

Bill Vansyckle, Mayor
Tom Leverenz, Mayor Pro-Tem
Michael Dickey, Place Two

CITY OF OVILLA

AGENDA

James Wade, Place Three
Doug Hunt, Place Four
Richard Dormier, Place Five
Randy Whiteman, City Administrator

Ovilla City Council

105 S. Cockrell Hill Road, Ovilla, TX 75154

Monday, November 28, 2011

7:00 P.M.

Council Chamber Room

Pursuant to the provisions of Chapter 551 VTCA Government Code, NOTICE is hereby given of a Regular Meeting of the City Council of the City of Ovilla, to be held on Monday, November 28, 2011 at 7:00 P.M. in the City Hall Council Chamber Room, 105 S. Cockrell Hill Road, Ovilla, Texas, 75154, for the purpose of considering the following items.

CALL TO ORDER

- ◆ Invocation
- ◆ Pledge of Allegiance

COMMENTS, PRESENTATIONS, ANNOUNCEMENTS & REPORTS

◆ **Citizen Comments**

The City Council welcomes comments from Citizens. Those wishing to speak must sign in before the meeting begins. Speakers may speak on any topic, whether on the agenda or not. The City Council cannot act upon, discuss issues raised, or make any decision at this time. Speakers under citizen's comments must observe a three-minute time limit. Inquiries regarding matters not listed on the Agenda may be referred to Staff for research and possible future action.

◆ **Department Activity Reports / Discussion**

- ◆ Finance Department
 - Monthly Financials
- ◆ Accountant S. Jungman

CONSENT AGENDA

- ◆ Minutes of the November 14, 2011 Regular Council Meeting.
- ◆ Annual UB Software Support and Agreement with AVR.

The following items may be acted upon in one motion. No separate discussion or action is necessary unless requested by a Council Member, in which event those items will be pulled from the consent agenda for individual consideration.

PUBLIC HEARING AND CONSIDERATION

ITEM 1. **Public Hearing and Discussion** – Receive Comments and discussion to consider the approval of taxation of goods-in-transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.

ITEM 2. **Discussion/Action** – Consider Ordinance 2011-028 relating to the approval of taxation of goods-in-transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.
• Presented by Administrative Staff

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REGULAR AGENDA INDIVIDUAL CONSIDERATION

ITEM 3. **Discussion/Action** – Update Council with audio/visual technical equipment and Council may take any action deemed necessary.
• Presented by Administrative Staff and Mayor Vansyckle

ITEM 4. **Discussion/Action** – Determine Council's response to ONCOR regarding the many outages in Ovilla during the past two years.
• Requested by Council

ITEM 5. **Discussion/Action** – City Council will hear a complaint filed by City Administrator Randy Whiteman in open session pursuant to the Council Procedures on Hearing Complaints.

EXECUTIVE SESSION

The City Council of the City of Ovilla, Texas, reserves the right to meet in a closed session on any item listed on this Agenda should the need arise, pursuant to authorization by Texas Government Code, Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), 551.087 (economic development), 418.183 (homeland security).

ITEM 1. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda.
• Complaint filed by City Administrator

ITEM 2. The City Council will meet in closed session pursuant to Section 551.074 of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee.
• Mayor Vansyckle

Conflict of Interest

If a Council Member elects to refrain from an item(s) on this agenda, please see the City Secretary for an affidavit prior to the convening of the meeting.

Council's Request for Consideration of Future Agenda Items

No action or in-depth discussion may occur during this item. It is intended to provide an opportunity for the Council to inform each other and the public about events and situations that are of general interest.

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Adjournment

This is to certify that a copy of the Notice of the Regular City Council Meeting for November 28, 2011, was posted on the bulletin board at City Hall, 105 S. Cockrell Hill Road, Ovilla, on this 23 day of November prior to 6:00 p.m.



Pam Woodall Higgins
City Secretary

IF YOU OR YOUR REPRESENTATIVE HAVE A DISABILITY THAT REQUIRES SPECIAL ARRANGEMENTS AND YOU PLAN TO ATTEND THIS PUBLIC MEETING, PLEASE CALL THE CITY SECRETARY AT 972-617-7262 WITHIN 24 HOURS OF THE MEETING. REASONABLE ACCOMMODATIONS WILL BE MADE TO MEET YOUR NEEDS AT THE MEETING.

PLEASE SILENCE ALL PAGERS, CELL PHONES & OTHER ELECTRONIC EQUIPMENT WHILE THE CITY COUNCIL MEETING IS IN SESSION.

CERTIFICATION:

I hereby certify that the Ovilla City Council Agenda was removed from the City Hall Bulletin Board, located at 105 S. Cockrell Hill Road, Ovilla, TX 75154, (a place accessible to the public at all times) on the _____ day of _____ 2011, at _____ am/pm, after having been posted for at least 72 continuous hours preceding the scheduled time of the posted meeting.

Pam Woodall Higgins, City Secretary



DATE: 11-21-2011

TO: Honorable Mayor and Council Members

FROM: Sharon Jungman

**SUBJECT: Financial Statements
As of October 31st, 2011**

**City of Ovilla General Fund
Profit & Loss Budget vs. Actual
October 2011**

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Income				
4000100 · Taxes				
4000105 · Ad Valorem, Current	31,210.28	1,210,000.00	(1,178,789.72)	2.58%
4000110 · Ad Valorem, Delinquent	3,203.94	15,000.00	(11,796.06)	21.36%
4000113 · Interest/Penalties - Prop Tax	661.36	11,000.00	(10,338.64)	6.01%
4000120 · Sales Tax	11,013.24	130,000.00	(118,986.76)	8.47%
4000125 · Sales Tax - Street Improvement	2,753.31	32,000.00	(29,246.69)	8.6%
4000130 · Franchise Tax	5,082.70	142,000.00	(136,917.30)	3.58%
Total 4000100 · Taxes	53,924.83	1,540,000.00	(1,486,075.17)	3.5%
4000200 · Licenses and Permits				
4000208 · Building Permits				
4000210 · Residential Building Permits	0.00	2,500.00	(2,500.00)	0.0%
4000214 · Misc Building Permits	607.68	14,000.00	(13,392.32)	4.34%
Total 4000208 · Building Permits	607.68	16,500.00	(15,892.32)	3.68%
4000230 · Plan Review Fee	0.00	4,000.00	(4,000.00)	0.0%
4000260 · Alarm Permits	50.00	1,500.00	(1,450.00)	3.33%
4000270 · Animal Tag Fees	298.00	1,000.00	(702.00)	29.8%
4000272 · Impound Fees	115.00	2,000.00	(1,885.00)	5.75%
4000290 · Misc Licenses and Permits	110.00	2,000.00	(1,890.00)	5.5%
Total 4000200 · Licenses and Permits	1,180.68	27,000.00	(25,819.32)	4.37%
4000400 · Charges for Services				
4000325 · ESD #2	0.00	110,000.00	(110,000.00)	0.0%
4000330 · ESD #4	0.00	40,000.00	(40,000.00)	0.0%
4000411 · Copies and Maps	5.00	50.00	(45.00)	10.0%
4000415 · Police Reports	12.00	100.00	(88.00)	12.0%
4000420 · Park Lights	0.00	500.00	(500.00)	0.0%
4000440 · Oak Leaf Animal Control	327.00	1,000.00	(673.00)	32.7%
4000480 · Solid Waste (Garbage)	16,294.35	200,760.00	(184,465.65)	8.12%
4000490 · Misc Charges for Services	153.50	2,000.00	(1,846.50)	7.68%
Total 4000400 · Charges for Services	16,791.85	354,410.00	(337,618.15)	4.74%
4000500 · Fines and Forfeitures				
4000510 · Fines - Police	7,569.61	83,000.00	(75,430.39)	9.12%
4000520 · Fines - Animal Control	0.00	3,000.00	(3,000.00)	0.0%
4000525 · Fines - Code Enforcement	0.00	2,500.00	(2,500.00)	0.0%
4000590 · Misc Fines and Forfeitures	5.00	150.00	(145.00)	3.33%
Total 4000500 · Fines and Forfeitures	7,574.61	88,650.00	(81,075.39)	8.54%
4000800 · Other Revenue				

