

**SPECIAL CALLED WORKSHOP OF CITY COUNCIL  
March 24, 2016**

MINUTES OF THE **SPECIAL CALLED WORKSHOP** OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD **MARCH 24, 2016** AT 6:00 P.M. PM IN THE COUNCIL CHAMBER, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

**PRESENT:**

C. R. Evans Jr., Mayor  
Philip Cox, Mayor Pro Tem (arrived at 6:13 p.m.)  
Jerry Clark  
Lawrence Davis  
John Posey

**ABSENT:**

Pat Beets

Also in attendance were, Charles Cunningham, City Manager, Rachél Gafford, City Secretary, and Clyde Carter, Chief of Police representing staff.

Mayor Evans called the workshop to order at 6:10 p.m.

1. City Council to review, discuss and make revisions to a draft Ordinance of the City Council of the City of Overton, Texas, establishing rules and procedures for City Council meetings, including and providing for the following; finding of facts; purpose; parliamentary laws and rules of order; authority; definitions; meetings and agendas; attendance and fines; general rules and procedures at meetings; standards of conduct; duties and privileges of council members; presiding officer and conduct; individuals with disabilities; rules of suspension; relation to other ordinances; severability; proper notice and meeting; and providing for publication and an effective date.

Council reviewed and discussed changes to the proposed Ordinance that would establish rules and procedures for City Council Meetings (Section 1 through Section 12.)

***Mayor Pro Tem asked if Council could adopt the proposed ordinance during the regular council meeting to be held March 24, 2016 through section 8.02 so that the provisions of three consecutive absences of a Regular Called Meeting by a councilmembers would start being counted toward their removal from City Council and that the set fine of \$20.00 per missed Regular Council Meeting would be imposed effective at the next Council Meeting.***

*City Secretary Gafford responded that since the Ordinance was on the posted agenda; then yes a motion to adopt the ordinance through section 8.02 could be adopted.*

***Mayor Evans stated that Council would need to schedule a second workshop to finish reviewing and making changes to the proposed ordinance during the council meeting.***

The workshop adjourned at 6:55 p.m.

**REGULAR CALLED CITY COUNCIL MEETING  
March 24, 2016**

MINUTES OF THE REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD MARCH 24, 2016 AT 7:00 P.M. PM IN THE COUNCIL CHAMBER, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

**PRESENT:**

C. R. Evans Jr., Mayor  
Philip Cox, Mayor Pro Tem  
Jerry Clark  
Lawrence Davis  
John Posey

**ABSENT:**

Pat Beets

Also in attendance were, Charles Cunningham, City Manager, Rachél Gafford, City Secretary, and Clyde Carter, Chief of Police; Pamela Raney, Finance Director (arrived at 8:00 p.m.) representing staff. Robert Haberle and Jeremy Buechter, P.E., representing Shaumburg & Polk, Deborah Vondrasek, Jack Sims, Nathan Kendall, Kitana Cox, Adam C. Elliott, Amy E. Carcia and Michael Paul Williams representing the public

**I. CALL TO ORDER** –Mayor Evans called the meeting to order at 7:00 p.m.

1. Invocation was given by Mayor Evans.
2. Pledge of Allegiance was led by Councilman Posey.

**II. PROCLAMATIONS & AWARDS**

1. Mayor Evans recognized and presented certificates of appreciation to citizens present who had volunteered to help at the first annual Overton Municipal Cemetery Clean Up Day held on Saturday, February 27, 2016.

**III. CITIZEN FORUM**

*Nathan Kendall, 202 Short Street, stated that the area of Short Street and around to Lamar Street has huge pot holes that continue to degrade. He stated that he filled in a pot hole recently that was 3' x 3' x 15'; and this will be a definite mosquito breeding ground this summer.*

*City Manager Cunningham responded that the City was already over budget for road repair and materials this fiscal year. The Council budgeted \$10,000.00 for road repairs and we have already exceeded 16,000.00*

*Nathan Kendall responded that he could assure the Council that \$0.00 had been spent on Short and Lamar Street.*

*City Manager Cunningham responded that the City could not work on every road, every year. It is a simple question of money.*

*Nathan Kendall then asked if the City had ever recovered any of the money spent on the Prison Sewer Lift Station repairs from the previous year.*

*City Manager Cunningham responded that the Prison currently pays 40% of the entire Wastewater Budget, and the City plans to raise the Water & Sewer rates on the Prison to recover \$104,000.00 spent on the Prison Lift Station repairs.*

***Mayor Evans wrapped up the discussion by directing staff to look into trying to fill in the pot holes on Short & Lamar Streets with available materials the City currently has in possession.***

#### **CITIZEN'S REQUEST**

*Jack Sims, 1002 E. Henderson Street, request was to fix the cave in at the Man Hole cover on Henderson Street. He stated that the City Crew had been out working on the problem earlier that day but had just filled the hole with cold mix. Prior to my request to be heard before City Council nothing had been done to address this problem and I was afraid for the public safety, especially that of young children falling into the hole. Mr. Sims went on to say that all the work done the previous year had been a waste of money because the City Crew used cold mix, and it had all washed out of the pot holes on Henderson Street. Mr. Sims recommended that the City crew purchase a roller and use hot mix in the future. Mr. Sims asked if the pot holes could be readdressed again this year in front of his house.*

*Mayor Evans thanked Mr. Sims for his comments.*

***No Action Taken***

#### **IV. CONSENT AGENDA**

Any or all items under Consent Agenda may be removed by the Mayor, any Council Member or the City Manager for discussion.

1. Approval of the Minutes of the Regular Council meeting held on February 18, 2016.

**Mayor Pro Tem Cox made a motion to approve the Consent Agenda as submitted.**

**Councilman Posey seconded the motion.**

**Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

#### **V. OLD BUSINESS**

1. Present revised meeting schedule for the City Council as updated March 14, 2016.

*City Manager Cunningham reviewed the upcoming meeting schedule with Council.*

*Mayor Evans directed staff to schedule a workshop prior to the next Regular Council Meeting on April 21, 2016 at 6 p.m. for Council to complete the review and changes to the proposed City Council Rules & Procedures Ordinance.*

*No action taken*

- a. Receive request for leave of absence request from Council Members for future meetings.

*No request for leave of absence received.*

*No action taken*

2. Hear, review, consider and/or take action on adoption of ~~Resolution No. 2016-03-24A~~, a Resolution of the City of Overton, Texas approving an Engineering Services Agreement between the City of Overton and Shaumburg & Polk Inc. and authorizing the Mayor to execute said Agreement on behalf of the City.

City Manager Cunningham presented Resolution No. 2016-03-24A with the contract for Engineering Services between the City of Overton and Shaumburg & Polk Inc. as reviewed and submitted for council approval by City Attorney Thompson. Cunningham also stated that each task order would have to go in front of the Municipal Body providing the project funds for approval prior to acceptance of the task order and any work being done.

**Councilman Posey made a motion to approve Resolution No. 2016-03-24A authorizing the Mayor to sign the contract for Engineering Services between the City of Overton and Shaumburg & Polk Inc. as submitted.**

**Councilman Clark seconded the motion.**

**Mayor Evans called for discussion; no discussion.**

**Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

3. Hear, review, consider and/or take action on adoption of ~~Ordinance No. 2016-03-24A~~, an Ordinance of the City of Overton, Texas establishing Rules and Procedures for City Council meetings, including and providing for the following: Findings of Fact; Purpose; Parliamentary Laws and Rules of Order; Authority; Definitions; Meetings & Agendas; Attendance and Fines; General Rules of Procedure at Meetings; Standards of Conduct; Disruptive or Disorderly Conduct; Duties and Privileges of Council Members; Enforcement; Committees; Recording of Meetings; individuals with Disabilities; Rules of Suspension; Relation of this Ordinance to Other Ordinances; Severability; Proper Notice and Meeting; and Providing for Publication and an Effective date.

**Mayor Pro Tem Cox made a motion to adopt Ordinance No. 2016-03-24A Sections 1 through Section 8.02, as amended in the City Council workshop held on March 24, 2016 at 6 p.m.; and that the remainder of the proposed**

**Ordinance (Section 8.03 through Section 17) be reviewed and adopted at the next regular called City Council meeting held in April.**

**Councilman Davis seconded the motion.**

**Mayor Evans called for discussion.**

*Mayor Pro Tem Cox stated that he felt that some of the provisions they had already reviewed and agreed upon during the workshop of the City Council Rules in Procedures needed to be established, locked in and we as the governing body needed to be adhering to immediately.*

**With no further discussion, Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

## **VI. NEW BUSINESS**

1. Council to hear and consider action on recommendation to apply for a grant from the McMillan Foundation in the amount of \$40,000 to pay for the resurveying and mapping of the Overton Municipal Cemetery.

