CITY OF HUTTO, TEXAS
REGULAR CITY COUNCIL MEETING
THURSDAY, APRIL 7, 2016 AT 7:00 PM
CITY HALL - CITY COUNCIL CHAMBERS
401 WEST FRONT STREET

CITY COUNCIL
Debbie Holland, Mayor
Anne Cano, Place 1
Tom Hines, Place 2
Ronnie Quintanilla-Perez, Place 3
Michael J. Smith, Place 4, Mayor Pro-tem
Lucio Valdez, Place 5
Max V. Yeste, Place 6

AGENDA

1. CALL SESSION TO ORDER

2. ROLL CALL

3. INVOCATION

4. PLEDGE OF ALLEGIANCE

5. PROCLAMATIONS:
   
   5A. Proclamation recognizing the local AmeriCorps Volunteers in Hutto as part of the National Service Recognition Day.
   
   5B. Proclamation declaring April 9, 2016, as "Hutto's Big Event."

6. PUBLIC COMMENT
   
   6A. Remarks from visitors. (Three-minute time limit)

7. CONSENT AGENDA ITEMS:

   All items listed on the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless requested by a Council member in which event, the item will be removed from the consent agenda and considered as a regular agenda item.
7A. Consideration and possible action on a resolution concerning the acceptance of the streets, sidewalks and drainage improvements of Hutto Highlands Section 1, Phase B-2 subdivision.

7B. Consideration and possible action on the meeting minutes for the March 17, 2016 City Council Regular Meeting.

REGULAR AGENDA ITEMS

8. ORDINANCE:

8A. Consideration and possible action on the first reading of an ordinance adopting a new franchise agreement with Atmos Energy Corporation.

9. EXECUTIVE SESSION:

9A. Executive Session as authorized by §551.074, Texas Government Code, related to the discussion, deliberation, and/or negotiations regarding the annual performance evaluation of the City Manager.

10. ADJOURNMENT

The City Council for the City of Hutto reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above as authorized by the Texas Government Code Sections 551.071 [Litigation/Consultation with Attorney], 551.072 [Deliberations regarding real property], 551.073 [Deliberations regarding gifts and donations], 551.074 [Deliberations regarding personnel matters] or 551.076 [Deliberations regarding deployment/implementation of security personnel or devices] and 551.087 [Deliberations regarding Economic Development negotiations].

CERTIFICATION

I certify that this notice of the April 7, 2016 Hutto City Council meeting was posted on the City Hall bulletin board of the City of Hutto on Friday, the 1st day of April 2016, at 11:15am.

Seth Gipson, City Secretary

The City of Hutto is committed to comply with the American with Disabilities Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special communications or accommodations must be made 48 hours prior to the meeting. Please contact the City Secretary at (512) 759-4033 or seth.gipson@hutto.tx.gov for assistance.
Official Proclamation

Whereas, service to others is a hallmark of the American character, and central to how we meet our challenges; and

Whereas, AmeriCorps and Senior Corps address the pressing challenges facing our cities and nation, from educating students for jobs and supporting veterans and military families to preserving the environment and helping communities recover from natural disasters; and

Whereas, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

Whereas, national service participants serve in more than 70,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

Whereas, national service, represents a unique public-private partnership where participants increase the impact of the organizations and communities they serve with, both through their direct service, community investment, leveraging non-federal resources and by recruiting and managing millions of additional volunteers; and

Whereas, the Corporation for National and Community Service shares a priority with local elected officials nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, the US Conference of Mayors, the National Association of Counties and elected officials across the country to recognize the impact of service on the Mayors Day of Recognition for National Service.

Now Therefore, I, DEBBIE HOLLAND, MAYOR OF THE CITY OF HUTTO, hereby recognize and applaud the local AmeriCorps Volunteers in Hutto for their dedicated service and contributions to our community and I encourage residents to recognize the positive impact of national service in our city and thank those who serve; and to find ways to give back to their community.

Proclaimed this 7th day of April 2016.