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
4000810 · Heritage Day	1,240.00	2,500.00	(1,260.00)	49.6%
4000818 · Lease Proceeds	0.00	1,175.00	(1,175.00)	0.0%
4000820 · Water Tower Lease	4,706.16	80,716.00	(76,009.84)	5.83%
4000840 · Interest Earned	102.45	500.00	(397.55)	20.49%
4000887 · HOA Revenue	0.00	1,015.00	(1,015.00)	0.0%
4000890 · Misc Other Revenue	80.00	5,000.00	(4,920.00)	1.6%
Total 4000800 · Other Revenue	6,128.61	90,906.00	(84,777.39)	6.74%
 4000900 · Transfers In				
4000925 · Transfer In - 4B-EDC	0.00	2,500.00	(2,500.00)	0.0%
4000930 · Transfer In From W&S Fund	0.00	121,972.00	(121,972.00)	0.0%
4000940 · Transfer in MDD Fund	0.00	500.00	(500.00)	0.0%
Total 4000900 · Transfers In	0.00	124,972.00	(124,972.00)	0.0%
 Total Income	85,600.58	2,225,938.00	(2,140,337.42)	3.85%
 Gross Profit	85,600.58	2,225,938.00	(2,140,337.42)	3.85%
 Expense				
10 · Administration				
5101100 · Salaries & Wages				
5101110 · City Administrator	6,249.26	62,034.00	(55,784.74)	10.07%
5101115 · City Secretary	3,198.73	32,075.00	(28,876.27)	9.97%
5101117 · City Accountant	3,470.57	34,625.00	(31,154.43)	10.02%
5101120 · Part Time- Admin. Support	712.33	7,566.00	(6,853.67)	9.42%
Total 5101100 · Salaries & Wages	13,630.89	136,300.00	(122,669.11)	10.0%
 5102100 · Employee Benefits				
5102110 · Group Insurance	1,519.38	19,480.00	(17,960.62)	7.8%
5102135 · TMRS	599.18	8,750.00	(8,150.82)	6.85%
5102160 · Worker's Compensation	154.50	475.00	(320.50)	32.53%
5102170 · Payroll Taxes	197.91	3,250.00	(3,052.09)	6.09%
5102180 · Unemployment Taxes	0.00	1,000.00	(1,000.00)	0.0%
5102196 · Indiv. Membership Dues	0.00	600.00	(600.00)	0.0%
Total 5102100 · Employee Benefits	2,470.97	33,555.00	(31,084.03)	7.36%
 5102200 · Special Services				
5102210 · Tax Assessing & Collecting Fees	0.00	1,600.00	(1,600.00)	0.0%
5102220 · Tax Appraisal Fee	0.00	17,000.00	(17,000.00)	0.0%
5102230 · Legal Fees	0.00	30,000.00	(30,000.00)	0.0%
5102240 · Audit	0.00	6,120.00	(6,120.00)	0.0%
5102250 · Accounting	0.00	1,500.00	(1,500.00)	0.0%
5102260 · Engineering Fees	0.00	1,000.00	(1,000.00)	0.0%
Total 5102200 · Special Services	0.00	57,220.00	(57,220.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5102300 · Contractual Services				
5102310 · Consultant Fees	0.00	20,000.00	(20,000.00)	0.0%
Total 5102300 · Contractual Services	0.00	20,000.00	(20,000.00)	0.0%
5102500 · Operating Services				
5102530 · Custodial Service Contract	200.00	3,200.00	(3,000.00)	6.25%
Total 5102500 · Operating Services	200.00	3,200.00	(3,000.00)	6.25%
5102600 · Special Expenses				
5102610 · Election - Payroll	0.00	600.00	(600.00)	0.0%
5102620 · Election - Supplies	0.00	2,200.00	(2,200.00)	0.0%
5102630 · Election Meeting Expense	0.00	100.00	(100.00)	0.0%
5102650 · Codification Book Update	0.00	2,000.00	(2,000.00)	0.0%
Total 5102600 · Special Expenses	0.00	4,900.00	(4,900.00)	0.0%
5103100 · General Supplies				
5103110 · Office Supplies	339.60	7,000.00	(6,660.40)	4.85%
5103140 · Uniforms	0.00	300.00	(300.00)	0.0%
Total 5103100 · General Supplies	339.60	7,300.00	(6,960.40)	4.65%
5103400 · Maintenance Supplies / Parts				
5103410 · Supplies - Custodial	0.00	1,500.00	(1,500.00)	0.0%
5103440 · Maintenance Agreement Expense	0.00	900.00	(900.00)	0.0%
5103460 · Miscellaneous	0.00	200.00	(200.00)	0.0%
Total 5103400 · Maintenance Supplies / Parts	0.00	2,600.00	(2,600.00)	0.0%
5104200 · Travel Expenses				
5104210 · Travel - Local	0.00	500.00	(500.00)	0.0%
5104220 · Professional Development	0.00	5,000.00	(5,000.00)	0.0%
5104222 · Professional Develop - Council	322.48	350.00	(27.52)	92.14%
5104225 · City Council Meal Expense	0.00	400.00	(400.00)	0.0%
5104230 · Professional Develop - In-House	0.00	100.00	(100.00)	0.0%
Total 5104200 · Travel Expenses	322.48	6,350.00	(6,027.52)	5.08%
5105200 · Data Processing Expenses				
5105230 · Data Proc-Maintenance & Repair	207.74	4,500.00	(4,292.26)	4.62%
5105240 · Data Processing - Software	2,772.43	11,350.00	(8,577.57)	24.43%
Total 5105200 · Data Processing Expenses	2,980.17	15,850.00	(12,869.83)	18.8%
5105300 · Printing Expense				
5105310 · Copier Expense	0.00	5,000.00	(5,000.00)	0.0%
5105320 · Printing - Newsletters	0.00	4,800.00	(4,800.00)	0.0%
5105330 · Printing - Forms	0.00	1,800.00	(1,800.00)	0.0%
5105350 · Printing - Other	0.00	500.00	(500.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Total 5105300 · Printing Expense	0.00	12,100.00	(12,100.00)	0.0%
5105400 · Utilities				
5105410 · Telephone	96.83	1,200.00	(1,103.17)	8.07%
5105415 · Cellular Phone	82.29	1,000.00	(917.71)	8.23%
5105417 · Internet	59.59	750.00	(690.41)	7.95%
5105450 · Electricity	4,580.51	70,000.00	(65,419.49)	6.54%
Total 5105400 · Utilities	4,819.22	72,950.00	(68,130.78)	6.61%
5105500 · Repairs & Bldg Improvements				
5105520 · Repairs - Buildings	86.98	3,500.00	(3,413.02)	2.49%
5105540 · Repairs - Machinery & Equipment	0.00	1,000.00	(1,000.00)	0.0%
5105590 · Repairs - Other	0.00	500.00	(500.00)	0.0%
Total 5105500 · Repairs & Bldg Improvements	86.98	5,000.00	(4,913.02)	1.74%
5105600 · Insurance				
5105610 · Insurance - Property	623.00	2,500.00	(1,877.00)	24.92%
5105620 · Insurance - Liability	121.25	780.00	(658.75)	15.55%
5105630 · Insurance - Fidelity Bond	62.50	250.00	(187.50)	25.0%
5105635 · Public Officials Surety Bonds	0.00	900.00	(900.00)	0.0%
Total 5105600 · Insurance	806.75	4,430.00	(3,623.25)	18.21%
5105700 · Other Expenses				
5105705 · Postage	0.00	6,000.00	(6,000.00)	0.0%
5105710 · Cash - Over/Short	0.00	10.00	(10.00)	0.0%
5105725 · Records Management Expense	0.00	1,000.00	(1,000.00)	0.0%
5105730 · City - Memberships	300.00	2,100.00	(1,800.00)	14.29%
5105740 · Advertising	413.74	5,000.00	(4,586.26)	8.28%
5105752 · Pre-Employment Screening	0.00	300.00	(300.00)	0.0%
5105760 · Bank Service Charge	0.00	25.00	(25.00)	0.0%
5105764 · Filing Fees	0.00	250.00	(250.00)	0.0%
5105765 · Miscellaneous	35.78	2,000.00	(1,964.22)	1.79%
Total 5105700 · Other Expenses	749.52	16,685.00	(15,935.48)	4.49%
5106400 · Minor Capital Outlay				
5106440 · Machinery & Equipment	0.00	1,000.00	(1,000.00)	0.0%
5106465 · Furniture	0.00	500.00	(500.00)	0.0%
Total 5106400 · Minor Capital Outlay	0.00	1,500.00	(1,500.00)	0.0%
5107400 · Capitalized Assets				
5107440 · Machinery & Equipment	0.00	1,000.00	(1,000.00)	0.0%
5107470 · Audio & Visual Equipment	0.00	5,000.00	(5,000.00)	0.0%
Total 5107400 · Capitalized Assets	0.00	6,000.00	(6,000.00)	0.0%
5109000 · Reserves				