*City Manager Cunningham presented the letter requesting a grant from the McMillan Foundation to help fund a resurveying and mapping project of the Overton Municipal Cemetery stating that he was asking that Council make a recommendation to authorize submittal of the grant request.*

**Mayor Pro Tem Cox made a motion to authorize submission of grant request letter as presented for the proposed grant from the McMillan Foundation to fund the resurveying and mapping of the Overton Municipal Cemetery.**

**Councilman Posey seconded the motion.**

**Mayor Evans called for discussion.**

*Mayor Pro Tem Cox stated that he felt like this is one of the most important projects that City Council should back and support; although City Staff has done a fantastic job with what documents they were handed over by the Cemetery Association. The City definitely needs this money and this resurveying and mapping done, and I as a Councilman am all for supporting the request for this grant and these projects.*

*Councilman Clark asked City Secretary Gafford if she had ever found out if the Warren heirs could now sign a warranty deed for the cemetery land donated by P.C. Warren.*

*City Secretary Gafford stated that she was still in the process of researching deed records for all the land that has been pieced together over the years that make up the Cemetery, prior to going to the City Attorney to ask that question.*

**With no further discussion, Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

**Mayor Evans skipped over Item No. VII.2 and moved to Item No. VII.3:**

3. Council to hear and consider action on a request to purchase a new loader- backhoe and steel wheeled roller for the Public Works and Utility Departments.

*City Manager Cunningham presented his request to research financing options for the City to purchase a new backhoe loader, a new roller and dump truck for the Public Works and Utility Departments. City Manager Cunningham showed Council the numbers spent on repairs and rental of equipment over the past year which would have gone a long ways to the purchase of replacement machines.*

**Mayor Pro Tem Cox made a motion to allow City Manager Cunningham to pursue financing options to make the purchase of the equipment needed as mentioned above and bring back a proposal for purchase of this equipment to the City Council at their next regular meeting in April.**

**Councilman Clark seconded the motion.**

**Mayor Evans called for discussion**

*Councilman Posey asked if the City was looking for a backhoe with an extended boom to reach sewer lines at depths over 12 feet.*

*City Manager Cunningham stated that we were researching one with a 14' reach which is sufficient for most of the work done in the City.*

**Councilman Clark asked what the Best Brand would be to look at.**

*City Manager Cunningham stated that the City could purchase equipment off the "Buy Board" for the governmental pricing, plus satisfy the state requirements for bidding out purchase of equipment. Using the Buy Board for the equipment purchase will be a more efficient way of proceeding as we are able to dispense with the bidding process.*

**Councilman Davis asked if the whole package is going to cost about \$120,000.00 for the new equipment, will that still balance out.**

*City Manager Cunningham stated that the City would amortize the payments over 2 to 3 years; with just interest payments for the remainder of this year and quarterly payments beginning in October. Considering that the City paid \$9,000.00 last month on rentals and equipment repairs for just the backhoe last month alone, I think we will save money in the long run. The equipment would have a one year warranty and two year extended warranty which greatly reduces maintenance costs during the warranty period.*

**With no further discussion, Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

**Mayor Evans moved back to Item No. VII.2:**

2. Council to hear and review a draft **Ordinance No. 2016-Draft**; an Ordinance of the City Council of the City of Overton, Texas, adding Section 76.10 to Chapter 76 General Provisions to the City of Overton Code of Ordinances; Adopting the Overton Municipal Cemetery Rules and Regulations 2016; providing a Severability Clause and declaring a penalty for violations of certain rules; regulations provided within and an effective date.

*City Manager Cunningham presented a draft ordinance to add the proposed Overton Municipal Cemetery Rules to the Code of Ordinances. He stated that the ordinance as presented this evening is in draft form, and staff would schedule a workshop prior to the next City Council Meeting in April to work on revisions and changes Council feels should be made to the proposed ordinance.*

***No action Taken***

4. Council to hear and consider action on **Ordinance No. 2016-03-24B**; an Ordinance of the City Council of the City of Overton, Texas, amending Chapter 73: Health And Sanitation by the addition of 73.07: Trees And Objects In The Visibility Triangle Or Right-Of-Way; imposing regulations on property owners to maintain trees and other vegetation on private property and within street right-of-ways; containing a severability clause, providing for a penalty of up to \$500.00 as to be defined in Appendix B "Schedule Of Fines" of the Overton Code of Ordinances for violation of this ordinance and providing for publication and for an effective date.

*City Manager Cunningham presented Ordinance No. 2016-03-24B to Council for review, discussion and adoption. The City currently does not have an ordinance in place that enforces restrictions on excessive vegetation in City right-of-ways. The proposed ordinance was modeled after several larger cities' ordinances that are used to keep easements and right-of-ways cleared.*

*Councilman Posey asked if this would help the City to reopen alley ways that have fallen into disuse.*

*City Manager Cunningham stated that the City needs to do some clean up on the alleys and this will be done with the Propositions approved for the replacement of the water & sewer lines in the downtown area and the repaving the alleys; however, one problem is that the alleys were never designed to handle the 36,000 # garbage trucks. Staff is going to recommend to our Code Enforcement Officer to educate and give warning to citizens through the end of the year on this Ordinance to allow the City to clean up their Right-of-Ways as well.*

**Councilman Posey made a motion to approve Ordinance No. 2016-03-24B as submitted.**

**Councilman Davis seconded the motion.**

**Mayor Evans called for discussion**

*Mayor Pro Tem Cox stated he would donate the land for the brush to be placed on as long as the Fire Department would come out a Burn the brush pile pretty quickly.*

**With no further discussion, Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

5. Council to appoint a Committee Chair in charge of the City's Annual July 4<sup>th</sup> Fireworks Celebration.

*City Manager explained to City Council that the City had received notification from Brookshire's Grocery Company of their approval of a donation of \$2,500.00 for the Fireworks in the Park 2016. However, Councilman Beets has said he would not be able to commit to being chairman for the fireworks this year. Therefore, Council would need to consider appointing another chairman for the annual fireworks show. Mayor Pro Tem Cox asked what all is involved with the job.*

*City Secretary Gafford stated that the Chairman orders and picks up the fireworks, coordinates hanging the signs for the festival, and is in charge of getting the fireworks ready to be set off the night of the fireworks show.*

*Police Chief Carter stated that he had gone to pick up the fireworks the previous year, Chuck Bogdanowitz put up the banner across the 4 way with his lift truck and that the Fire Department typically assists with the fireworks show.*

**Councilman Davis made a motion to appoint Philip Cox as the Chairman of the 4th of July Fireworks in the Park.**

**Councilman Posey seconded the motion.**

**Mayor Evans called for discussion**

**With no further discussion, Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

**VII. CITY ADMINISTRATION'S MONTHLY REPORTS**

1. Fire Department Monthly Report
2. Police Department Monthly & Annual Racial Profiling Report 2015
3. Department of Finance Monthly Report
4. City Manager's Monthly Report

*City Manager Cunningham presented monthly departmental reports.*

**No Action Taken**

**VIII. ADJOURNMENT**

**Mayor Pro Tem Cox made a motion to adjourn.**

**Councilman Clark seconded the motion.**

**Mayor Evans called for a vote.**

**Motion carried 4-0-0; Councilman Beets absent.**

With no further business, the meeting was adjourned at 8:45 P. M.

Minutes approved and submitted and/or corrected this 21<sup>st</sup> day of April, 2016.