CITY OF HUTTO, TEXAS

Debbie Holland, Mayor
Official Proclamation

Whereas, Keep Texas Beautiful is working with communities, counties and volunteer groups statewide to conduct litter prevention, recycling, beautification, community improvement and waste minimization activities as part of Keep America Beautiful Great American Clean-up; and,

Whereas, Keep Hutto Beautiful and the Hutto Parks & Recreation Department, strive to empower individuals to take greater responsibility for enhancing their community environment while participating in the “Don’t Mess With Texas Trash-Off” by keeping litter out of our local parks and neighborhoods; and,

Whereas, the BIG EVENT Committee lead by Leadership Hutto, the City of Hutto Employee Volunteer Team, and the Parks & Recreation Department join together in providing the “Junk Round-Up” as another way of helping Hutto citizens start at their own homes to create a cleaner community; and,

Whereas, community and school service groups are organized and ready to mobilize to remove litter and debris along Hutto streets, parks, school sites and waterways with support of local businesses who provide generous contributions for beautification projects; and,

Whereas, Keep Hutto Beautiful wishes to support the nation’s largest organized cleanup, beautification, and community involvement program, built on the foundation of civic pride and individual responsibility.

Now, Therefore, I, DEBBIE HOLLAND, MAYOR OF THE CITY OF HUTTO, do hereby proclaim Saturday, April 9, 2016, as:

“HUTTO’S BIG EVENT”

in Hutto, as we celebrate by cleaning up our city through the combined Trash Off and Junk Round-up events, and I urge all businesses and citizens to participate through volunteerism and sponsorship of these programs in an effort to keep Hutto clean!

Proclaimed this the 7th day of April, 2016.

CITY OF HUTTO, TEXAS

Debbie Holland, Mayor
CITY OF HUTTO
CITY COUNCIL AGENDA

AGENDA ITEM NO.: 7A. AGENDA DATE: April 07, 2016

PRESENTED BY: Helen Ramirez, Development Services Director

ITEM: Consideration and possible action on a resolution concerning the acceptance of the streets, sidewalks and drainage improvements of Hutto Highlands Section 1, Phase B-2 subdivision.

STRATEGIC GUIDE POLICY: Infrastructure

ITEM BACKGROUND:
The infrastructure improvements for the Hutto Highlands Section 1 Phase B-2 subdivision have been constructed and are ready to be accepted by the City. A final inspection was conducted by the City's Construction Inspector of all streets, sidewalk and drainage improvements. The water and wastewater services for this subdivision are owned and operated by Jonah Water S.U.D. The City has received written confirmation from Jonah Water S.U.D that they have inspected and accepted the water and wastewater for operation and maintenance. All items inspected by the City of Hutto have been constructed according to engineering plans and City codes and standards. The contractor has submitted a maintenance bond to cover materials and workmanship for two years.

BUDGETARY AND FINANCIAL SUMMARY:
The total value of the streets, sidewalks and drainage improvements is $1,141,253.50. The value of water and wastewater improvements is not included as it is owned, operated and maintained by Jonah. Erosion control/restoration costs are not included in the value as they are not permanent assets.

RELATED COUNCIL COMMITTEE OR ADVISORY BOARD RECOMMENDATIONS:
Not applicable.

CITY ATTORNEY REVIEW:
Not applicable.

STAFF RECOMMENDATION:
Staff recommends that the City Council approve the resolution.

SUPPORTING MATERIAL:

1. Resolution - Hutto Highlands Section 1 Phase B-2 Acceptance
1. Resolution - Hutto Highlands Section 1 Phase B-2 Acceptance
2. Hutto Highlands Section 1 Phase B-2 Site Map
3. Hutto Highlands Section 1 Phase B-2 Construction Summary
RESOLUTION NO. _____________

WHEREAS, the infrastructure improvements for the Hutto Highlands Section 1, Phase B-2 residential subdivision have been constructed and are ready for acceptance; and

WHEREAS, a final inspection was conducted by the City’s Construction Inspector of all streets, sidewalks and drainage improvements; and

WHEREAS, all items have been constructed according to engineering plans and City codes and standards; and

WHEREAS, Cash Construction Company, Inc. submitted a warranty bond to cover the materials and workmanship for two years,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, hereby accepts the infrastructure improvements for the Hutto Highlands Section 1, Phase B-2, residential subdivision.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 7th day of April, 2016.