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
5109001 · Reserve for Contingency	0.00	86,561.00	(86,561.00)	0.0%
Total 5109000 · Reserves	0.00	86,561.00	(86,561.00)	0.0%
 Total 10 · Administration	 26,406.58	 492,501.00	 (466,094.42)	 5.36%
 20 · Police				
5201100 · Salaries & Wages				
5201120 · Police Chief	4,536.95	60,046.00	(55,509.05)	7.56%
5201143 · Command Staff	3,549.37	47,004.00	(43,454.63)	7.55%
5201150 · Certification Pay	184.60	2,400.00	(2,215.40)	7.69%
Total 5201100 · Salaries & Wages	8,270.92	109,450.00	(101,179.08)	7.56%
 5201400 · Support Salaries				
5201405 · Support Staff	1,601.61	21,337.00	(19,735.39)	7.51%
5201410 · Patrol	18,869.34	235,978.00	(217,108.66)	8.0%
5201415 · Certification Pay	265.40	5,500.00	(5,234.60)	4.83%
5201490 · Overtime	522.36	9,600.00	(9,077.64)	5.44%
Total 5201400 · Support Salaries	21,258.71	272,415.00	(251,156.29)	7.8%
 5202100 · Employee Benefits				
5202110 · Group Insurance	5,027.92	79,000.00	(73,972.08)	6.36%
5202135 · TMRS	1,108.64	18,650.00	(17,541.36)	5.94%
5202160 · Worker's Compensation	2,102.50	8,500.00	(6,397.50)	24.74%
5202170 · Payroll Taxes	292.67	5,300.00	(5,007.33)	5.52%
5202196 · Membership Dues	0.00	315.00	(315.00)	0.0%
Total 5202100 · Employee Benefits	8,531.73	111,765.00	(103,233.27)	7.63%
 5202300 · Contractual Services				
5202355 · Contract Labor - Individual	12.50	500.00	(487.50)	2.5%
5202356 · Gingerbread House	0.00	1,000.00	(1,000.00)	0.0%
5202380 · Dispatch	0.00	13,550.00	(13,550.00)	0.0%
Total 5202300 · Contractual Services	12.50	15,050.00	(15,037.50)	0.08%
 5202500 · Operating Services				
5202540 · Computer Maintenance	0.00	500.00	(500.00)	0.0%
5202560 · Internet Subscriptions	0.00	350.00	(350.00)	0.0%
Total 5202500 · Operating Services	0.00	850.00	(850.00)	0.0%
 5202600 · Special Expenses				
5202675 · National Night Out	279.12	500.00	(220.88)	55.82%
Total 5202600 · Special Expenses	279.12	500.00	(220.88)	55.82%
 5203100 · General Supplies				
5203110 · Office Supplies	0.00	1,500.00	(1,500.00)	0.0%
5203140 · Uniforms	0.00	1,400.00	(1,400.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
5203170 · Evidence Gathering	0.00	300.00	(300.00)	0.0%
Total 5203100 · General Supplies	0.00	3,200.00	(3,200.00)	0.0%
 5203400 · Maintenance Supplies & Parts				
5203410 · Supplies - Custodial	0.00	500.00	(500.00)	0.0%
Total 5203400 · Maintenance Supplies & Parts	0.00	500.00	(500.00)	0.0%
 5204200 · Travel Expenses				
5204210 · Travel - Local	5.00	300.00	(295.00)	1.67%
5204220 · Professional Development	0.00	500.00	(500.00)	0.0%
5204270 · Vehicle Expenses	0.00	22,000.00	(22,000.00)	0.0%
Total 5204200 · Travel Expenses	5.00	22,800.00	(22,795.00)	0.02%
 5205200 · Data Processing Expenses				
5205220 · Data Proc - Equipment Rental	0.00	400.00	(400.00)	0.0%
5205240 · Data Processing - Software	18,326.00	17,850.00	476.00	102.67%
Total 5205200 · Data Processing Expenses	18,326.00	18,250.00	76.00	100.42%
 5205300 · Printing Expenses				
5205310 · Copier Expense	108.22	1,500.00	(1,391.78)	7.22%
5205330 · Printing - Forms	0.00	600.00	(600.00)	0.0%
5205350 · Printing - Other	0.00	400.00	(400.00)	0.0%
Total 5205300 · Printing Expenses	108.22	2,500.00	(2,391.78)	4.33%
 5205400 · Utilities				
5205410 · Telephone	104.28	1,400.00	(1,295.72)	7.45%
5205415 · Cellular Phone	116.05	1,700.00	(1,583.95)	6.83%
5205417 · Internet - PD	74.48	950.00	(875.52)	7.84%
5205420 · Wireless Cards	190.03	2,350.00	(2,159.97)	8.09%
Total 5205400 · Utilities	484.84	6,400.00	(5,915.16)	7.58%
 5205500 · Repairs & Building Improvements				
5205520 · Repairs - Building	0.00	300.00	(300.00)	0.0%
5205540 · Repairs- Machinery & Equipment	0.00	700.00	(700.00)	0.0%
5205550 · Repairs - Vehicles	300.00	7,500.00	(7,200.00)	4.0%
Total 5205500 · Repairs & Building Improvements	300.00	8,500.00	(8,200.00)	3.53%
 5205600 · Insurance				
5205610 · Insurance - Property	412.50	1,060.00	(647.50)	38.92%
5205620 · Insurance - Liability	1,267.25	5,400.00	(4,132.75)	23.47%
5205640 · Insurance - Vehicle	587.50	2,500.00	(1,912.50)	23.5%
Total 5205600 · Insurance	2,267.25	8,960.00	(6,692.75)	25.3%
 5205700 · Other Expenses				
5205752 · Pre-Employment Screeing	0.00	600.00	(600.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5205742 · Public Relations	12.00	400.00	(388.00)	3.0%
5205765 · Miscellaneous	92.20	1,500.00	(1,407.80)	6.15%
Total 5205700 · Other Expenses	104.20	2,500.00	(2,395.80)	4.17%
5206400 · Minor Capital Outlay				
5206440 · Machinery & Equipment	130.65	650.00	(519.35)	20.1%
5206445 · Personal Protective Equipment	0.00	2,000.00	(2,000.00)	0.0%
Total 5206400 · Minor Capital Outlay	130.65	2,650.00	(2,519.35)	4.93%
5207400 · Capitalized Assets				
5207440 · Machinery & Equipment	0.00	1,000.00	(1,000.00)	0.0%
5207450 · Vehicles	0.00	12,370.00	(12,370.00)	0.0%
Total 5207400 · Capitalized Assets	0.00	13,370.00	(13,370.00)	0.0%
Total 20 · Police	60,079.14	599,660.00	(539,580.86)	10.02%
25 · Municipal Court				
5251100 · Salaries & Wages				
5251140 · Municipal Judge	440.00	5,280.00	(4,840.00)	8.33%
Total 5251100 · Salaries & Wages	440.00	5,280.00	(4,840.00)	8.33%
5251400 · Support Staff				
5251405 · Support Staff	1,987.20	27,945.00	(25,957.80)	7.11%
5251420 · Jury Fees	0.00	108.00	(108.00)	0.0%
5251425 · City Prosecutor	305.53	5,000.00	(4,694.47)	6.11%
5251490 · Overtime	0.00	1,000.00	(1,000.00)	0.0%
Total 5251400 · Support Staff	2,292.73	34,053.00	(31,760.27)	6.73%
5252100 · Employee Benefits				
5252110 · Group Insurance	540.99	6,492.00	(5,951.01)	8.33%
5252135 · TMRS	87.12	1,450.00	(1,362.88)	6.01%
5252160 · Worker's Compensation	27.00	125.00	(98.00)	21.6%
5252170 · Payroll Taxes	22.20	410.00	(387.80)	5.42%
5252196 · Membership Dues	0.00	80.00	(80.00)	0.0%
Total 5252100 · Employee Benefits	677.31	8,557.00	(7,879.69)	7.92%
5252300 · Contractual Services				
5252375 · Traffic Fines	10,358.50	34,000.00	(23,641.50)	30.47%
Total 5252300 · Contractual Services	10,358.50	34,000.00	(23,641.50)	30.47%
5252500 · Operating Services				
5252540 · Computer Maintenance	0.00	150.00	(150.00)	0.0%
Total 5252500 · Operating Services	0.00	150.00	(150.00)	0.0%
5253100 · General Supplies				