  
\_\_\_\_\_  
C. R. Evans Jr., Mayor

Attested by:

\_\_\_\_\_  
Rachél Gafford, City Secretary

ATTACHMENT 1

City of Overton, TX  
Page 1 of 2

RESOLUTION NO. 2016-3-24A

City of Overton, TX  
Page 2 of 2

RESOLUTION NO. 2016-3-24A

**RESOLUTION NO. 2016-3-24A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS AUTHORIZING THE MAYOR TO EXECUTE AN ENGINEERING SERVICES AGREEMENT WITH SCHAUMBURG & POLK INC.; EFFECTIVE 3-24-2016 WITH AN INITIAL TERM OF THREE YEARS.**

**WHEREAS,** The City of Overton is committed over the next several years to use all available financial and human resources to improve a variety of major deficiencies that have been identified in its infrastructure network; and

**WHEREAS,** The City initiated a program in December 2015 to recruit a highly qualified Engineering firm to provide these services and established an Engineering Services evaluation and selection committee made up of two members each of the City Council, Overton Economic Development Board and the Overton Municipal Development District; and

**WHEREAS,** the Committee reviewed Statements of Qualifications and interviewed the top two firms that submitted Statements of Qualifications to provide such services and recommended to the City Council the firm of Schaumburg and Polk Inc.; and

**WHEREAS,** the terms and conditions of a draft agreement were negotiated between the City and SPI to arrive a completed document to be considered and approved by the City Council, OEDC Board and OMDD Committee;

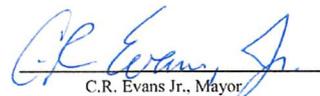
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS:**

**SECTION 1:** THAT the Mayor of the City of Overton is authorized to execute the Agreement attached as Exhibit A and incorporated into this Resolution for all purposes.

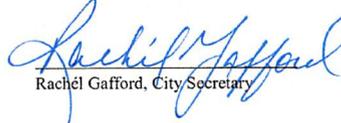
**AND IT IS SO RESOLVED.**

APPROVED AND ADOPTED by the City Council of the City of Overton, Texas on this 24<sup>th</sup> day of March, 2016.

CITY OF OVERTON

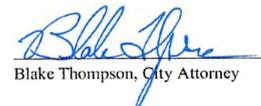
By:   
C.R. Evans Jr., Mayor

ATTEST:

  
Rachel Gafford, City Secretary



APPROVED AS TO FORM AND LEGALITY:

  
Blake Thompson, City Attorney

AGREEMENT FOR ENGINEERING SERVICES

<u>INDEX</u>	<u>PAGE</u>
SECTION 1. EMPLOYMENT OF THE ENGINEER .....	1
SECTION 2. BASIC SERVICES OF THE ENGINEER .....	1
A. GENERAL	
B. RELIMINARY REPORT PHASE	
C. DESIGN PHASE	
D. CONSTRUCTION PHASE	
SECTION 3. ADDITIONAL SERVICES OF THE ENGINEER .....	4
A. GENERAL	
B. RESIDENT PROJECT REPRESENTATIVE SERVICES	
SECTION 4. OWNER'S RESPONSIBILITIES .....	7
SECTION 5. PAYMENT FOR ENGINEERING SERVICES .....	8
A. STANDARD ENGINEERING FEE	
B. PAYMENT FOR ADDITIONAL SERVICES	
SECTION 6. GENERAL CONSIDERATIONS .....	8
A. TERMINATION	
B. OWNERSHIP OF DOCUMENTS	
C. ESTIMATES	
D. ENGINEERS'S INSURANCE REQUIREMENTS	
E. LAWS AND ORDINANCES	
F. VENUE	
G. INDEMNITY	
H. PROTECTION AGAINST ACCIDENTS TO EMPLOYEES AND PUBLIC	
I. OSHA REQUIREMENTS	
J. LOSSES FROM NATURAL CAUSES	
K. PUBLIC INFORMATION	
L. SEVERABILITY AND NO ASSIGNMENT	
M. NOTICES	

ATTACHMENT- SCHEDULE OF FEES

Notary's Printed Name

i.

STATE OF TEXAS §  
RUSK COUNTY §

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT is entered into by and between the City of Overton (CITY), the Overton Economic Development Corporation (OEDC) and the Overton Municipal Development District (OMDD) in Rusk County, Texas, either collectively or individually hereinafter called OWNERS, acting therein by and through their duly authorized representative, the City Manager of the City of Overton; and Schaumburg & Polk, Inc. a corporation of Beaumont, Jefferson County, Texas (hereinafter called the ENGINEER) acting herein by and through one of its officers, who is duly authorized to act for and on behalf of said ENGINEER.

SECTION 1. EMPLOYMENT OF THE ENGINEER

OWNERS hereby employ ENGINEER and ENGINEER agrees to perform professional services in connection with planning, designing and/or constructing various water, wastewater, drainage, roads and/or other infrastructure features hereinafter called the Services. Consulting or Engineering Services provided for any specific project will be documented by a Work Order. A Work Order may be issued to the City or OEDC or OMDD or any combination of the three organizations depending on the funding of the project for which the Services are being provided. This Agreement sets forth the general terms and conditions which shall apply to all Work Orders duly executed under this Agreement.

- A. This Agreement is not a commitment by OWNERS to ENGINEER, to issue any Work Orders. ENGINEER shall not be obligated to perform any prospective Work Order unless and until OWNERS and ENGINEER agree as to the particulars of a Specific Project, including the scope of ENGINEER's services, time for performance, ENGINEER's compensation, and all other appropriate matters. The time of performance shall be specified in each Work Order.

SECTION 2. BASIC SERVICES OF ENGINEER

- A. General
  - 1. ENGINEER agrees to perform professional services in connection with the Project as hereinafter stated as required for each project issued Work Order.
  - 2. ENGINEER shall serve as OWNER's professional representative in all authorized phases of the Project and shall give consultation and advice to OWNERS during the performance of his services.
  - 3. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. Preliminary Report Phase

During the preliminary phase, ENGINEER shall:

- 1. Consult with OWNERS to determine the requirements of the Project.

1.

3. Assist in the engineering phases of the preparation of formal contract documents for award of contracts.
4. Attend preconstruction conference with OWNERS, other utility owners, contractors and other interested parties to determine and coordinate construction scheduling and responsibilities.
5. Make periodic visits to the site (as distinguished from the continuous services of a resident Project Representative) to observe the progress and quality of work, and to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, the ENGINEER will endeavor to protect OWNERS against defects and deficiencies in the work of contractors, but he will not be required to guarantee the performance of their contracts, nor will he be responsible for the actual supervision of construction operations.
6. Check samples, catalog data, shop drawings, laboratory, shop and mill tests of materials and equipment and other data which the Contractor is required to submit, only for the conformance with the design concept of the Project and compliance with the information given by the plans, specifications, and contract documents; and accept or reject all such submittal data furnished by the contractors, materials used and work performed by the contractors as either complying or not complying with the intent of the plans, specifications and contract documents.
7. Coordinate core borings, probing or subsurface explorations, issue orders for necessary laboratory tests and inspect samples or materials submitted for laboratory testing.
8. Consult and advise with OWNERS, act as OWNERS' representative at the project site, issue all instructions of OWNERS to the construction contractors that do not conflict with good engineering practice and prepare routine change orders as required.
9. Approve monthly and final payments to contractors.
10. Based on his on-site observations as an experienced and qualified design professional and on his review of the contractors' applications for payment, determine the amount owing to the contractors and recommend in writing payment to the contractors in such amounts; such recommendations of payment to constitute a representation to OWNERS, based on such applications, that the work has progressed to the point indicated and that, to the best of his knowledge, work is in accordance with the plans, specifications and contract documents, subject to the specifications and contract documents and any qualifications stated in his approval.
11. Conduct, in company with OWNER's representative, a final inspection of the Project for conformance with the design concept of the Project and compliance with the plans, specifications and contract documents, and recommend in writing final payment to the Contractor.
12. Revise contract drawings, with the assistance of the Resident Project Representative and based on record drawings prepared by the Contractor, to show the work as actually constructed, and furnish one (1) set of the revised reproducible drawings and one set of drawings in pdf format to OWNERS.

3.