CITY OF HUTTO, TEXAS

__________________________________
Debbie Holland, Mayor

ATTEST:

__________________________________
Seth Gipson, City Secretary
PROJECT CONSTRUCTION SUMMARY

PROJECT NAME: Hutto Highlands Section 1 Phase B2

FINAL ACCEPTANCE DATE: ________________________________

INSPECTOR: Tony Host

CONTRACTOR: Cash Construction Company, Inc.

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<th>Maintained By:</th>
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<td>COH</td>
<td>Other</td>
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CONSTRUCTION COSTS

STREET IMPROVEMENT COST: $579,789.50

SIDEWALK IMPROVEMENT COST: $16,600.00

SIDEWALK RAMP IMPROVEMENT COST: $10,400.00

BRIDGE IMPROVEMENT COST: $0.00

POND(S) COST: $0.00

DRAINAGE IMPROVEMENT COST: $489,738.00

WATER IMPROVEMENT COST: $0.00

WASTEWATER IMPROVEMENT COST: $0.00

EROSION CONTROLS / RESTORATION COST: $44,726.00

TOTAL IMPROVEMENT COST: $1,141,253.50

PREPARED BY (DESIGN ENGINEER): Randall Jones & Associate Engineering

CHECKED BY (CID SUPERVISOR): ________________________________

STATE OF TEXAS
ISRAEL RAMIREZ
114495
PROFESSIONAL ENGINEER
3-23-2016

PAGE 1 OF 7
# CONSTRUCTION SUMMARY FOR STREETS & SIDEWALKS

## STREET PAVING

<table>
<thead>
<tr>
<th>STREET NAME</th>
<th>Address From</th>
<th>Address To</th>
<th>Pavement Design (Thickness)</th>
<th>Pavement Width (FT) (foc-foc)</th>
<th>L (FT)</th>
<th>PRIVATE</th>
<th>ETJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANTAIN DRIVE</td>
<td>16 &quot;A&quot;</td>
<td>1 &quot;C&quot;</td>
<td>1.5/11</td>
<td>30</td>
<td>1301</td>
<td>No</td>
<td>No</td>
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<tr>
<td>HENDERSON LANE</td>
<td>8 &quot;C&quot;</td>
<td>33 &quot;A&quot;</td>
<td>1.5/11</td>
<td>30</td>
<td>712</td>
<td>No</td>
<td>No</td>
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## SIDEWALKS / SIDEWALK RAMPS

<table>
<thead>
<tr>
<th>STREET NAME</th>
<th>Address from</th>
<th>Address to</th>
<th>W (FT)</th>
<th>L (FT)</th>
<th>SIDES</th>
<th>CURB RAMP</th>
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<td>OFFSITE CR 132</td>
<td>na</td>
<td>na</td>
<td>4</td>
<td>664</td>
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1 – Designates location of existing sidewalk (E, W, S, N, SE, SW, NE, NW of designated street)
2 – Number of Ramps
## CONSTRUCTION SUMMARY FOR PONDS

<table>
<thead>
<tr>
<th>POND TYPE</th>
<th>LOCATION (ADDRESS OR LOT / BLOCK #)</th>
<th>SIZE (SY)</th>
<th>DRAINAGE AREA (ACRES)</th>
<th>PRIVATE</th>
<th>ETJ</th>
<th>COST</th>
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1 - BD = Bio-Detention  
D = Detention Only  
DSF = Detention / Sedimentation / Filtration  
F = Filtration Only  
S = Sedimentation Only  
SF = Sedimentation / Filtration  
SFI = Sedimentation / Filtration / Infiltration  
SI = Sedimentation / Irrigation  
WP = Wet Pond

2 - Approximate boundary area

3 - Provide copy of recorded agreement for privately maintained ponds
CONSTRUCTION SUMMARY FOR BRIDGES

<table>
<thead>
<tr>
<th>STREET NAME AND ADDRESS OR LOCATION</th>
<th>FEATURE CROSSED</th>
<th>TYPE</th>
<th>DESCRIPTION</th>
<th>DECK</th>
<th>COST</th>
<th>PRIVATE</th>
<th>ETJ</th>
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1 – Feature Crossed: Creek name if major creek or branch, or roadway name if overpass.