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5253110 · Office Supplies	0.00	75.00	(75.00)	0.0%
5253140 · Uniforms	0.00	50.00	(50.00)	0.0%
Total 5253100 · General Supplies	0.00	125.00	(125.00)	0.0%
5254200 · Travel Expenses				
5254210 · Travel - Local	0.00	25.00	(25.00)	0.0%
5254220 · Professional Development	0.00	50.00	(50.00)	0.0%
Total 5254200 · Travel Expenses	0.00	75.00	(75.00)	0.0%
5255200 · Data Processing Expenses				
5255240 · Data Processing - SW Maint.	1,606.35	1,670.00	(63.65)	96.19%
Total 5255200 · Data Processing Expenses	1,606.35	1,670.00	(63.65)	96.19%
5255300 · Printing Expense				
5255350 · Printing - Other	0.00	200.00	(200.00)	0.0%
Total 5255300 · Printing Expense	0.00	200.00	(200.00)	0.0%
5255600 · Insurance				
5255620 · Insurance - Liability	62.50	275.00	(212.50)	22.73%
5255630 · Insurance - Fidelity Bond	0.00	50.00	(50.00)	0.0%
Total 5255600 · Insurance	62.50	325.00	(262.50)	19.23%
5255700 · Other Expenses				
5255752 · Pre-Employment Screening	0.00	100.00	(100.00)	0.0%
5255765 · Miscellaneous	0.00	75.00	(75.00)	0.0%
Total 5255700 · Other Expenses	0.00	175.00	(175.00)	0.0%
Total 25 · Municipal Court	15,437.39	84,610.00	(69,172.61)	18.25%
30 · Fire				
5301100 · Salaries & Wages				
5301125 · Fire Chief	4,276.67	56,632.00	(52,355.33)	7.55%
5301130 · Asst. Fire Chief	2,068.09	32,068.00	(29,999.91)	6.45%
Total 5301100 · Salaries & Wages	6,344.76	88,700.00	(82,355.24)	7.15%
5301400 · Support Salaries				
5301440 · Firefighters	8,169.78	126,000.00	(117,830.22)	6.48%
5301485 · Volunteer Incentive Program	1,090.00	14,000.00	(12,910.00)	7.79%
Total 5301400 · Support Salaries	9,259.78	140,000.00	(130,740.22)	6.61%
5302100 · Employee Benefits				
5302110 · Group Insurance	350.00	6,500.00	(6,150.00)	5.39%
5302135 · TMRS	327.62	4,550.00	(4,222.38)	7.2%
5302137 · Volunteer Retirement	0.00	4,500.00	(4,500.00)	0.0%
5302160 · Worker's Compensation	2,054.75	8,100.00	(6,045.25)	25.37%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5302170 · Payroll Taxes	573.22	11,900.00	(11,326.78)	4.82%
5302196 · Membership Dues	525.00	2,500.00	(1,975.00)	21.0%
Total 5302100 · Employee Benefits	3,830.59	38,050.00	(34,219.41)	10.07%
5302300 · Contractual Services				
5302310 · Consultant Fees	0.00	1,600.00	(1,600.00)	0.0%
5302380 · Dispatch	0.00	11,525.00	(11,525.00)	0.0%
5302385 · Emergency Transport Service	0.00	59,410.00	(59,410.00)	0.0%
Total 5302300 · Contractual Services	0.00	72,535.00	(72,535.00)	0.0%
5302500 · Operating Services				
5302510 · Maintenance Agreements	0.00	12,005.00	(12,005.00)	0.0%
5302540 · Computer Maintenance	0.00	2,000.00	(2,000.00)	0.0%
5302570 · Warning System Maintenance	0.00	730.00	(730.00)	0.0%
5302580 · Generator Maintenance	0.00	1,650.00	(1,650.00)	0.0%
Total 5302500 · Operating Services	0.00	16,385.00	(16,385.00)	0.0%
5302600 · Special Expenses				
5302675 · National Night Out	0.00	500.00	(500.00)	0.0%
Total 5302600 · Special Expenses	0.00	500.00	(500.00)	0.0%
5303100 · General Supplies				
5303110 · Office Supplies	168.67	2,000.00	(1,831.33)	8.43%
5303140 · Uniforms	135.95	4,000.00	(3,864.05)	3.4%
5303160 · Medical Supplies	518.67	7,000.00	(6,481.33)	7.41%
5303165 · Medical Support	0.00	1,000.00	(1,000.00)	0.0%
5303170 · Evidence Gathering	0.00	250.00	(250.00)	0.0%
5303175 · Education Aids	0.00	250.00	(250.00)	0.0%
Total 5303100 · General Supplies	823.29	14,500.00	(13,676.71)	5.68%
5303400 · Maintenance Supplies & Parts				
5303410 · Supplies - Custodial	0.00	1,400.00	(1,400.00)	0.0%
5303420 · Building Alarm Maintenance	0.00	420.00	(420.00)	0.0%
Total 5303400 · Maintenance Supplies & Parts	0.00	1,820.00	(1,820.00)	0.0%
5304200 · Travel Expenses				
5304220 · Professional Development	250.00	4,500.00	(4,250.00)	5.56%
5304240 · Medical Training	0.00	1,000.00	(1,000.00)	0.0%
5304270 · Vehicle Expenses	868.68	12,000.00	(11,131.32)	7.24%
Total 5304200 · Travel Expenses	1,118.68	17,500.00	(16,381.32)	6.39%
5305200 · Data Processing Expenses				
5305230 · Data Proc-Maintenance & Repair	0.00	1,250.00	(1,250.00)	0.0%
5305240 · Data Processing - Software	1,783.00	2,850.00	(1,067.00)	62.56%
Total 5305200 · Data Processing Expenses	1,783.00	4,100.00	(2,317.00)	43.49%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5305300 · Printing Expense				
5305310 · Copier Expense	221.28	3,300.00	(3,078.72)	6.71%
5305330 · Printing - Forms	0.00	200.00	(200.00)	0.0%
Total 5305300 · Printing Expense	221.28	3,500.00	(3,278.72)	6.32%
5305400 · Utilities				
5305410 · Telephone	181.51	2,100.00	(1,918.49)	8.64%
5305415 · Cellular Phone	269.21	4,000.00	(3,730.79)	6.73%
5305417 · Internet - Fire Dept.	134.07	1,750.00	(1,615.93)	7.66%
5305430 · Natural Gas	24.44	2,200.00	(2,175.56)	1.11%
Total 5305400 · Utilities	609.23	10,050.00	(9,440.77)	6.06%
5305500 · Repairs & Bldg Improvements				
5305520 · Repairs - Building	1,550.00	5,000.00	(3,450.00)	31.0%
5305540 · Repairs - Machinery & Equipment	208.77	19,500.00	(19,291.23)	1.07%
5305545 · Repairs - Apparatus	59.90	12,000.00	(11,940.10)	0.5%
5305550 · Repairs - Vehicles	35.84	4,000.00	(3,964.16)	0.9%
Total 5305500 · Repairs & Bldg Improvements	1,854.51	40,500.00	(38,645.49)	4.58%
5305600 · Insurance				
5305610 · Insurance - Property	13.25	75.00	(61.75)	17.67%
5305620 · Insurance - Liability	285.00	8,960.00	(8,675.00)	3.18%
5305640 · Insurance - Vehicle	2,563.97	11,718.00	(9,154.03)	21.88%
Total 5305600 · Insurance	2,862.22	20,753.00	(17,890.78)	13.79%
5305700 · Other Expenses				
5305705 · Postage	0.00	200.00	(200.00)	0.0%
5305752 · Pre-Employment Screening	260.00			
5305765 · Flags & Miscellaneous	0.00	500.00	(500.00)	0.0%
5305770 · Matching Fire Grant Expense	0.00	400.00	(400.00)	0.0%
Total 5305700 · Other Expenses	260.00	1,100.00	(840.00)	23.64%
5306400 · Minor Capital Outlay				
5306440 · Machinery & Equipment	1,090.00	11,000.00	(9,910.00)	9.91%
5306445 · Personal Protective Equipment	0.00	10,500.00	(10,500.00)	0.0%
Total 5306400 · Minor Capital Outlay	1,090.00	21,500.00	(20,410.00)	5.07%
Total 30 · Fire	30,057.34	491,493.00	(461,435.66)	6.12%
40 · Community Services				
5401100 · Salaries & Wages				
5401135 · ACO/Code Enforcement Officer	2,575.80	34,200.00	(31,624.20)	7.53%
5401190 · Overtime	0.00	150.00	(150.00)	0.0%
Total 5401100 · Salaries & Wages	2,575.80	34,350.00	(31,774.20)	7.5%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5402100 · Employee Benefits				
5402110 · Group Insurance	350.00	6,492.00	(6,142.00)	5.39%
5402135 · TMRS	146.58	1,450.00	(1,303.42)	10.11%
5402160 · Worker's Compensation	77.25	325.00	(247.75)	23.77%
5402170 · Payroll Taxes	42.42	500.00	(457.58)	8.48%
5402190 · License	0.00	200.00	(200.00)	0.0%
Total 5402100 · Employee Benefits	616.25	8,967.00	(8,350.75)	6.87%
5402300 · Contractual Services				
5402315 · Contract Building Inspections	0.00	10,500.00	(10,500.00)	0.0%
5402370 · Impound Fees	0.00	2,000.00	(2,000.00)	0.0%
Total 5402300 · Contractual Services	0.00	12,500.00	(12,500.00)	0.0%
5402500 · Operating Services				
5402540 · Computer Maintenance	0.00	100.00	(100.00)	0.0%
Total 5402500 · Operating Services	0.00	100.00	(100.00)	0.0%
5402600 · Special Expenses				
5402685 · Clean up Day	0.00	100.00	(100.00)	0.0%
Total 5402600 · Special Expenses	0.00	100.00	(100.00)	0.0%
5403100 · General Supplies				
5403110 · Office Supplies	0.00	125.00	(125.00)	0.0%
5403120 · Animal Care	0.00	150.00	(150.00)	0.0%
5403122 · Pet Supplies	0.00	100.00	(100.00)	0.0%
5403140 · Uniforms	0.00	350.00	(350.00)	0.0%
Total 5403100 · General Supplies	0.00	725.00	(725.00)	0.0%
5403400 · Maintenance Supplies & Parts				
5403460 · Miscellaneous	0.00	100.00	(100.00)	0.0%
Total 5403400 · Maintenance Supplies & Parts	0.00	100.00	(100.00)	0.0%
5404200 · Travel Expenses				
5404210 · Travel - Local	0.00	25.00	(25.00)	0.0%
5404220 · Professional Development	0.00	200.00	(200.00)	0.0%
5404270 · Vehicle Expenses	0.00	1,400.00	(1,400.00)	0.0%
Total 5404200 · Travel Expenses	0.00	1,625.00	(1,625.00)	0.0%
5405200 · Data Processing Expenses				
5405230 · Data Proc-Maintenance & Repairs	0.00	100.00	(100.00)	0.0%
Total 5405200 · Data Processing Expenses	0.00	100.00	(100.00)	0.0%
5405300 · Printing Expense				
5405330 · Printing - Forms	0.00	150.00	(150.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Total 5405300 · Printing Expense	0.00	150.00	(150.00)	0.0%
5405400 · Utilities				
5405415 · Cellular Phone	89.35	675.00	(585.65)	13.24%
Total 5405400 · Utilities	89.35	675.00	(585.65)	13.24%
5405600 · Insurance				
5405610 · Insurance - Property	2.75	35.00	(32.25)	7.86%
5405620 · Insurance - Liability	48.50	194.00	(145.50)	25.0%
5405640 · Insurance - Vehicle	67.00	275.00	(208.00)	24.36%
Total 5405600 · Insurance	118.25	504.00	(385.75)	23.46%
5405700 · Other Expenses				
5405765 · Miscellaneous	0.00	100.00	(100.00)	0.0%
Total 5405700 · Other Expenses	0.00	100.00	(100.00)	0.0%
5406400 · Minor Capital Outlay				
5406440 · Machinery & Equipment	0.00	450.00	(450.00)	0.0%
Total 5406400 · Minor Capital Outlay	0.00	450.00	(450.00)	0.0%
Total 40 · Community Services	3,399.65	60,446.00	(57,046.35)	5.62%
45 · Solid Waste				
5455400 · Utilities				
5455465 · Solidwaste Pickup (Garbage)	16,049.05	197,450.00	(181,400.95)	8.13%
Total 5455400 · Utilities	16,049.05	197,450.00	(181,400.95)	8.13%
Total 45 · Solid Waste	16,049.05	197,450.00	(181,400.95)	8.13%
50 · Streets				
5501400 · Support Staff				
5501415 · Maintenance Crew	1,720.76	22,100.00	(20,379.24)	7.79%
5501490 · Overtime	31.38	2,000.00	(1,968.62)	1.57%
5501500 · Streets - On Call	150.00	850.00	(700.00)	17.65%
Total 5501400 · Support Staff	1,902.14	24,950.00	(23,047.86)	7.62%
5502100 · Employee Benefits				
5502110 · Group Insurance	540.99	6,500.00	(5,959.01)	8.32%
5502135 · TMRS	97.40	1,150.00	(1,052.60)	8.47%
5502160 · Worker's Compensation	262.00	1,400.00	(1,138.00)	18.71%
5502170 · Payroll Taxes	24.82	325.00	(300.18)	7.64%
5502190 · License	0.00	85.00	(85.00)	0.0%
Total 5502100 · Employee Benefits	925.21	9,460.00	(8,534.79)	9.78%
5502200 · Special Services				