### SECTION 3. ADDITIONAL SERVICES OF THE ENGINEER

#### A. General.

In addition to the Basic Services to be performed by the ENGINEER for the payment of the standard engineering fee, the ENGINEER shall furnish additional services of the following types, if authorized by OWNERS, to be paid for by OWNERS as set out in Section 5B and as required by each project issued a Work Order:

1. Additional services due to significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity or character of construction.
2. Revised previously approved studies, reports, design documents, drawings or specifications.
3. Furnish additional copies of reports and additional prints of drawings, specifications and contract documents.
4. Investigations involving detailed consideration of operation, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by OWNERS.
5. Additional or extended services during the construction made necessary by (1) work damaged by fire or other cause during construction, (2) prolongation of the construction contract time by more than 25 percent, (3) acceleration of work schedules involving service beyond normal working hours, and (4) construction contract default due to delinquency or insolvency of the construction contractor.
6. Serving as expert witness for OWNERS in any litigation or other proceeding involving the Project.
7. Additional services in connection the Project not otherwise provided for in this Agreement.
8. Preparation of design surveys, construction staking, plats, legal descriptions, easements or deeds; record search, abstracting of ownership or other related surveying work.
9. Applications for federal or state grants or loans, water permits, waste disposal permits, solid waste permits, environmental permits, cultural resources permits, railroad permits and any other type permits.
10. Preparation of operation and maintenance manuals.
11. Providing the services of outside consultants or ENGINEER's staff for the performance of specialized work including but not limited to geotechnical investigation, materials testing, and environmental studies.
12. Perform an inspection of the Project prior to the expiration of the guarantee period and report observed discrepancies related to guarantees provided by the construction contract.

4.

(2) Verify that tests, including equipment and start-up, which are required by the specifications and contract documents, are conducted and that the contractor maintains adequate records thereof, observe, record and report to the ENGINEER appropriate details relative to the test procedures and start-ups.

g. Interpretation of Contract Documents. Transmit to the contractor the ENGINEER's interpretation of the plans, specifications and contract documents.

h. Modifications. Consider and evaluate contractor's suggestions for modifications in drawings or specifications and report them with recommendations to the ENGINEER.

i. Records.

(1) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original contract documents including all addenda, change order and additional drawings issued subsequent to the award of the contract, the ENGINEER's interpretation of the plans, specifications and contract documents, progress reports and other project-related documents.

(2) Keep a diary or log book, recording hours on the job site, weather conditions, list of visiting officials, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures.

(3) Record names, addresses and telephone numbers of all contractors, field superintendents and foremen, subcontractor and major material suppliers.

(4) Maintain a set of drawings on which authorized changes are noted and deliver to the ENGINEERS at the completion of the project.

j. Payment Certifications. Review applications for payment with the contractor for compliance with the established procedure for their submission and forward them with recommendations to the ENGINEER, noting particularly their relation to work completed and materials on hand at the site.

k. Guarantees, Certificates, Maintenance and Operation Manuals: During the course of the work, assemble guarantees, certificates, installation and maintenance operation manuals and other required data to be furnished by the Contractor and upon acceptance of the project, deliver this material to the ENGINEER for his approval and forwarding to OWNERS.

l. Completion.

(1) Prior to final inspection, submit to the contractor a list of observed items requiring correction and verify that each correction has been made.

(2) Conduct final inspection in the company of the ENGINEERS and Owner and prepare a final list of items to be corrected.

(3) Verify that all items on the final list have been corrected and make recommendations to the ENGINEER concerning acceptance.

6.

3. Except upon written instruction of the ENGINEER, the Resident Project Representative:  
a. Shall not authorize any deviation from the plans, specifications and contract documents.

b. Shall not undertake any of the responsibilities of the contractor, the subcontractors or the contractor's field superintendent.

c. Shall not expedite the work for the Contractor.

d. Shall not advise on or issue directions relative to any aspect of the construction technique or sequence unless a specific technique or sequence is called for in the specifications and contract documents.

e. Shall not participate in specialized field or laboratory tests.

4. Through continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if one is to be furnished) the ENGINEER will endeavor to provide further protection for OWNERS against defects and deficiencies in the work of the contractors. However, ENGINEER shall not, during such Resident Project Representative services, supervise, direct, or have control over Contractor's work, nor shall the ENGINEER have authority over or responsibility for means, methods, techniques, sequences, or procedures of construction, security or safety at the site selected by the Contractor. The ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for Contractor's failure to perform the work in accordance with the Contract Documents.

SECTION 4. OWNER'S RESPONSIBILITIES

OWNERS shall:

1. Provide full information as to his requirements for the project.

2. Assist the ENGINEER by placing at his disposal all available information pertinent to the site of the Project including all previous reports and any other data relative to design of construction of the Project in a timely fashion.

3. Guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform his work under this Agreement.

4. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented by the ENGINEER and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the ENGINEER.

5. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.

6. Provide legal and accounting services as may be required for the Project.

7. Designate in writing a person to act as Owner's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit

7.

instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement.

8. Give prompt written notice to the ENGINEER whenever OWNERS observes or otherwise becomes aware of any defect in the Project.

9. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

10. Furnish, or direct the ENGINEER to provide at OWNER's expense, necessary additional service as stipulated in Section 3 of this Agreement, or other services as required.

SECTION 5. PAYMENT FOR ENGINEERING SERVICES

A. Basic Engineering Fee.

1. OWNERS hereby agree to pay to the ENGINEER for performance of all services as set out in Section 2a. a basic engineering fee as presented in a Work Order which shall be prepared and negotiated for each individual project for which engineering services by the ENGINEER were authorized by the City Council of the City of Overton, Texas, the Overton Economic Development Corporation and/or the Overton Municipal Development District.

Said payment shall be made monthly on the basis of a clear and detailed invoice reflecting items being billed. ENGINEER's statement of services shall show the percent of work completed to date by activity or task and the amount and/or percentage billed broken down by activity or task.

SECTION 6. GENERAL CONSIDERATIONS

A. Termination

This AGREEMENT may be terminated by either party hereto, with or without cause, upon ten (10) days written notice thereof. If this AGREEMENT is terminated by OWNERS without cause or by the ENGINEER with cause, the ENGINEER shall be paid his compensation for service performed to termination date, including Reimbursable Expenses then due. This AGREEMENT shall be in force for a period of 3 years from the date of execution and may be extended thereafter upon written agreement executed by OWNERS and ENGINEER for maximum of two additional annual extensions.

B. Ownership of Documents

Drawings and specifications are and shall remain the property of the ENGINEER until payment of the ENGINEER in full. Upon payment of the ENGINEER in full, said drawings and specifications shall pass to and become the property of OWNERS without restriction as to their subsequent uses. Any re-use of documents other than for what they were originally intended shall be at OWNERS sole risk. If the project is terminated prior to completion, all drawings and specifications and calculations which have been completed by the ENGINEER through the date of termination, shall be transmitted to OWNERS and shall be OWNER's property.

8.

The OWNERS shall be notified by the ENGINEER and Insurance Company at least 30 days prior to any cancellation or non-renewal affecting this contract. Should coverage be canceled or reduced below the required limits the ENGINEER shall immediately stop work until coverage can be reinstated and new certificates of coverage provided.

E. Laws and Ordinances.

ENGINEERS shall comply with all federal, state and local laws, including but not limited to all ordinances of the City of Overton.

F. Venue.

Venue for any action arising hereunder shall lie exclusively in Rusk County, Texas for actions in state court and in the Eastern District of Texas, Tyler Division, for actions in federal court. This provision shall supersede any other references in the Agreement.

G. INDEMNIFICATION AND MUTUAL WAIVER

1. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants and employees, from losses, damages and judgements (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgement is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

2. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and Engineer's officers, directors, members, partners, agents, consultants and employees from losses damages and judgements (including reasonable consultant's and attorney's fees and expenses) arising from third party claims or actions relating to the Project, provided that any such claim, action, loss, damages or judgement is attributable to bodily injury, sickness, disease, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees or Consultants.

3. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultant's and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgement is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

10.

4. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

5. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

6. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners; and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

H. Protection against Accidents to Employees and the Public.

The ENGINEER shall at all times exercise reasonable precautions for the safety of employees and others on or near the Work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes.

I. OSHA Requirements.

The ENGINEER shall be required to adhere to all applicable requirements of the Federal Occupational Safety and Health Act of 1930 (OSHA) which is made a part of this contract by reference.

J. Losses from Natural Causes.

Unless otherwise specified, all loss or damage to the ENGINEER arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by the ENGINEER at the ENGINEER'S own cost and expense.

K. Public Information.

The Parties acknowledge that the Texas Public Information Act governs public information maintained by the City and that disclosure of information by the City under the Texas Public Information Act or as a matter of law may be required.

L. Severability and No Assignment.

If any provision herein is held by a court to be void or unconstitutional, such holding shall not affect the remaining provisions of this Agreement which shall remain in full force and effect. ENGINEER shall not assign this agreement without prior written approval of OWNERS.