2 – Type: B – Bridge, C - Culvert, P – Pipe. All crossings 20’ and wider including multiple box culverts totaling 20’ or wider shall be classified as a B – Bridge. Culverts are precast of cast-in-place box culverts. Pipes are smaller drainage pipe crossings with or without headwalls.

3 – Description: i.e. 2 spans (Bridge), 2 – 5 X 7’ (Culverts), 2 – 24” RCP (Pipes).

4 – Deck Width: Use “footprint” of culvert/pipes for width on buried culvert/pipes; include full “out to out” dimension including sidewalks/railings for width of standard bridges.

5 – Deck Length: Measured along the centerline of the roadway
## CONSTRUCTION SUMMARY FOR DRAINAGE

<table>
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<tr>
<th>STORM DRAIN</th>
<th>MANHOLES</th>
<th>INLETS</th>
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<tbody>
<tr>
<td>SIZE (IN)</td>
<td>MATERIAL TYPE</td>
<td>L (FT)</td>
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<tr>
<td>18&quot;</td>
<td>RCP CL III</td>
<td>550</td>
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<td>21&quot;</td>
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## JUNCTION BOXES

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<tr>
<th>QTY</th>
<th>SIZE (FT x FT x FT)</th>
<th>MATERIAL TYPE</th>
<th>QTY</th>
<th>SIZE (Dia – FT)</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>1</td>
<td>5 x 7 x 6.9</td>
<td>Conc</td>
<td>1</td>
<td>48&quot;x54&quot;</td>
<td>Conc Headwall</td>
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<tr>
<td>1</td>
<td>7 x 7 x 8.5</td>
<td>Conc</td>
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## OUTFALL STRUCTURES

<table>
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<tr>
<th>CHANNEL</th>
<th>LENGTH (FT)</th>
<th>BOTTOM WIDTH (FT)</th>
<th>SIDE SLOPE (FT/FT)</th>
<th>LINING MATERIAL TYPE</th>
</tr>
</thead>
</table>

1) Grate, Area, Curb, Recessed Curb, Combination, Slotted Drain
2) Cast-in-Place, Precast
3) Pipe size / Culvert Size
4) Headwall, Wing Walls, Gabions
## CONSTRUCTION SUMMARY FOR WATER

<table>
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<tr>
<th>VALVES INSTALLED</th>
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<td>Gate Valve</td>
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### AIR RELEASE

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### SERVICES INSTALLED

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<td>24</td>
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**REMARKS:**

CONSTRUCTION COST FOR WATER & WASTEWATER WERE NOT PROVIDED AS REQUESTED BY THE CITY OF HUTO. THESE UTILITIES ARE MAINTAINED BY JONAH SUD.
<table>
<thead>
<tr>
<th>PIPE</th>
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**SERVICES INSTALLED**

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<th>NO.</th>
<th>TYPE – S / D</th>
<th>TYPE OF MANHOLE COATING:</th>
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<td>3</td>
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<td>23</td>
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AGENDA ITEM NO.: 7B.  
AGENDA DATE: April 07, 2016

PRESENTED BY: Seth Gipson, City Secretary

ITEM: Consideration and possible action on the meeting minutes for the March 17, 2016 City Council Regular Meeting.

STRATEGIC GUIDE POLICY: Leadership

ITEM BACKGROUND: The City Council meeting minutes for the March 17, 2016 City Council Regular Meeting have been drafted for the City Council's review and consideration.

BUDGETARY AND FINANCIAL SUMMARY: Not applicable.

RELATED COUNCIL COMMITTEE OR ADVISORY BOARD RECOMMENDATIONS: Not applicable.

CITY ATTORNEY REVIEW: Not applicable.

STAFF RECOMMENDATION: Staff recommends approval of the City Council meeting minutes for the March 17, 2016 City Council Regular Meeting.

SUPPORTING MATERIAL: 1. Draft - March 17, 2016 City Council Meeting Minutes
The Hutto City Council met in a regular session on Thursday, March 17, 2016, in the Hutto City Council Chamber, 401 W. Front Street, Hutto, TX 78634.

CALL SESSION TO ORDER

Mayor Holland called the session to order at 7:00p.m.

