law as set forth in the Agreement, without regard to choice of law provisions. The parties consent to personal jurisdiction in that state or district's courts and that venue is appropriate.

IN WITNESS WHEREOF, Texas City and PCG have executed this Amendment as of the date stated above.

PUBLIC CONSULTING GROUP, INC.

CITY of TEXAS CITY, TEXAS

By: 

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

Name: MATTHEW SORRENTINO

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

Title: MANAGER

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

Date: 12/1/17

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

**CITY COMMISSION REGULAR MTG**

**(6) (h)**

**Meeting Date:** 12/20/2017

Amendment

**Submitted By:** Rhomari Jackson-Glover, City Secretary

**Department:** Emergency Management

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**Information**

**ACTION REQUEST (Brief Summary)**

Consider and take action on Resolution No. 17-093, amending Resolution No. 17-085 which approved the purchase of a camera from CDW Government, LLC. (Homeland Security)

**BACKGROUND**

The State requires that an additional line be added to the existing Resolution No. 17-085.

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Fiscal Impact**

**Attachments**

Resolution

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**RESOLUTION NO. 17-093**

**A RESOLUTION AMENDING RESOLUTION NO. 17-085 ACCEPTING OFFICE OF THE GOVERNOR – HOMELAND SECURITY GRANT DIVISION (HSGD) #3397701 IN THE AMOUNT OF \$70,752.52 FOR LAW ENFORCEMENT PORTABLE VIDEO SURVEILLANCE; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, the Houston-Galveston Area Council (HGAC) provides a State of Texas Homeland Security Grant to aid in the achievement of target capabilities related to terrorism preparedness and enhanced preparedness for other hazards unrelated to acts of terrorism; and

**WHEREAS**, the Texas City Emergency Management Department applied for such funding, and the Houston-Galveston Area Council has agreed to a grant in the amount of \$70,752.52 for the purchase of a wireless remote monitoring camera system; and

**WHEREAS**, The City of Texas City agrees that in the event of loss or misuse of the Office of the Governor funds, the City of Texas City assures that the funds will be returned to the Office of the Governor in full; and

**WHEREAS**, the Emergency Management Department plans to buy the wireless remote monitoring camera system from CDW-Government, LLC.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City hereby approves the acceptance of the Office of the Governor- Homeland Security Grant Division (HSGD) #3397701 in the amount of \$70,752.52 from the Houston-Galveston Area Council.

**SECTION 2:** That the Emergency Management Department will use the grant funds to purchase a Long Deployment Surveillance Trailer Network Camera-Bundle 4 –Part # MVT-3001.BUN4.

**SECTION 3:** That the Mayor is authorized to execute said agreement.

**SECTION 4:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of December, 2017.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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James M. Hartshorn  
City Secretary

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Russell F. Plackemeier  
City Attorney