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
				9%
5502260 · Engineering Fees	0.00	500.00	(500.00)	0.0%
5502280 · NCTCOG- SWMP Fees	3,353.00	3,500.00	(147.00)	95.8%
Total 5502200 · Special Services	3,353.00	4,000.00	(647.00)	83.83%
 5502600 · Special Expenses				
5502620 · Emergency Clean Up	2,912.04	2,500.00	412.04	116.48%
Total 5502600 · Special Expenses	2,912.04	2,500.00	412.04	116.48%
 5503100 · General Supplies				
5503110 · Office Supplies	0.00	100.00	(100.00)	0.0%
5503140 · Uniforms	0.00	400.00	(400.00)	0.0%
Total 5503100 · General Supplies	0.00	500.00	(500.00)	0.0%
 5503400 · Maintenance Supplies & Parts				
5503405 · Drainage Maintenance	0.00	500.00	(500.00)	0.0%
5503420 · Supplies - Street Signs	0.00	1,200.00	(1,200.00)	0.0%
5503460 · Miscellaneous	0.00	250.00	(250.00)	0.0%
Total 5503400 · Maintenance Supplies & Parts	0.00	1,950.00	(1,950.00)	0.0%
 5504200 · Travel Expenses				
5504220 · Professional Development	0.00	500.00	(500.00)	0.0%
5504270 · Vehicle Expenses	0.00	4,000.00	(4,000.00)	0.0%
Total 5504200 · Travel Expenses	0.00	4,500.00	(4,500.00)	0.0%
 5505300 · Printing Expense				
5505350 · Printing - Other	0.00	300.00	(300.00)	0.0%
Total 5505300 · Printing Expense	0.00	300.00	(300.00)	0.0%
 5505500 · Repairs & Bldg Improvements				
5505540 · Repairs - Machinery & Equipment	288.21	3,500.00	(3,211.79)	8.24%
5505550 · Repairs - Vehicles	13.54	3,000.00	(2,986.46)	0.45%
5505560 · Repairs -Street Maint.& Repairs	2,082.19	50,000.00	(47,917.81)	4.16%
5505565 · Repairs - Infrastruct Drainage	0.00	6,000.00	(6,000.00)	0.0%
5505590 · Repairs - Other	0.00	1,500.00	(1,500.00)	0.0%
Total 5505500 · Repairs & Bldg Improvements	2,383.94	64,000.00	(61,616.06)	3.73%
 5505600 · Insurance				
5505610 · Insurance - Property	0.00	100.00	(100.00)	0.0%
5505620 · Insurance - Liability	245.50	1,000.00	(754.50)	24.55%
5505640 · Insurance - Vehicle	733.75	2,965.00	(2,231.25)	24.75%
Total 5505600 · Insurance	979.25	4,065.00	(3,085.75)	24.09%
 5505700 · Other Expenses				
5505752 · Pre-Employment Screening	0.00	100.00	(100.00)	0.0%
Total 5505700 · Other Expenses	0.00	100.00	(100.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5506400 · Minor Capital Outlay				
5506440 · Machinery & Equipment	0.00	8,453.00	(8,453.00)	0.0%
5506445 · Personal Protective Equipment	0.00	300.00	(300.00)	0.0%
5506490 · Other	0.00	500.00	(500.00)	0.0%
Total 5506400 · Minor Capital Outlay	0.00	9,253.00	(9,253.00)	0.0%
5507400 · Capitalized Assets				
5507420 · Buildings	0.00	7,500.00	(7,500.00)	0.0%
5507440 · Machinery & Equipment	0.00	6,500.00	(6,500.00)	0.0%
5507460 · Infrastructure	0.00	145,000.00	(145,000.00)	0.0%
Total 5507400 · Capitalized Assets	0.00	159,000.00	(159,000.00)	0.0%
Total 50 · Streets	12,455.58	284,578.00	(272,122.42)	4.38%
60 · Parks				
5602400 · Rentals				
5602490 · Rental - Other	196.71	2,700.00	(2,503.29)	7.29%
Total 5602400 · Rentals	196.71	2,700.00	(2,503.29)	7.29%
5602600 · Special Expenses				
5602680 · Heritage Day	0.00	4,000.00	(4,000.00)	0.0%
Total 5602600 · Special Expenses	0.00	4,000.00	(4,000.00)	0.0%
5605400 · Utilities				
5605450 · Electricity	176.42	3,000.00	(2,823.58)	5.88%
Total 5605400 · Utilities	176.42	3,000.00	(2,823.58)	5.88%
5605500 · Repairs & Bldg Improvements				
5605530 · REPAIRS-IMP OTHER THAN BLDGS	0.00	1,500.00	(1,500.00)	0.0%
Total 5605500 · Repairs & Bldg Improvements	0.00	1,500.00	(1,500.00)	0.0%
5605700 · Other Expenses				
5605765 · Miscellaneous	0.00	200.00	(200.00)	0.0%
Total 5605700 · Other Expenses	0.00	200.00	(200.00)	0.0%
5606400 · Minor Capital Outlay				
5606410 · Land Improvements	0.00	300.00	(300.00)	0.0%
5606440 · Machinery & Equipment	0.00	500.00	(500.00)	0.0%
Total 5606400 · Minor Capital Outlay	0.00	800.00	(800.00)	0.0%
5607400 · Capitalized Assets				
5607440 · Machinery & Equipment	0.00	3,000.00	(3,000.00)	0.0%
Total 5607400 · Capitalized Assets	0.00	3,000.00	(3,000.00)	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Total 60 - Parks	373.13	15,200.00	(14,826.87)	2.46%
6560 - Payroll Expenses	1,395.99			
Total Expense	165,653.85	2,225,938.00	(2,060,284.15)	7.44%
Net Income	(80,053.27)	0.00	(80,053.27)	100.0%

Ovilla W&S Utility Fund
Profit & Loss Budget vs. Actual
October 2011

3:04 PM

11/15/2011

Accrual Basis

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
	Oct 11	Budget	\$ Over Budget	9%
Income				
4000400 · Charges for Services				
4000460 · Water Sales	192,967.46	912,040.00	-719,072.54	21.16%
4000461 · Sewer Service	15,095.95	137,851.00	-122,755.05	10.95%
4000465 · Water & Sewer Penalties	2,770.24	17,000.00	-14,229.76	16.3%
4000471 · Reconnect Fees	463.62	5,000.00	-4,536.38	9.27%
4000473 · Connect Fees	250.00	1,500.00	-1,250.00	16.67%
4000474 · Sewer Fees	86.00	1,100.00	-1,014.00	7.82%
4000478 · Infrastructure Improvement Fee	4,851.40	55,000.00	-50,148.60	8.82%
Total 4000400 · Charges for Services	216,484.67	1,129,491.00	-913,006.33	19.17%
4000800 · Other Revenue				
4000840 · Interest Earned	201.62	1,500.00	-1,298.38	13.44%
4000890 · Misc Other Revenue	0.00	2,000.00	-2,000.00	0.0%
Total 4000800 · Other Revenue	201.62	3,500.00	-3,298.38	5.76%
Total Income	216,686.29	1,132,991.00	-916,304.71	19.13%
Gross Profit	216,686.29	1,132,991.00	-916,304.71	19.13%
Expense				
70 · Administration				
5701100 · Salaries & Wages				
5701120 · Part Time Admin. Support	0.00	2,534.00	-2,534.00	0.0%
5701110 · City Administrator	0.00	20,791.00	-20,791.00	0.0%
5701115 · City Secretary	0.00	10,337.00	-10,337.00	0.0%
5701117 · Finance Accountant	0.00	11,240.00	-11,240.00	0.0%
5701130 · Public Works Director	2,627.21	46,123.00	-43,495.79	5.7%
Total 5701100 · Salaries & Wages	2,627.21	91,025.00	-88,397.79	2.89%
5702100 · Employee Benefits				
5702110 · Group Insurance	540.99	6,500.00	-5,959.01	8.32%
5702135 · TMRS	149.48	2,375.00	-2,225.52	6.29%
5702160 · Worker's Compensation	320.73	1,250.00	-929.27	25.66%
5702170 · Payroll Taxes	38.10	700.00	-661.90	5.44%
Total 5702100 · Employee Benefits	1,049.30	10,825.00	-9,775.70	9.69%
5702200 · Special Services				
5702230 · Legal Fees	0.00	500.00	-500.00	0.0%
5702240 · Audit	0.00	4,760.00	-4,760.00	0.0%
5702250 · Accounting	0.00	1,500.00	-1,500.00	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Total 5702200 · Special Services	0.00	6,760.00	-6,760.00	0.0%
5702300 · Contractual Services /Personnel				
5702310 · Consultant Fees	0.00	5,000.00	-5,000.00	0.0%
Total 5702300 · Contractual Services /Personnel	0.00	5,000.00	-5,000.00	0.0%
5703100 · General Supplies				
5703110 · Office Supplies	0.00	800.00	-800.00	0.0%
Total 5703100 · General Supplies	0.00	800.00	-800.00	0.0%
5703400 · Maintenance Supplies / Parts				
5703410 · Supplies - Custodial	0.00	150.00	-150.00	0.0%
Total 5703400 · Maintenance Supplies / Parts	0.00	150.00	-150.00	0.0%
5704200 · Travel Expenses				
5704210 · Travel - Local	0.00	200.00	-200.00	0.0%
5704220 · Professional Development	0.00	750.00	-750.00	0.0%
Total 5704200 · Travel Expenses	0.00	950.00	-950.00	0.0%
5705200 · Data Processing Expenses				
5705240 · Data Processing - Software	0.00	1,000.00	-1,000.00	0.0%
Total 5705200 · Data Processing Expenses	0.00	1,000.00	-1,000.00	0.0%
5705300 · Printing Expense				
5705350 · Printing - Other	0.00	250.00	-250.00	0.0%
Total 5705300 · Printing Expense	0.00	250.00	-250.00	0.0%
5705400 · Utilities				
5705410 · Telephone	96.83	1,200.00	-1,103.17	8.07%
5705415 · Cellular Phone	84.76	1,000.00	-915.24	8.48%
5705417 · Internet	59.58	750.00	-690.42	7.94%
5705450 · Electricity	1,454.81	28,000.00	-26,545.19	5.2%
Total 5705400 · Utilities	1,695.98	30,950.00	-29,254.02	5.48%
5705700 · Other Expenses				
5705705 · Postage	570.48	6,000.00	-5,429.52	9.51%
5705740 · Advertising	0.00	500.00	-500.00	0.0%
5705760 · Bank Service Charge	20.00	250.00	-230.00	8.0%
5705765 · Miscellaneous	0.00	100.00	-100.00	0.0%
Total 5705700 · Other Expenses	590.48	6,850.00	-6,259.52	8.62%
5706400 · Minor Capital Outlay				
5706440 · Machinery & Equipment	0.00	500.00	-500.00	0.0%
Total 5706400 · Minor Capital Outlay	0.00	500.00	-500.00	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5709000 · Reserve				
5709003 · Capital Improv. Sewer Reserve	0.00	2,851.00	-2,851.00	0.0%
5709002 · Capital Improv. Water Reserve	0.00	11,040.00	-11,040.00	0.0%
5708215 · Transfer Out - General Fund	0.00	121,972.00	-121,972.00	0.0%
Total 5709000 · Reserve	0.00	135,863.00	-135,863.00	0.0%
 Total 70 · Administration	 5,962.97	 290,923.00	 -284,960.03	 2.05%
 75 · Water				
 5751100 · Salaries & Wages				
5751133 · Superintendent	3,051.61	42,650.00	-39,598.39	7.16%
Total 5751100 · Salaries & Wages	3,051.61	42,650.00	-39,598.39	7.16%
 5751400 · Support Salaries				
5751430 · Seasonal Crew	0.00	3,000.00	-3,000.00	0.0%
5751500 · Water - On Call	0.00	850.00	-850.00	0.0%
5751405 · Support Staff	2,016.80	26,900.00	-24,883.20	7.5%
5751415 · Maintenance Crew	2,559.17	46,500.00	-43,940.83	5.5%
5751490 · Overtime	325.81	6,000.00	-5,674.19	5.43%
Total 5751400 · Support Salaries	4,901.78	83,250.00	-78,348.22	5.89%
 5752100 · Employee Benefits				
5752110 · Group Insurance	1,240.99	21,100.00	-19,859.01	5.88%
5752135 · TMRS	365.95	5,000.00	-4,634.05	7.32%
5752160 · Worker's Compensation	528.30	2,150.00	-1,621.70	24.57%
5752170 · Payroll Taxes	201.18	1,650.00	-1,448.82	12.19%
5752190 · Licenses	0.00	285.00	-285.00	0.0%
Total 5752100 · Employee Benefits	2,336.42	30,185.00	-27,848.58	7.74%
 5752300 · Contractual Services/Personnel				
5752350 · Contract Labor - Company	670.00	1,000.00	-330.00	67.0%
5752380 · Dispatch	0.00	8,460.00	-8,460.00	0.0%
Total 5752300 · Contractual Services/Personnel	670.00	9,460.00	-8,790.00	7.08%
 5752400 · Rentals				
5752420 · Rental - Machinery & Equipment	0.00	200.00	-200.00	0.0%
5752490 · Rental - Other	0.00	500.00	-500.00	0.0%
Total 5752400 · Rentals	0.00	700.00	-700.00	0.0%
 5752500 · Operating Services				
5752580 · Water Testing	80.00	1,200.00	-1,120.00	6.67%
5752590 · TCEQ Fees	0.00	3,000.00	-3,000.00	0.0%
Total 5752500 · Operating Services	80.00	4,200.00	-4,120.00	1.91%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5753100 · General Supplies				
5753140 · Uniforms	0.00	1,500.00	-1,500.00	0.0%
Total 5753100 · General Supplies	0.00	1,500.00	-1,500.00	0.0%
5753400 · Maintenance Supplies & Parts				
5753460 · Miscellaneous	0.00	250.00	-250.00	0.0%
Total 5753400 · Maintenance Supplies & Parts	0.00	250.00	-250.00	0.0%
5754200 · Travel Expenses				
5754220 · Professional Development	0.00	1,000.00	-1,000.00	0.0%
5754270 · Vehicle Expenses	0.00	9,000.00	-9,000.00	0.0%
Total 5754200 · Travel Expenses	0.00	10,000.00	-10,000.00	0.0%
5755200 · Data Processing Expenses				
5755230 · Data Proc-Maintenance & Repairs	586.25	4,500.00	-3,913.75	13.03%
5755240 · Data Processing - Software	0.00	500.00	-500.00	0.0%
5755250 · Data Proc - Computer Repair	0.00	500.00	-500.00	0.0%
Total 5755200 · Data Processing Expenses	586.25	5,500.00	-4,913.75	10.66%
5755300 · Printing Expenses				
5755310 · Copier Expense	0.00	4,000.00	-4,000.00	0.0%
5755350 · Printing - Other	0.00	1,400.00	-1,400.00	0.0%
Total 5755300 · Printing Expenses	0.00	5,400.00	-5,400.00	0.0%
5755400 · Utilities				
5755415 · Cellular Phone	66.34	1,200.00	-1,133.66	5.53%
5755460 · Water, wholesale	0.00	283,250.00	-283,250.00	0.0%
Total 5755400 · Utilities	66.34	284,450.00	-284,383.66	0.02%
5755500 · Repairs & Building Improvements				
5755540 · Repairs- Machinery & Equipment	3,370.89	5,000.00	-1,629.11	67.42%
5755550 · Repairs - Vehicles	0.00	3,000.00	-3,000.00	0.0%
5755570 · Inventory Expense	1,172.84	16,000.00	-14,827.16	7.33%
5755590 · Repairs - Other	323.57	5,000.00	-4,676.43	6.47%
Total 5755500 · Repairs & Building Improvements	4,867.30	29,000.00	-24,132.70	16.78%
5755600 · Insurance				
5755610 · Insurance - Property	1,016.00	6,900.00	-5,884.00	14.73%
5755620 · Insurance - Liability	343.95	1,450.00	-1,106.05	23.72%
5755640 · Insurance - Vehicle	603.75	2,450.00	-1,846.25	24.64%
Total 5755600 · Insurance	1,963.70	10,800.00	-8,836.30	18.18%
5755700 · Other Expenses				