ROLL CALL

Members of the City Council that were present were Mayor Debbie Holland, Mayor Pro-tem Michael J. Smith, Councilmember Anne Cano, Councilmember Tom Hines, Councilmember Ronnie Quintanilla-Perez, and Councilmember Max V. Yeste. Councilmember Lucio Valdez was absent.

Members of staff that were present were Karen Daly, City Manager, Micah Grau, Assistant City Manager, Brian Knowles, City Attorney, Earl Morrison, Chief of Police, Amy McGlothlin, Human Resources Director, Melanie Hudson, Finance Director, and Seth Gipson, City Secretary.

INVOCATION

The invocation was given by Pastor Seth Simmons with New Life Pentecostal Church.

PLEDGE OF ALLEGIANCE

Mayor Holland led the Pledge of Allegiance.

PUBLIC COMMENT

5A. Remarks from visitors

There were no remarks from the visitors present.

PRESENTATION


Melanie Hudson, Finance Director, gave the staff presentation. The City Charter requires the City Council to have a certified public accountant conduct an independent audit of all accounts of the City at the close of the fiscal year, or as necessary. On August 20, 2015, the Council engaged the audit firm of Brockway, Gersbach, Franklin & Niemeier, P. C. for the City's independent financial audit for the fiscal year ending September 30, 2015.
The firm has conducted the City's audit since 2006 and assisted staff with the preparation of the Comprehensive Annual Financial Report (CAFR).

The Fiscal & Budgetary Committee met with Stephen Niemeier, Partner with Brockway, Gersbach, Franklin & Niemeier on March 15, 2016, to discuss the audit process and to review the results of the audit in detail.

Mr. Niemeier presented the results of the audit and explained the following financial highlights. Daniel Jones, who assisted with the audit, was also present for questions regarding the audit.

Significant Impacts in FY 2015
- This is the 9th consecutive year the City has received the Distinguished Budget Presentation Award and the Certificate of Achievement for Excellence in Financial Reporting. This demonstrates the City's adherence to rigorous financial standards in terms of financial reporting and transparency.
- Property values and sales tax collections have increase significantly, which indicates the local economy is strengthening.

Mr. Niemeier also gave a brief overview of the following graphs.
- Revenues by Component of Primary Government
- Expenses by Component of Primary Government
- Summary of Net Assists of Primary Government
- TMRS Projected vs. City Actual

He completed the presentation by stating that the City had an Unmodified Report, which means there were not any serious weaknesses and no new recommendations. Mr. Niemeier also outlined impacts that the change in pensions accounting from 2015 had on the city and pointed out that the Economic Development Corporation portion of the audit is now blended in the presentation and it is not a separate component unit as it had been previously reported.

CONSENT AGENDA ITEMS:

All items listed on the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless requested by a Council member in which event, the item will be removed from the consent agenda and considered as a regular agenda item.

7A. **Consideration and possible action on a resolution concerning the subdivision approval extension request for the Star Ranch Phase 2 Section 1 Final Plat, 10.56 acres, more or less, of land, 24 single family lots, located at Muirfield Bend Drive at Muirfield Bend Cove within Hutto’s extraterritorial jurisdiction.**

7B. **Consideration and possible action on a resolution concerning the acceptance of the streets, sidewalks, wastewater and drainage improvements of Riverwalk Phase 3, Section 1 subdivision.**
7C. Consideration and possible action on the meeting minutes for the March 3, 2016 City Council regular session.

MOTION: Mayor Pro-tem Michael Smith moved to approve items 7A-7C on the consent agenda as presented. Councilmember Anne Cano seconded the motion. The motion carried with 6 ayes and 0 nays.

RESOLUTION

8A. Consideration and possible action on a resolution concerning the re-adoption of the 401a Plan Administrative Services Agreement with the ICMA Retirement Corporation (ICMA-RC).

Amy McGlothlin, Human Resources Director, gave the staff presentation.

Any employee who was actively employed by the City of Hutto on January 23, 2014, and participated in the Texas Municipal Retirement System as of January 23, 2014, voted in an individual choice referendum election on April 23, 2014, to determine if they would continue to participate in Social Security or if they would opt out of Social Security participation. The individual choice referendum was conducted in accordance with the provisions set forth by the State of Texas’ Social Security Administrator. Any employees hired on or after January 24, 2014, must participate in Social Security.