M. Notices.

Any notices provided under this agreement shall occur in writing, by certified or registered mail delivery, receipt requested. For purposes of such notice, the addresses of the parties, until changed by written notice, shall be:

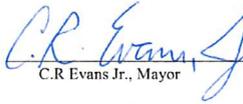
ENGINEER : Allen R. Ross, PE Executive Vice President  
Schaumburg & Polk Inc.  
320 S Broadway Ave, Ste. 200  
Tyler, Texas 75702  
(903) 595-3913

CITY, OEDC and OMDD: Charles L. Cunningham, City Manager  
Drawer D  
1200 S. Commerce Street  
Overton, TX 75684  
(903) 834-3171

OWNERS and ENGINEER hereby bind themselves, their heirs, successors and assigns and representatives for the faithful and full performance of the terms and provisions of this contract, jointly and severally.

IN WITNESS WHEREOF, the parties to these presents have executed this Engineering Contract on the \_\_\_\_ day of \_\_\_\_\_, 2016

FOR THE CITY OF OVERTON, TEXAS:

By:   
C.R. Evans Jr., Mayor

ATTEST:  
  
Rachel Gafford, City Secretary

FOR THE OVERTON ECONOMIC DEVELOPMENT CORPORATION:

By: \_\_\_\_\_  
Philip Cox, Chairman of Board

ATTEST:  
By: \_\_\_\_\_  
Jeannie Barber, Executive Secretary

FOR THE OVERTON MUNICIPAL DEVELOPMENT DISTRICT:

ATTEST:

By: Robert Heath, Chairman of Board  
By: Rachel Gafford, City Secretary

By:   
Blake Thompson, City Attorney

FOR THE ENGINEER:  
Schamburg & Polk, Inc.

By: Allen R. Ross P.E., Executive Vice-President

THE STATE OF TEXAS § ENGINEER'S ACKNOWLEDGEMENT  
COUNTY OF SMITH §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day, personally appeared Allen R. Ross who is known to me, or who was proved to me through to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for the purposes and consideration therein expressed.

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

Notary Public In and For The State of Texas

My Commission Expires: Notary's Printed Name

ATTACHMENT



2016 SCHEDULE OF HOURLY RATES and EXPENSES

ENGINEER IX	\$245.00 /HOUR
ENGINEER VIII	\$200.00 /HOUR
ENGINEER VII	\$175.00 /HOUR
ENGINEER VI	\$155.00 /HOUR
ENGINEER V	\$140.00 /HOUR
ENGINEER IV	\$125.00 /HOUR
ENGINEER III	\$105.00 /HOUR
ENGINEER II	\$95.00 /HOUR
ENGINEER I	\$85.00 /HOUR
DESIGN TECHNICIAN IV	\$110.00 /HOUR
DESIGN TECHNICIAN III	\$95.00 /HOUR
DESIGN TECHNICIAN II	\$75.00 /HOUR
DESIGN TECHNICIAN I	\$55.00 /HOUR
SURVEYOR III	\$95.00 /HOUR
SURVEYOR II	\$75.00 /HOUR
SURVEYOR I	\$55.00 /HOUR
ADMINISTRATIVE ASSISTANT	\$60.00 /HOUR
CONSTRUCTION REPRESENTATIVE III	\$95.00 /HOUR
CONSTRUCTION REPRESENTATIVE II	\$85.00 /HOUR
CONSTRUCTION REPRESENTATIVE I	\$70.00 /HOUR

REIMBURSABLE EXPENSES	
Mileage	IRS Allowable Rate
Travel and Meals	Actual Cost x 1.10
Misc. Reimbursable Expenses	Actual Cost x 1.10
Color Plots	\$3.00 per Square Foot

OUTSIDE CONSULTANT RATES		
Associate Engineer	Civil, Electrical, Environmental, Mechanical, etc.	up to \$175.00/HOUR
Subconsultants		Actual Cost x 1.10

Schaumburg & Polk, Inc. furnishes General Liability Insurance, Professional Liability Insurance and State of Texas mandatory limits of Worker's Compensation Insurance.

Preparation for and furnishing expert witness testimony will be billed at three times the hourly rates shown above for the various classifications.

Rates Effective: January 1, 2016 (adjusted annually)

ATTACHMENT 2

City of Overton, Texas

Ordinance No. 2016-03-24A

**ORDINANCE NO. 2016-03-24A**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, ESTABLISHING CITY COUNCIL RULES AND PROCEDURES FOR CITY COUNCIL MEETINGS, INCLUDING AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; PURPOSE; PARLIMENTARY LAWS AND RULES OF ORDER; AUTHORITY; DEFINITIONS; MEETINGS & AGENDAS; ATTENDANCE & FINES; GENERAL RULES OF PROCEDURE AT MEETINGS; STANDARDS OF CONDUCT; DUTIES AND PRIVILIGES OF COUNCILMEMBERS; PRESIDING OFFICER AND CONDUCT; COMMITTEES; INDIVIDUALS WITH DISABLITIES; RULES OF SUSPENSION; RELATION TO OTHER ORDINANCES; SEVERABILITY; PROPER NOTICE AND MEETING; PROVIDING FOR A FINE OF \$20 FOR EACH UNEXCUSED ABSENCE; PROVIDING FOR PUBLICATION AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Overton, Texas seeks to provide for the efficient administration of City business; and

**WHEREAS**, the City Council seeks to maintain order and decorum at City Council meetings; and

**WHEREAS**, the City Council finds the promulgation of procedural rules for Council meetings furthers the effective and efficient administration of City business and encourages orderly public participation in the democratic process; and

**WHEREAS**, the City Council finds it to be in the best interest of the public safety, health and general welfare to adopt reasonable rules and regulations to maintain order and to regulate conduct at its meetings; and

**WHEREAS**, the City Council is authorized to adopt such rules and regulations by virtue of Section §22.038 of the Texas Local Government Code and by section §551.023 of the Texas Government Code; and

**WHEREAS**, the City Council has carefully reviewed the rules and regulations established by this ordinance; and

**WHEREAS**, the City Council has received public input by and through a public meeting at which the Ordinance was adopted.

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

**SECTION 1.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

City of Overton, Texas

Ordinance No. 2016-03-24A

**SECTION 2.** That Ordinance No. 2016-03-24A– City Council Rules of Procedure shall read as provided in Exhibit “A” attached hereto and incorporated herein as if fully set forth for all purposes.

**SECTION 3.** This Ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other City ordinances and regulations. Except to the extent they apply to obligations and violations arising prior to the enactment of this Ordinance.

**SECTION 5.** All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any previous ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.** In the event that any one or more of the sections, provisions, clauses, or words of this Ordinance or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Ordinance or the application thereof to any other situations or circumstances and it is intended that this ordinance shall be severable and that it shall be construed and applied as if such invalid or unconstitutional section, provision, clause or word had not been included herein.

**SECTION 7.** That the meeting at which this Ordinance was enacted was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

**SECTION 8.** The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this Ordinance as an alternative method of publication provided by law.

**SECTION 9.** That this Ordinance shall become effective after its passage.

**PRESENTED APPROVED ON THIS THE 24<sup>TH</sup> DAY OF MARCH, 2016, AT A REGULAR COUNCIL MEETING OF THE CITY OF OVERTON BY A VOTE OF, 4 AYES, 0 NAYS, 0 ABSTENTIONS; COUNCILMAN BEETS ABSENT.**



CITY OF OVERTON

*C. R. Evans, Jr.*  
C. R. Evans, Jr., Mayor

ATTEST:

*Rachel Gafford*  
Rachel Gafford, City Secretary

APPROVED AS TO CONTENT AND FORM:

*Blake Thompson*  
Blake Thompson, City Attorney

**THIS  
PAGE  
LEFT  
BLANK**

**CITY COUNCIL  
RULES OF PROCEDURE  
CITY OF OVERTON, TEXAS**

**As Adopted by Ordinance No. 2016-03-24A  
Effective Date: March 24, 2016**

City of Overton, Texas

Ordinance No. 2016-03-24A

**TABLE OF CONTENTS**

**Section 1 – FINDINGS OF FACT** 1

**Section 2 – PURPOSE** 1

**Section 3 – PARLIAMENTARY LAW AND RULES OF PROCEDURE** 1

**Section 4 – AUTHORITY** 1

**Section 5 - DEFINITIONS**

5.01. General Definition 2

5.02. Specific Definitions 2

**Section 6 – MEETINGS & AGENDAS**

6.01. Regular Meetings 3

6.02. Special Meetings 4

6.03. Workshops 4

6.04. Agenda 4

6.05. Minutes 5

**Section 7 – ATTENDANCE & FINES**

7.01. Mayor & Councilmember Attendance 6

7.02. Fines 6

**Section 8 - ORDER OF BUSINESS**

8.01. Regular and Special Meetings 6

8.02. Public Hearings 6

**Section 1. – FINDINGS OF FACT**

The Council hereby finds all of the above premises to be true and correct legislative and factual findings of the City of Overton, and, so finding, the Council incorporates them into the body of this Ordinance as if copied in their entirety.