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
5755752 · Pre-Employment Screening	0.00	300.00	-300.00	0.0%
Total 5755700 · Other Expenses	0.00	300.00	-300.00	0.0%
 5756400 · Minor Capital Outlay				
5756440 · Machinery & Equipment	0.00	2,000.00	-2,000.00	0.0%
5756490 · Other	0.00	500.00	-500.00	0.0%
Total 5756400 · Minor Capital Outlay	0.00	2,500.00	-2,500.00	0.0%
 5757400 · Capitalized Assets				
5757470 · Infrastructure - Water	0.00	6,500.00	-6,500.00	0.0%
Total 5757400 · Capitalized Assets	0.00	6,500.00	-6,500.00	0.0%
 5757900 · Long-Term Debt				
5758225 · Transfer out to Debt Fund	0.00	166,788.00	-166,788.00	0.0%
Total 5757900 · Long-Term Debt	0.00	166,788.00	-166,788.00	0.0%
 Total 75 · Water	18,523.40	693,433.00	-674,909.60	2.67%
 80 · Sewer				
5801400 · Support Salaries				
5801500 · Sewer - On Call	0.00	850.00	-850.00	0.0%
5801405 · Support Staff	0.00	9,300.00	-9,300.00	0.0%
5801415 · Maintenance Crew	2,854.00	50,710.00	-47,856.00	5.63%
5801490 · Overtime	31.38	1,500.00	-1,468.62	2.09%
Total 5801400 · Support Salaries	2,885.38	62,360.00	-59,474.62	4.63%
 5802100 · Employee Benefits				
5802110 · Group Insurance	1,081.98	14,625.00	-13,543.02	7.4%
5802135 · TMRS	167.91	2,800.00	-2,632.09	6.0%
5802160 · Worker's Compensation-Sewer	416.75	2,100.00	-1,683.25	19.85%
5802170 · Payroll Taxes	42.78	875.00	-832.22	4.89%
5802190 · Licenses	0.00	285.00	-285.00	0.0%
Total 5802100 · Employee Benefits	1,709.42	20,685.00	-18,975.58	8.26%
 5802300 · Contractual Services/Personnel				
5802350 · Contract Labor - Company	0.00	2,000.00	-2,000.00	0.0%
Total 5802300 · Contractual Services/Personnel	0.00	2,000.00	-2,000.00	0.0%
 5802500 · Operating Services				
5802590 · TCEQ Fees - Sewer	0.00	50.00	-50.00	0.0%
Total 5802500 · Operating Services	0.00	50.00	-50.00	0.0%
 5803100 · General Supplies				
5803140 · Uniforms	0.00	810.00	-810.00	0.0%

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Total 5803100 · General Supplies	0.00	810.00	-810.00	0.0%
5803400 · Maintenance Supplies & Parts	0.00	200.00	-200.00	0.0%
5804200 · Travel Expenses				
5804220 · Professional Development	0.00	600.00	-600.00	0.0%
5804270 · Vehicle Expense	0.00	1,600.00	-1,600.00	0.0%
Total 5804200 · Travel Expenses	0.00	2,200.00	-2,200.00	0.0%
5805400 · Utilities				
5805450 · Electricity	67.68	2,500.00	-2,432.32	2.71%
5805463 · TRA Wastewater Treatment	3,421.00	42,230.00	-38,809.00	8.1%
Total 5805400 · Utilities	3,488.68	44,730.00	-41,241.32	7.8%
5805500 · Repairs & Bldg Improvements				
5805510 · Repairs - Land Improvements	0.00	300.00	-300.00	0.0%
5805570 · Inventory Expense	0.00	750.00	-750.00	0.0%
5805590 · Repairs - Other	0.00	5,000.00	-5,000.00	0.0%
Total 5805500 · Repairs & Bldg Improvements	0.00	6,050.00	-6,050.00	0.0%
5805600 · Insurance				
5805610 · Insurance - Property	78.50	100.00	-21.50	78.5%
5805620 · Insurance - Liability	229.30	1,150.00	-920.70	19.94%
5805640 · Insurance - Vehicle	157.25	100.00	57.25	157.25%
Total 5805600 · Insurance	465.05	1,350.00	-884.95	34.45%
5805700 · Other Expenses				
5805752 · Pre-Employment Screening	0.00	200.00	-200.00	0.0%
Total 5805700 · Other Expenses	0.00	200.00	-200.00	0.0%
5807400 · Capitalized Assets				
5807440 · Machinery & Equipment	0.00	8,000.00	-8,000.00	0.0%
Total 5807400 · Capitalized Assets	0.00	8,000.00	-8,000.00	0.0%
Total 80 · Sewer	8,548.53	148,635.00	-140,086.47	5.75%
Total Expense	33,034.90	1,132,991.00	-1,099,956.10	2.92%
Net Income	183,651.39	0.00	183,651.39	100.0%

Ovilla Debt Service
Profit & Loss Budget vs. Actual
October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Income				
4000100 · Taxes				
4000107 · Ad Valorem, Current I & S	5,389.35	517,478.00	(512,088.65)	1.04%
4000111 · Ad Valorem, Delinquent I & S	836.03	5,000.00	(4,163.97)	16.72%
4000114 · Interest/Penalties - I & S	172.31	6,000.00	(5,827.69)	2.87%
Total 4000100 · Taxes	6,397.69	528,478.00	(522,080.31)	1.21%
4000800 · Other Revenue				
4000840 · Interest Earned	51.54	1,100.00	(1,048.46)	4.69%
4000930 · Transfer In - Water & Sewer	0.00	166,788.00	(166,788.00)	0.0%
Total 4000800 · Other Revenue	51.54	167,888.00	(167,836.46)	0.03%
Total Income	6,449.23	696,366.00	(689,916.77)	0.93%
Expense				
5157900 · Long-Term Debt				
5157930 · Paying Agent Fees	0.00	500.00	(500.00)	0.0%
5157935 · 2011 Bond Issue Principle	0.00	400,000.00	(400,000.00)	0.0%
5157940 · 2011 Bond Issue Interest	0.00	233,425.00	(233,425.00)	0.0%
Total 5157900 · Long-Term Debt	0.00	633,925.00	(633,925.00)	0.0%
5159000 · Reserves				
5159015 · Debt Reserves	0.00	62,441.00	(62,441.00)	0.0%
Total 5159000 · Reserves	0.00	62,441.00	(62,441.00)	0.0%
Total Expense	0.00	696,366.00	(696,366.00)	0.0%
Net Income	6,449.23	0.00	6,449.23	100.0%