Employees who elected to opt out of Social Security were given an option to have their wages deducted and deposited into a 401(a) defined contribution plan instead. The deposit to the defined contribution plan is equal to the amount that would have been paid for Social Security. The City of Hutto, in lieu of contributions to Social Security on behalf of employees, makes deposits to the defined contribution plan at a one-to-one matching rate.

The IRS has a six-year review schedule for the type of 401 plan documents ICMA-RC makes available. Following the IRS schedule, ICMA-RC submitted updated plan documents for review and approval in 2012 and received favorable opinion letters last year. The documents incorporate amendments for legislative and regulatory changes enacted since the prior restatement in 2006 and are effective as of 2012.

In the past, ICMA-RC has utilized a negative election adoption process in an effort to make the plan document adoption process as easy as possible. This time, per instructions from the IRS, each plan sponsor using ICMA-RC documents will be required to execute a new adoption agreement by April 30, 2016.

MOTION: Councilmember Ronnie Quintanilla-Perez moved to approve the resolution concerning the re-adoption of the 401a Plan Administrative Services Agreement with the ICMA Retirement Corporation (ICMA-RC). Councilmember Anne Cano seconded the motion. The motion carried with 6 ayes and 0 nays.
9A. **Work session regarding the results of the Employee Engagement Survey.**

Amy McGlothlin, Human Resources Director, made the staff presentation. At the December 17, 2015 City Council meeting, a work session was held to identify a third party vendor to administer an employee engagement survey. The International City/County Management Association (ICMA), in partnership with the National Research Center (NRC), was selected.

Employees were notified via email by Mayor Debbie Holland on February 2, 2016, about the online survey. The survey was closed on February 11, 2016, due to all employee responses being recorded.

ICMA & NRC collected the responses from the survey and have provided reports containing an analysis of the survey data.

Ms. McGlothlin described the objectives and methods that were used, how the results compared to ICMA’s existing database that is comprised of over 18,000 employees, and the following key findings from the survey.

1. City employees are satisfied with their jobs.
2. Employee contribution and fit is an area for potential improvement.
3. Employees have high opinions of the City Manager and Supervisors.
4. Support Services were rated positively.

She also highlighted that there was 100% participation across the city and 9 out of the 10 Key Indicators scored above the benchmarks.

Mayor Debbie Holland and Ronnie Quintanilla-Perez thanked the staff for all the hard work for the City.

9B. **Discussion regarding the City of Hutto logo.**

The Logo Committee comprised of Karen Daly, City Manager, Micah Grau, Assistant City Manager, Christina Kane-Gibson, Public Information Officer, Scot Stromsness, Public Works Director, Kim McAuliffe, Downtown and Tourism Manager, Will Hutchinson, Purchasing Agent, and Seth Gipson, City Secretary, made the staff presentation.

In FY15, the City’s Strategic Guide contained a strategy to develop a new brand for the City. The team described the issues with the current logo, which was chosen by the 2006 Hutto Citizen’s University Class and implemented in 2007, goals of the logo project and new logo design, and the design process from the request for proposals to the final logo design selection. The presentation concluded with an explanation of the phased implementation schedule that was the most cost effective for the City.

The team looked at many different options, colors and approaches before deciding on the contemporary layout. The new logo represents a clean and modern look that more accurately reflects the current city organization. The logo also has been designed so that it can be customized for each department.
ADJOURNMENT

There being no further business, the meeting was adjourned at 7:59 pm.

CITY OF HUTTO, TEXAS

______________________________
Debbie Holland, Mayor

ATTEST:

______________________________
Seth Gipson, City Secretary
AGENDA ITEM NO.: 8A. AGENDA DATE: April 07, 2016

PRESENTED BY: Micah Grau, Assistant City Manager

ITEM: Consideration and possible action on the first reading of an ordinance adopting a new franchise agreement with Atmos Energy Corporation.