**Section 2. – PURPOSE**

This Ordinance is adopted so that the City Council may promote the public health, safety, ethics, and the general welfare with the City of Overton through the enactment of reasonable rules and procedures designed to facilitate the orderly and efficient conduct of City Council meetings in a manner that promotes a positive City image reflecting order, harmony, and pride, thereby strengthening the economic stability of the City. By and through this Ordinance, the City Council additionally seeks to establish fair, reasonable, and efficient guidelines for maintaining order and promoting effective public participation at City Council meetings.

**Section 3. – PARLIAMENTARY LAW AND RULES OF PROCEDURE**

Parliamentary law and the rules of procedure derived from such law are essential to all deliberative organizations so that they may consider all matters before them in an effective and efficient manner and produce results that are legal and binding. Moreover, such procedural safeguards ensure due process during deliberations among members of the organization while at the same time protecting the rights of both the group and each member. Accordingly, these rules of procedure establish guidelines to be followed by all persons attending City Council meetings, including members of the City Council, administrative staff, news media, citizens and visitors.

The parliamentary reference for the City Council is the most recent edition of *Robert's Rules of Order Newly Revised (RONR)*. When any issue concerning procedure arises that is not covered by the Rules of Procedure or State law, the Council will refer to RONR, which shall determine such procedural issue.

**Section 4. – AUTHORITY**

According to the Texas Local Government Code §22038 (c); "The governing body shall determine the rules of proceedings and may compel the attendance of absent members and punish them for disorderly conduct." Thus, these rules of procedure are established. In the event of any conflict between the State Law and these rules of procedure, State Law shall prevail.

**Section 5. – DEFINITIONS**

**5.01. General Definition**

Words and phrases used in this Ordinance shall have the meanings set forth in this Section. Words and phrases that are not defined in this Ordinance, but are defined in other ordinances of the City of Overton, shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only and shall not be used in the interpretation of this Ordinance.

**5.02. Specific Definitions**

- a. **Council** means the City Council (i.e., the governing body) of the City of Overton, Texas.
- b. **City Council Meeting** means any public meeting held by the City Council of the City of Overton as authorized or required by the Texas Constitution and applicable by state law.
- c. **Council Chambers** means the meeting space designated for City Council meetings located in City Hall at 1200 South Commerce Street, Overton, Texas 75684.
- d. **Closed Meeting** means a meeting to which the public does not have access (i.e., executive session).
- e. **Conduct** means an act or omission and its accompanying mental state.
- f. **Deliberation** means a verbal exchange during a meeting by a quorum of the City Council, or between a quorum of the City Council and another person, concerning a public issue within the jurisdiction of the City Council.
- g. **Intentional** means the culpable mental state of "intent" as defined by Section 6.03 of the Texas Penal Code. A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.
- h. **Meeting** means any official proceeding of the Council. This term includes, but is not limited to, all Regular, Special (i.e., "called"), Emergency, and Executive Session (i.e., "closed") meetings.
- i. **Official Proceeding** means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant.

- j. **Open** means the public is allowed to attend.
- k. **Person** means a human individual.
- l. **Public Servant** means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if that person has not yet qualified for office or assumed her or her duties:
  - i. An officer, employee, or agent of the City;
  - ii. An attorney-at-law or notary public when participating in the performance of a government function;
  - iii. A candidate for nomination or election to public office; or
  - iv. A person who is performing a public function under a claim of right although he or she is not legally qualified to do so.
- m. **Quorum** means a majority of the City Councilmembers for a regular meeting and two-thirds of the Councilmembers for special meetings and/or meetings to consider the imposition of taxes.
- n. **Unlawful** means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.
- o. **City** means the City of Overton, a duly incorporated, Type A Texas Municipality located in Rusk & Smith County.

**Section 6. – MEETINGS & AGENDAS**

The City Council shall follow both the letter and the spirit of the Texas Open Meetings Act.

**6.01. Regular Meetings.**

- a. The City Council shall conduct regular meetings generally on the third (3<sup>rd</sup>) Thursday of each month. All regular sessions shall normally be scheduled to begin at 7:00 p.m. at City Hall in Council Chambers and are open to the public. Council by a Resolution may change or cancel the date and time of the regular meeting.
- b. When the day for any regular meeting falls on a legal holiday, the regularly scheduled meeting for such day shall be cancelled unless otherwise specified by the City Council by a Resolution to change the date of the regular meeting. .
- c. Except as otherwise provided in this paragraph, the City Council shall conduct all meetings in the City Council Chambers, located at 1200 S. Commerce Street, Overton, Texas. However, the City Council may from time to time elect to meet at other locations and, upon such election, shall give public notice of the change of location in accordance with State law. If, by reason of fire, flood, or other emergency, it is unsafe to meet in Council Chambers for the duration of the

emergency, the Council may hold its meeting at such other place as the Mayor may designate. In the Mayor's absence, the Mayor Pro-Tem may designate such change.

- d. Meetings may be cancelled or recessed to the next business day with or without notice by the Mayor, a majority of the Council, or a majority of the members of the Council in attendance at the meeting.

**6.02. Special Meetings.**

The City Manager or the Mayor may call a special meeting (i.e., "special called meeting") or on the written request of two Councilmembers. Each member of the City Council, the City Secretary, and the City Attorney must be notified of the special meeting in accordance with all notice requirements of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

**6.03. Workshops.**

Workshop sessions may be scheduled by the Mayor, two Councilmembers or by the City Manager. They are normally conducted prior to regular or special sessions but may also be conducted at other times as well. Their purpose is to exchange information between Council, staff, vendors or other groups. No official action is taken by Council during these sessions, but workshops shall be posted and are open to the public and shall comply with all notice requirements of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

**6.04. Agenda.**

- a. The City shall comply with all notice requirements of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.
- b. The City Manager and/or the City Secretary and/or the Mayor shall be responsible for preparing the agenda for Council Meetings. The City Manager may determine which items to include on the agenda, provided that the City Manager shall include any item requested by at least two (2) Councilmembers. Councilmembers shall submit written or verbal agenda item request to the City
- c. The Mayor, two (2) or more Councilmembers, the City Manager, the City Attorney, and the City Secretary may place items on the agenda. Agenda items, including any necessary or applicable supporting documents and materials to be included in agenda packets, shall be submitted in written form to the City Secretary at least seven (7) business days in advance of the day of the meeting. The City Manager will coordinate the placement of items on the agenda and will resolve any conflicts with Mayor and Councilmembers. Agenda items may be removed only by the person who initially placed that item on the agenda.
- d. Drafts of contracts, ordinances, resolutions, or other items requiring review should be submitted to the City Attorney in a manner timely enough to allow for their review prior to this submittal deadline.

- e. A citizen may request inclusion of an item on the agenda by submitting a request in writing to the City Secretary at least seven (7) business days in advance of the day of the meeting. The requested item may be included on the agenda at the City Manager and Mayor's discretion.
- f. Upon the motion of any Councilmember, the Council may elect to table or postpone and agenda item by an affirmative vote by a majority of Councilmembers present at the meeting.
- g. In compliance with the Texas Open Meetings Act, the Board shall not deliberate or vote on a matter not appearing on the agenda, except for purposes of presenting statements of current fact or policy or for determining whether the matter should appear on a future agenda.
- h. When possible, proposed ordinances and resolutions will first be placed on a Workshop Agenda or a Regular Agenda for discussion prior to being placed on a Regular Agenda for action.
- i. Regular and Workshop meeting agenda packets shall be delivered to the Council at least two (2) days prior to the meeting.