**City of Ovilla Capital Projects Fund
Profit & Loss Budget vs. Actual
October 2011**

	Oct '11 - Sep 12	Budget	\$ Over Budget	% of Budget Thru October
Income				
4000800 · Other Revenue				
4000840 · Interest Earned - Texpool	0.00	1.00	-1.00	0.0%
4000845 · Interest Earned - Texstar	0.10	2.00	-1.90	5.0%
4000850 · Interest Earned - Prosperity	0.00	575.00	-575.00	0.0%
Total 4000800 · Other Revenue	0.10	578.00	-577.90	0.02%
Total Income	0.10	578.00	-577.90	0.02%
Expense				
5879000 · Reserves				
5879010 · Admin Reserves	0.00	578.00	-578.00	0.0%
Total 5879000 · Reserves	0.00	578.00	-578.00	0.0%
Total Expense	0.00	578.00	-578.00	0.0%
Net Income	0.10	0.00	0.10	100.0%

City of Ovilla - Park Impact Fund
Profit & Loss Budget vs. Actual
October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Income				
4000400 · Charges for Services				
4000460 · Park Impact	0.00	670.00	(670.00)	0.0%
Total 4000400 · Charges for Services	0.00	670.00	(670.00)	0.0%
4000800 · Other Revenue				
4000840 · Interest Earned	0.36	55.00	(54.64)	0.66%
Total 4000800 · Other Revenue	0.36	55.00	(54.64)	0.66%
Total Income	0.36	725.00	(724.64)	0.05%
Expense				
5606400 · Minor Capital Outlay				
5606440 · Machinery and Equipment	0.00	3,000.00	(3,000.00)	0.0%
Total 5606400 · Minor Capital Outlay	0.00	3,000.00	(3,000.00)	0.0%
5609000 · Reserves				
5609035 · Park Impact Reserves	0.00	(2,275.00)	2,275.00	0.0%
Total 5609000 · Reserves	0.00	(2,275.00)	2,275.00	0.0%
Total Expense	0.00	725.00	(725.00)	0.0%
Net Income	0.36	0.00	0.36	100.0%

**Ovilla W&S Impact Fee Fund
Profit & Loss Budget vs. Actual
October 2011**

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Income				
4000400 · Charges for Services				
4000476 · Water Impact Fee	0.00	3,500.00	(3,500.00)	0.0%
4000477 · Sewer Impact Fee	0.00	1,600.00	(1,600.00)	0.0%
Total 4000400 · Charges for Services	0.00	5,100.00	(5,100.00)	0.0%
4000800 · Other Revenue				
4000840 · Interest Earned	15.78	780.00	(764.22)	2.02%
Total 4000800 · Other Revenue	15.78	780.00	(764.22)	2.02%
Total Income	15.78	5,880.00	(5,864.22)	0.27%
Expense				
5755500 · Repairs				
5755560 · Repairs- Water Lines	0.00	2,000.00	(2,000.00)	0.0%
Total 5755500 · Repairs	0.00	2,000.00	(2,000.00)	0.0%
5859000 · Reserves				
5859020 · Water Impact Fees Reserve	0.00	2,280.00	(2,280.00)	0.0%
5859030 · Sewer Impact Fees Reserve	0.00	1,600.00	(1,600.00)	0.0%
Total 5859000 · Reserves	0.00	3,880.00	(3,880.00)	0.0%
Total Expense	0.00	5,880.00	(5,880.00)	0.0%
Net Income	15.78	0.00	15.78	100.0%

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Accrual Basis

**Ovilla 4B Economic Development Corporation
Profit & Loss Budget vs. Actual**

October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
				9%
Income				
4000100 · Taxes				
4000120 · Sales tax	5,506.60	60,000.00	(54,493.40)	9.18%
Total 4000100 · Taxes	5,506.60	60,000.00	(54,493.40)	9.18%
4000800 · Other Revenue				
4000840 · Interest Income	44.84	550.00	(505.16)	8.15%
Total 4000800 · Other Revenue	44.84	550.00	(505.16)	8.15%
Total Income	5,551.44	60,550.00	(54,998.56)	9.17%
Expense				
8102200 · Special Services				
8102220 · Website Support & Maintenance	0.00	5,000.00	(5,000.00)	0.0%
8102230 · Legal Fees	0.00	500.00	(500.00)	0.0%
8102240 · Audit	0.00	1,360.00	(1,360.00)	0.0%
Total 8102200 · Special Services	0.00	6,860.00	(6,860.00)	0.0%
8102300 · Consultant Services				
8102310 · Consultant Fees	0.00	7,500.00	(7,500.00)	0.0%
8102350 · Contract Labor	0.00	5,000.00	(5,000.00)	0.0%
Total 8102300 · Consultant Services	0.00	12,500.00	(12,500.00)	0.0%
8103100 · General Supplies				
8103110 · Office Supplies	0.00	100.00	(100.00)	0.0%
Total 8103100 · General Supplies	0.00	100.00	(100.00)	0.0%
8104200 · Travel Expense				
8104210 · Travel Expense	0.00	1,500.00	(1,500.00)	0.0%
8104220 · Professional Development	89.00	1,500.00	(1,411.00)	5.93%
Total 8104200 · Travel Expense	89.00	3,000.00	(2,911.00)	2.97%
8105600 · Insurance				
8105620 · Insurance - Liability	0.00	175.00	(175.00)	0.0%
Total 8105600 · Insurance	0.00	175.00	(175.00)	0.0%
8105700 · Other Expenses				
8105705 · Postage	0.00	200.00	(200.00)	0.0%
8105730 · Memberships	0.00	1,100.00	(1,100.00)	0.0%
8105765 · Miscellaneous	0.00	1,000.00	(1,000.00)	0.0%
Total 8105700 · Other Expenses	0.00	2,300.00	(2,300.00)	0.0%
8109000 · Reserves				

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Accrual Basis

Ovilla 4B Economic Development Corporation
Profit & Loss Budget vs. Actual
October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
8109015 · Administrative Reserves	0.00	33,115.00	(33,115.00)	0.0%
8109215 · Transfer Out - General Fund	0.00	2,500.00	(2,500.00)	0.0%
Total 8109000 · Reserves	0.00	35,615.00	(35,615.00)	0.0%
 Total Expense	 89.00	 60,550.00	 (60,461.00)	 0.15%
 Net Income	 5,462.44	 0.00	 5,462.44	 100.0%

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Accrual Basis

**Ovilla Municipal Development District
Profit & Loss Budget vs. Actual**

October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Income				
4000100 · Taxes				
4000120 · Sales tax	1,558.00	15,000.00	-13,442.00	10.39%
Total 4000100 · Taxes	1,558.00	15,000.00	-13,442.00	10.39%
4000800 · Other Revenue				
4000840 · Interest Income	1.22	8.00	-6.78	15.25%
Total 4000800 · Other Revenue	1.22	8.00	-6.78	15.25%
Total Income	1,559.22	15,008.00	-13,448.78	10.39%
Expense				
9102200 · Special Services				
9102230 · Legal Fees	0.00	250.00	-250.00	0.0%
9102240 · Audit	0.00	1,360.00	-1,360.00	0.0%
9102250 · Accounting	0.00	250.00	-250.00	0.0%
Total 9102200 · Special Services	0.00	1,860.00	-1,860.00	0.0%
9102300 · Consultant Services				
9102310 · Consultant Fees	0.00	500.00	-500.00	0.0%
Total 9102300 · Consultant Services	0.00	500.00	-500.00	0.0%
9103100 · General Supplies				
9103110 · Office Supplies	0.00	100.00	-100.00	0.0%
Total 9103100 · General Supplies	0.00	100.00	-100.00	0.0%
9104200 · Travel Expense				
9104220 · Professional Development	0.00	250.00	-250.00	0.0%
Total 9104200 · Travel Expense	0.00	250.00	-250.00	0.0%
9105600 · Insurance				
9105620 · Insurance - Liability	0.00	200.00	-200.00	0.0%
Total 9105600 · Insurance	0.00	200.00	-200.00	0.0%
9105700 · Other Expenses				
9105705 · Postage	0.00	25.00	-25.00	0.0%
Total 9105700 · Other Expenses	0.00	25.00	-25.00	0.0%
9109000 · Reserves				
9109015 · Administrative Reserves	0.00	11,573.00	-11,573.00	0.0%
9109215 · Transfer Out - General Fund	0.00	500.00	-500.00	0.0%
Total 9109000 · Reserves	0.00	12,073.00	-12,073.00	0.0%

2:23 PM
11/15/11
Accrual Basis

**Ovilla Municipal Development District
Profit & Loss Budget vs. Actual**

October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Total Expense	0.00	15,008.00	-15,008.00	0.0%
Net Income	1,559.22	0.00	1,559.22	100.0%

Ovilla Police Department Special Fund
Profit & Loss Budget vs. Actual
October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October
Income				
4000800 · Other Revenue				
4000815 · Gifts	0.00	1,000.00	(1,000.00)	0.0%
Total 4000800 · Other Revenue	0.00	1,000.00	(1,000.00)	0.0%
 Total Income	0.00	1,000.00	(1,000.00)	0.0%
Expense				
5232600 · Special Expenses				
5232690 · Special Expenses - Other	219.99	1,565.00	(1,345.01)	14.06%
Total 5232600 · Special Expenses	219.99	1,565.00	(1,345.01)	14.06%
 5235500 · Repairs and Bldg Improvements				
5235540 · Repairs - Machinery & Equipment	0.00	1,000.00	(1,000.00)	0.0%
Total 5235500 · Repairs and Bldg Improvements	0.00	1,000.00	(1,000.00)	0.0%
 5235700 · Other Expense				
5235735 · Official Functions	0.00	1,000.00	(1,000.00)	0.0%
Total 5235700 · Other Expense	0.00	1,000.00	(1,000.00)	0.0%
 5239000 · Reserves				
5239010 · Administrative Reserves	0.00	(2,565.00)	2,565.00	0.0%
Total 5239000 · Reserves	0.00	(2,565.00)	2,565.00	0.0%
 Total Expense	219.99	1,000.00	(780.01)	22.0%
 Net Income	(219.99)	0.00	(219.99)	100.0%