STRATEGIC GUIDE POLICY: Service Delivery

ITEM BACKGROUND: The City's franchise agreement with Atmos Energy Corporation expired at the end of 2015. Since then, staff has been working with Atmos to negotiate a new franchise agreement. A franchise agreement is the governing document that outlines the City's arrangement with Atmos for use of the public utility and right-of-way to deliver gas to services in Hutto. The franchise fee payment remains at 5% of gross revenues and would expire in November 2040.

BUDGETARY AND FINANCIAL SUMMARY: The franchise payment would remain at 5% of gross revenues. The City annually collects around $40,000 for the franchise.

RELATED COUNCIL COMMITTEE OR ADVISORY BOARD RECOMMENDATIONS: Not applicable.

CITY ATTORNEY REVIEW: The City Attorney has reviewed the franchise. Alfred Herrera of Herrera & Boyle PLLC also reviewed the document. Mr. Herrera is the legal advisor for Atmos Texas Municipalities, an organization to which the City belongs. They provide specialized review of utilities and franchises.

STAFF RECOMMENDATION: Staff recommends approval of the ordinance.

SUPPORTING MATERIAL:
1. Atmos Energy Corporation Franchise Ordinance
ORDINANCE NO: ______________

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF HUTTO, WILLIAMS COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of Hutto, Texas, hereinafter called “City,” hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places as authorized (“Public Rights-of-Way”), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the “System”) to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2040.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.
Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy’s operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy’s facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practicably possible with respect to the scope of the project. Except in an emergency, in no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

B. If City, in constructing its sewers, drainage, water lines, streets, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. In the event that the City does not provide sufficient written notice to Atmos Energy as set forth in this paragraph, the City shall be responsible for fifty percent (50%) of the cost of the removal or relocation of Atmos Energy’s facilities.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines,
streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of reasonable relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs.

D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy’s right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Atmos Energy’s construction, operation, maintenance, or replacement of Atmos Energy’s pipeline system within Public Rights-of-Way, Atmos Energy shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the City, including, without limitation, the City’s negligent or intentional acts or omissions. Atmos Energy’s insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof. Furthermore, the City reserves the right to grant any person or corporation the right to use the City’s Right-of-Way.
SECTION 5. PAYMENTS TO CITY:

A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 25th day of November, 2016 and on or before the same day of each succeeding year during the term of this franchise the last payment being made on the 25th day of November, 2040, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar year.

B. "Gross Revenues" shall mean:

(1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;

(2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy’s monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and

(4) “Gross Revenues” shall also include fees collected pursuant to this agreement and the following “miscellaneous charges”: charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.

(5) “Gross Revenues” shall not include:

(a) revenues billed but not ultimately collected or received by Atmos Energy;
(b) contributions in aid of construction;
(c) the revenue of any affiliate or subsidiary of Atmos Energy;
(d) sales tax paid to the City;
(e) interest or investment income earned by Atmos Energy; and
(f) monies received from the lease or sale of real or personal property, provided, however, that this
exclusion does not apply to the lease of facilities within the City's right of way.

C. The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through December 31, 2016, and each succeeding payment shall be for the privilege period of the calendar year in which the payment is made.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy’s agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy’s obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy’s Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City’s acceptance of all terms and conditions of the other municipal franchise in toto. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

(1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the
recovery of the franchise fees under this agreement.

(2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy’s rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy’s franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. Lease of Facilities Within City’s Rights-of-Way. Subject to the City’s approval, which shall not be unreasonably withheld, Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City’s public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City’s Rights-of-Way shall not affect any such lessee, licensee or user’s obligation, if any, to pay franchise fees.

SECTION 6. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 7. PARAGRAPH HEADINGS, CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several
paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 8. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of January 1, 2016.

PASSED AND APPROVED on this the _____ day of _______________, 2016.

ATTEST:

__________________________________________
Seth Gipson, City Secretary

__________________________________________
Debbie Holland, Mayor
City of Hutto, Texas
I, Seth Gipson, City Secretary of the City of Hutto, Williams County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Hutto, Texas, at a _________________ session, held on the _____ day of __________________, 2016, as it appears of record in the Minutes in Book _____________, page ______.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ___ day of ________________, 2016.

________________________________
Seth Gipson, City Secretary
City of Hutto, Texas