**6.05. Minutes.**

- a. Minutes of City Council meetings will be recorded and maintained by the City Secretary. The Minutes will include final motions with voting results. The minutes will also reflect the names of those citizens in attendance that sign in and / or who present public comments. Minutes of meetings will generally be submitted to the City Council for approval at the next regularly scheduled meeting.

**Section 7. – ATTENDANCE & FINES**

**7.01. Mayor & Councilmember Attendance**

Missing three (3) regular consecutive meetings will result in automatic removal of office and the creation of a vacant position of the City Council. There shall be three (3) provisions for excused absences:

- a. The Mayor or Councilmember is sick; or
- b. The Mayor or Councilmember has first obtained a leave of absence at a regular meeting for an excused absence; or §LGC 22.041(b)
- c. The Mayor or Councilmember has requested that an excused absence be granted and such request shall be added to the next agenda to be voted on by City Council approval at the next regular scheduled meeting. .

**7.02. Fines**

If the Mayor or a councilmember is absent, then they shall be fined \$20 for each regular called meeting they miss, unless the absence has been excused or caused by the councilmember's illness or the illness of a family member. §LGC 22.038(d)

---

City of Overton, Texas

Ordinance No. 2016-03-24A

**Section 8. – ORDER OF BUSINESS**

**8.01. Regular and Special Meeting.**

Regular and special meetings will generally adhere to the following agenda:

- Call to Order
  - Invocation
  - Pledge of Allegiance (United States Flag)
- Presentations & Proclamations
- Citizen Forum
- Citizens Requests
- Consent Agenda Items (may be moved to Statutory Agenda by Councilmembers)
- Public Hearings
- Statutory Agenda Items
  - Old Business
  - New Business
  - Request for Excused Absence
- Departmental & City Manager Report
- Media Inquiries
- Executive and/or Workshop Sessions (as appropriate)
- Reconvene in Regular Session (as appropriate)
- Adjournment

**8.02. Public Hearings.**

The City Manager shall schedule public hearings on the City Council's agenda to be held at least two weeks before the City Council may vote on the matter (unless the law requires otherwise, in which case, public hearings shall be conducted as provided by state law). In addition to this requirement, when conducted as part of a Regular Session, a vote may be taken on the matter at that same meeting. When a public hearing is conducted as a stand-alone meeting and not part of a Regular Session, the vote may be taken at a subsequent Regular or Special Session.

### ATTACHMENT 3



### CITY OF OVERTON

DRAWER D  
1200 S. COMMERCE  
OVERTON, TEXAS 75684



March 24, 2016

Bruce McMillan Jr. Foundation  
Attn: Todd Meadows  
302 S. Commerce St.  
Overton, TX 75684

Re: Request for Grant to fund Surveying and Mapping of the Overton Municipal Cemetery

Dear President and Board Members:

At the request of the Overton Cemetery Association, on October 1, 2011, the City of Overton agreed to take over operation of the local cemetery. The handover included approximately \$48,000 in accumulated cash but also included a contractual obligation of \$2,000 per month to L&L Lawn Maintenance Service. The existing contract was re-negotiated shortly after the City took over operations and the monthly obligation was reduced to \$1,500.00 per month or \$18,000.00 a year. The new contract undoubtedly reduced the scope of maintenance services provided and for the next four years little more was done than to keep the grass mowed, trash picked up and a minimum amount of leveling for graves and headstones. During this time, the condition of the roads inside the cemetery was steadily deteriorating as were the conditions of the trees and bushes inside.

Funding for cemetery operations in the past four years, until October of 2015, consisted of donations, sale of spaces and interment fees but these sources of revenue were not sufficient to cover the cost of routine contract maintenance. As a result the original reserve amount was depleted and the City's General Fund has been subsidizing operating costs until recently.

In addition to inadequate maintenance and need for other physical improvements, another issue faced by the City has been record keeping and lack of control over the locations of many of the graves.

Most if not all of the volunteer work previously done by the Cemetery Association staff fell to the City's Administrative staff, who had no free time available to manage data and the logistical

demands of cemetery operations. This resulted in a very poorly maintained manual system with only crudely drawn maps and charts to identify the locations of where people are buried, which plots are sold and what unused areas are available for sale. To correct this deficiency the cemetery is in need of resurveying and mapping the gravesites "as buried" for accuracy.

Beginning in 2014, efforts were made to organize existing data and automate cemetery administrative processes. In researching gravesite burials it was determined that the City is missing any plat records or maps for Old Section A, Section A-1, Baby Land, and the former Black Section of the Cemetery now named Section G. Former members of the Cemetery Association have been contacted in an effort to secure the missing records without any luck. Incomplete plot records for Sections B, C, D, DD, EE and F as we continue to find unmarked graves in these sections through the process of trial and error during burials.

On August 20, 2015, the City Council adopted Resolution 2015-08-20C to formally accept trusteeship of the Overton Municipal Cemetery. This was a precondition for establishing a Cemetery Property Tax which is allowed under Section§ 713.002 and 713.006 of the Texas Health and Safety Code.

The Fiscal Year 2015-16 Budget separated out cemetery operations from general fund operations by creating a separate Municipal Cemetery Fund with its own continuing source of revenue in the form of a property tax. The City Council Adopted Ordinance 2015-08-20D that imposes a property tax exclusively for the benefit of the maintenance and operation of the Overton Municipal Cemetery in August of 2015. The \$0.05 tax rate per \$100 of assessed value is expected to generate approximately \$40,000 per year.

In addition to the \$18,000 annual maintenance contract, the remaining funds have been used to pay for several landscaping improvements including removal of dead trees and certain bushes and hedges that were encroaching on existing grave sites. Materials for road repairs have been purchased and used to repair certain internal roads but future funds will be used to rebuild some portions of existing roads.

It will take several years to complete all of the planned capital improvements but there is a source of funds for these public works.

What remains to be accomplished in an urgent way, is a project to resurvey and map the entire cemetery to correct the burial plat maps and to fix plat maps for future plot sales and burials.

**LACY SURVEYING INC.**  
REGISTERED PROFESSIONAL LAND SURVEYORS

LacyLandSurveying.com  
TEL & FAX: 903.859.9942  
EMAIL: info@LacyLandSurveying.com

P.O. BOX 736  
ARP, TX 75750  
TBLS Firm #100299-00

The City has received a quote in the amount of roughly \$40,000 from Lacy Surveying, Arp, Texas to re-survey the Cemetery. Lacy Survey has broken the quote down by section and then prioritized the order in which the re-surveying and mapping needs to take place. A detailed report provided by Daniel Cooper of Lacy Surveying is attached. Lacy Surveying is a surveyor of record for having done some of the cemetery original surveys for sections D, DD, EE and F.

With this letter, the City Council of the City of Overton requests consideration for a grant from the McMillan Foundation in the amount of \$40,000 to pay for the resurveying and mapping of the cemetery. The City Council and staff are dedicated to making the Overton Municipal Cemetery the best it can be and a feature that the entire community can take pride in. You should also be aware that the City of Overton plans to file an application to the Texas Historical Cemetery Association for recognition and designation as a historical cemetery.

The City Council respectfully thanks the Board of the McMillan Foundation for consideration of this grant request that would assist the City in improving the image and administration of its Municipal Cemetery.

Respectfully Submitted,

CR Evans Jr., Mayor

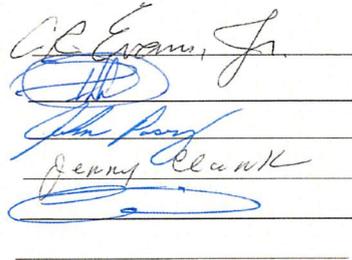
Philip Cox, Mayor Pro Tem

John Posey Place #2

Jerry Clark Place #3

Lawrence Davis Place #4

Pat Beets Place #5



City of Overton, Texas  
1200 S. Commerce St.  
Overton, Texas 75684

re: *Scope of work and cost analysis for survey work at the Overton Cemetery:*

To whom it may concern,

Thank you for the opportunity to present this proposal. I would like to begin with a short resume of myself and Lacy Surveying and why we are qualified to perform this work.

Lacy Surveying first opened for business in Arp, Tx in 1984. Jack Lacy was the registered surveyor in charge until I became registered in 2010. I now run the day to day operations of the company and will oversee this project from beginning to end. We are well insured, professional, local, and have done many cemetery surveys in the East Texas area. I pay close attention to detail and when you need to reach me, I am easy to find.

On March 2, Mrs. Rachél Gafford and I took a trip to the cemetery and she explained to me some of the issues that have arisen since she began working at the site. The major issue that I will be able to offer my services for include:

- A. *Section "F"-this area was laid out on the ground and platted many years back. The problem is the block markers are difficult to find because silt has washed over them. It also appears that someone has tried to mark some of the walkways and grave sites with brass markers. From the few that I measured in this section, I don't believe that they were placed there by a professional. Additionally, we will need to survey the occupied spaces to ensure that the people are buried according to the space they purchased and not in another's space. This will require platting and possibly an amended layout of the blocks and lots.*

To correct this we will locate any existing block markers, survey in the existing graves (if visible), prepare a plat and if necessary, redivide the existing blocks to fit with the existing graves. We will set missing block corners and any new corners that are created. We will prepare a map showing the location of the graves along with the locations of the spaces. Cost: \$3,682

**LACY SURVEYING INC.**  
REGISTERED PROFESSIONAL LAND SURVEYORS

LacyLandSurveying.com  
TEL & FAX: 903.859.9942  
EMAIL: info@LacyLandSurveying.com

P.O. BOX 736  
ARP, TX 75750  
TBLB Firm #100298-00

5

1. Find the perimeter of the cemetery which will precede the fencing.
2. Locate any unmarked graves (you will need a third party to do this)
3. Move the grave buried next to the road.
4. Straighten out the sections where you are selling spaces before it becomes too convoluted.
5. Redesign the areas where people are buried in the wrong locations, like pathways.
6. Survey the graves that have not been platted.
7. Prepare a map of the entire cemetery showing how all the blocks and sections fit together.
8. Create a database of occupants that can be maintained and shared.
9. Use Lacy Surveying to mark graves in the future and update the maps to ensure people are placed correctly.

I would come mark a space for grave within 36 hours of getting the call (weather permitting) for a charge of \$95. This of course after we survey the cemetery and have our control network in place.

I look forward to responding to any questions you may have and I hope that we get a chance to move forward on this project.

Sincerely,

*Daniel Cooper*  
Daniel Cooper, RPLS #6148

**Surveyor Cost Estimate**

Cemetery Section	Description of Work	Cost
Section F	Re-Survey with markers Corrected Re-Plat	\$ 3,682.00
	Map layout of existing and open graves	
Section F	Topographical Survey	\$ 2,400.00
Sections D, E, DD & EE	Re-Survey with markers Corrected Re-Plat	\$ 5,200.00
	Map layout of existing and open graves	
Baby Land	Survey and place survey markers Plat the area	\$ 1,555.00
	Map layout of existing and open graves	
Section G	Survey and place survey markers Plat the area	\$ 4,728.00
	Map layout of existing and open graves	
Section A1 - A2	Re-Survey with markers Corrected Re-Plat	\$ 2,515.00
	Map layout of existing and open graves	
Justin Blanton Grave	Locate the 4 corners of gravesite for Disinterment & relocation	\$ 187.00
Old Section A	Survey and place survey markers Plat the area & Mark each Family Plot	\$ 12,464.00
	Map layout of existing and open graves	
South Fence Line	Survey and Mark South line of the Cemetery Along 850	\$ 187.00
Survey Cemetery Boundaries	Estimated Cost	\$ 7,082.00
Total Cost		\$ 40,000.00

ATTACHMENT 4

City of Overton, Texas

Ordinance No. 2016-03-24B  
Page 1 of 3

**ORDINANCE NO. 2016-03-24B**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, AMENDING CHAPTER 73: HEALTH AND SANITATION BY THE ADDITION OF TREES AND OBJECTS IN THE VISIBILITY TRIANGLE OR RIGHT-OF-WAY; IMPOSING REGULATIONS ON PROPERTY OWNERS TO MAINTAIN TREES AND OTHER VEGETATION ON PRIVATE PROPERTY AND WITHIN STREET RIGHT OF WAYS; CONTAINING A SEVERABILITY CLAUSE, PROVIDING FOR A PENALTY OF UP TO \$500.00 AS TO BE DEFINED IN APPENDIX B "SCHEDULE OF FINES" OF THE OVERTON CODE OF ORDINANCES FOR VIOLATION OF THIS ORDINANCE AND PROVIDING FOR PUBLICATION AND FOR AN EFFECTIVE DATE**

**SECTION 1:** Findings. Before the city may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup and recycling services on private property to protect the public health, safety, or welfare, the City Council must make certain findings pursuant to Chapter 756 Subchapter G of the Health and Safety Code, a copy of which is included herein as reference in ATTACHMENT A to this Ordinance.

Therefore, the City Council makes the following findings:

- a. That trees and other vegetation on private property and within street rights-of-way, if not properly trimmed, may obstruct the view of traffic-control devices and the view of approaching traffic and pedestrians' use of sidewalks;
- b. That the obstructions constitute a safety concern;
- c. That the City's ordinance requires that trees and other vegetation be kept trimmed to address these safety concerns; and
- d. That property owners are required to correct the obstruction within 30 days of the date the City notifies the owner of the obstruction.

**SECTION 2:** Definitions. In this section:

Visibility triangle is an imaginary triangle located on property located at the corner of intersecting streets. The first two sides of a visibility triangle are drawn by measuring a distance of 25 feet from the street corner intersection of the curb line parallel to the curb line. The third side is established by drawing a diagonal line intersecting the two curb points. If there is no curb, the measurements are made along the edge of the street pavement.

**SECTION 3:** Objects in the visibility triangle or right-of-way.

It is unlawful for a person to knowingly place or maintain in a visibility triangle or right-of-way any object permanently affixed to the ground and having a height greater than three feet above the pavement surface of the nearest abutting street.

**SECTION 4:** Trees and branches in the visibility triangle or right-of-way.

It is unlawful for a person to knowingly place or maintain a tree or allow branches of a tree to extend into a visibility triangle or right-of-way unless the branches are pruned so that:

City of Overton, Texas

Ordinance No. 2016-03-24B  
Page 2 of 3

- a. They do not substantially obstruct a motorist's view of traffic control devices;
- b. There is a clear space from the public street surface to 14 feet above the street surface on a residential street, (a residential street means any street not shown as a freeway, highway, arterial or major collector on the city's thoroughfare plan);
- c. There is a clear space from the public street surface to 14 feet above the street surface on a non-residential street, (a non-residential street means any street shown as a freeway, highway, arterial or major collector on the city's thoroughfare plan); and
- d. There is a clear space from the public sidewalk surface to eight feet above the sidewalk surface.

**SECTION 5:** Trees and objects near fire hydrants.

It is unlawful for a person to knowingly plant or maintain any tree or maintain any object permanently affixed to the ground within three feet of a fire hydrant.

**SECTION 6:** That any person who shall violate any of the provisions of this ordinance shall be fined up to \$500.00 as defined in Appendix B "Schedule of Fines" of the Overton Code of Ordinances.

**SECTION 7:** That should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City of Overton, Texas as a whole or any part thereof, other than the part so declared to be valid.

**SECTION 8:** The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this Ordinance as an alternative method of publication provided by law.

**SECTION 9:** That this Ordinance shall take effect and be in force beginning **March 1, 2016.**

**PRESENTED APPROVED ON THIS THE 24<sup>TH</sup> DAY OF MARCH, 2016, AT A REGULAR COUNCIL MEETING OF THE CITY OF OVERTON BY A VOTE OF, 4 AYES, 0 NAYS, 0 ABSTENTIONS; COUNCILMAN BEETS ABSENT.**



CITY OF OVERTON

*C. R. Evans, Jr.*  
C. R. Evans, Jr., Mayor

ATTEST:

APPROVED AS TO CONTENT AND FORM:

*Rachel Gafford*  
Rachel Gafford, City Secretary

*Blake Thompson*  
Blake Thompson, City Attorney

ATTACHMENT A

SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

- (1) identify the problem requiring the need for providing municipal landscaping services;
- (2) identify the public health, safety, or welfare concern;
- (3) describe any reasonable actions previously taken to alleviate the problem; and
- (4) specify a period of definite duration necessary to address the problem.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.103. EXCEPTION. The limitations and requirements of this subchapter do not apply to a municipality in times of emergency, catastrophe, or other calamity.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.