Ovilla Fire Department Auxiliary Profit & Loss Budget vs. Actual October 2011

	Oct 11	Budget	\$ Over Budget	% of Budget Thru October 9%
Income				
4000800 · Other Revenue				
4000815 · Gifts	340.00	5,000.00	(4,660.00)	6.8%
4000830 · Vending Machines	0.00	100.00	(100.00)	0.0%
Total 4000800 · Other Revenue	340.00	5,100.00	(4,760.00)	6.67%
 Total Income	 340.00	 5,100.00	 (4,760.00)	 6.67%
 Expense				
5332100 · Employee Benefits				
5332196 · Membership Dues	0.00	100.00	(100.00)	0.0%
Total 5332100 · Employee Benefits	0.00	100.00	(100.00)	0.0%
 5333400 · Maintenance Supplies and Parts	 415.37	 2,000.00	 (1,584.63)	 20.77%
5333460 · Supplies - Miscellaneous				
Total 5333400 · Maintenance Supplies and Parts	415.37	2,000.00	(1,584.63)	20.77%
 5334200 · Travel Expenses	 0.00	 150.00	 (150.00)	 0.0%
5334220 · Professional Development				
Total 5334200 · Travel Expenses	0.00	150.00	(150.00)	0.0%
 5335700 · Other Expense	 0.00	 2,000.00	 (2,000.00)	 0.0%
5335735 · Official Functions				
Total 5335700 · Other Expense	0.00	2,000.00	(2,000.00)	0.0%
 5339000 · Reserve	 0.00	 850.00	 (850.00)	 0.0%
5339010 · Admin Reserves				
Total 5339000 · Reserve	0.00	850.00	(850.00)	0.0%
 Total Expense	 415.37	 5,100.00	 (4,684.63)	 8.15%
 Net Income	 (75.37)	 0.00	 (75.37)	 100.0%

CONSENT ITEMS

Item(s): 2 (City Secretary use only)

Meeting Date: November 28, 2011

Department: Administration & Utility Billing

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Attachments:

1. Minutes of the November 14, 2011 Regular Council Meeting
2. Annual UB Software Support and Agreement with AVR

Agenda Item / Topic:

Discussion / Justification:

Recommendation / Staff Comments:

Staff recommends approval.

Sample Motion(s):

"I MAKE A MOTION THAT COUNCIL APPROVES/DENIES THE CONSENT ITEMS AS PRESENTED."

"I MAKE A MOTION THAT COUNCIL APPROVES/DENIES THE CONSENT ITEM(S) AS PRESENTED WITH THE EXCEPTION OF _____ TO PULL FOR DISCUSSION/ACTION PRIOR TO APPROVAL."

CITY OF OVILLA MINUTES
Monday, 14 November 2011
Regular City Council Meeting
105 S. Cockrell Hill Road, Ovilla, TX 75154

Mayor Vansyckle called the Regular Council Meeting of the Ovilla City Council to order at 7:00 P.M. The following City Council Members were present:

Tom Leverentz	Mayor Pro-Tem, Place 1
James Wade	Council Member, Place 3
Doug Hunt	Council Member, Place 4
Richard Dormier	Council Member, Place 5
Absent: Michael Dickey	Council Member, Place 2

Noted members were present, thus constituting a quorum.

City Administrator Randy Whiteman and various department-head staff members were also present.

PL 5 Dormier gave the Invocation.

Mayor Pro-Tem Leverentz led the Pledge of Allegiance.

Comments, Presentations and Reports and Appointments

Mayor Vansyckle read a letter received from the City of Waxahachie sharing appreciation to all first responders' quick action and leadership to the fire at the Magnablend facility.

CITIZENS COMMENTS / CITIZENS FORUM:

1. Ms Jimmie Wade – stated that the recent water main line breaking on Main Street helped to locate the water & sewer lines. Ms Wade still wanted a sewer line commitment from Council on Main Street.
2. Ms Becky Freeman – Urged Council to approve the Tabled Item regarding the amendment to the codification for accessory building materials. Ms Freeman complimented Mike Dooly's presentation to the Planning & Zoning Commission.
3. Mayor Vansyckle gave a health and recovery report on PL 2 Mike Dickey.

♦ **Department Activity Reports / Discussion**

- ♦ Police Department
 - Monthly ReportChief M. Moon
- ♦ Fire Department
 - Monthly Report
 - Discussed the National Emergency Broadcast failure with PL 3 Wade.Fire Chief D. Pickard
- ♦ Public Works
 - Monthly ReportDirector B. Piland
- ♦ Finance Department
 - Monthly Municipal Court Report – slight decrease from this time last year.Accountant S. Jungman
- ♦ Administration
 - Monthly Report – Code Enforcement/Animal Control
 - Discussed the Charter Communications franchise authority.City Administrator R. Whiteman

CONSENT ITEMS:

- ◆ Monthly Financial Transactions
- ◆ Quarterly Investment Report
- ◆ Annual Investment Report
- ◆ Minutes of the October 24, 2011 Regular Council Meeting.
- ◆ Annual Membership Participation Fee to the TX Cooperative-Purchasing Program.

PL4 Hunt made a motion approve the consent items as presented.

PL5 Dormier seconded the motion.

*Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.
Present Council announced AYE in favor. No oppositions, no abstentions.*

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

TABLED ITEM(S)

Mayor Vansyckle interrupted the regular order of the agenda to ask Council if they wished to pull the Tabled Item to address prior to Individual Consideration.

PL5 Dormier made a motion the pull the tabled item for consideration and discussion.

PL4 Hunt seconded the motion.

*Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.
Present Council announced AYE in favor. No oppositions, no abstentions.
Place 2 Dickey was noted absent.*

VOTE: The motion carried unanimously: 4-0.

The Tabled Item was open for discussion and consideration.

ITEM 2. FROM THE OCTOBER 24, 2011 COUNCIL MEETING.

Discussion/Action – Receive written recommendation from the Planning & Zoning Commission and consider proposed Ordinance 2011-026 amending the Ovilla Code of Ordinances, Section 30.5 Construction Materials for Residential Accessory Buildings.

- Initiated by Mayor Vansyckle, presented by Administrative staff.

During the October 24 Public Hearing and Council consideration regarding this item, staff was directed to return with additional information. Miscellaneous photo samples and additional detailed information were presented.

PL4 Hunt made a motion that Council approve the adoption of Ordinance 2011-026 amending the Ovilla Code of Ordinances, Section 30.5, construction materials for residential accessory buildings as presented **and** with an amendment to include simulated finishes of wood or masonry.

PL3 Wade seconded the motion.

*Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.
Present Council announced AYE in favor. No oppositions, no abstentions.
Place 2 Dickey was noted absent.*

VOTE: The motion carried unanimously: 4-0.

Mayor Vansyckle returned to the regular order of the agenda.

REGULAR AGENDA**INDIVIDUAL CONSIDERATION:**

ITEM 1. **Discussion/Action** – Consider approval of \$10,030 invoice credits on the Five-Year Water & Wastewater Impact Fee Review (2011 Impact Fee Analysis) for a mathematical calculation error discovered in the previous study.

- Presented by Administrative staff.

City Administrator Randy Whiteman explained that during the Impact Fee Study, the City's engineering firm (Birkhoff, Hendricks & Carter, L. L. P.) made a calculation error from the previous study.

Mayor Pro-Tem Leverentz made a motion that Council approves Birkhoff, Hendricks & Carter L. L. P., firm's offer to forfeit \$10,030 outstanding invoices on the Five-Year Water & Wastewater Impact Fee Review.

PL4 Hunt seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

ITEM 2. **Discussion/Action** – Consider Resolution 2011-022 of the City of Ovilla casting votes to elect a Director for the Ellis Appraisal District for the Years 2012-2013.

- Presented by Administrative staff.

PL4 Hunt made a motion that Council approves Resolution 2011-022 casting all votes for Mr. Lynch and submitting the official ballot to elect Phillip Lynch as a Director for the Ellis Appraisal District for the years 2012-2013.

PL5 Dormier seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

ITEM 3. **Discussion/Action** – Consider Resolution 2011-023 of the City of Ovilla casting its vote for the fourth member of the Board of Directors of the Dallas Central Appraisal District for the Years 2012-2013.

- Presented by Administrative staff.

The City Administrator explained that this annual membership gives cities straightforward and cost-effective ways to share in the influence of electric policy in TX.

PL4 Hunt made a motion that Council approves Resolution 2011-023 casting its vote and submitting the official ballot to elect Mr. Michael Hurt as a fourth member to the Board of Directors on the Dallas Central Appraisal District for years 2012-2013.

Mayor Pro-Tem Leverentz seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

ITEM 4. Discussion/Action – Consider approval of a proposed Inter-Local Cooperation Billing Agreement with Sardis-Lone Elm Water Supply.

- Presented by City Administrator Randy Whiteman.

City Administrator Randy Whiteman explained that at the last meeting Council approved an Inter-Local Billing Agreement with Sardis for Ovilla Parc. This agreement amended the original one to include not only Ovilla Parc but Highland Meadows too.

PL5 Dormier made a motion that Council approves the Inter-local Cooperation Billing Agreement with Sardis-Lone Elm Water Supply as presented.

Mayor Pro-Tem Leverentz seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

Council's Request for Consideration of Future Agenda Items

Place 5, Dormier:	None
Place 4, Hunt:	Item to discuss increasing the size of accessory buildings
Place 3, Wade:	None
Mayor:	None
Place 2, Dickey:	Absent
Mayor Pro-Tem Leverentz:	None

Adjournment

PL3 Wade made a motion to adjourn the meeting of November 11, 2011 at 8:10 P.M.

Mayor Pro-Tem Leverentz seconded the motion.

VOTE: The motion carried unanimously.

Bill Vansyckle, Mayor

ATTEST:

Pam Woodall Higgins

Approved November 28, 2011



Date	Invoice #
11/14/2011	26355

Bill To

OVILLA, CITY OF
105 S COCKREEL HILL RD
OVILLA, TX 75154

AVR, Inc.

2000 W GOVERNORS CIRCLE
SUITE M
HOUSTON, TEXAS 77092

Phone # 713-523-1623

Fax # 713-523-0571

www.avruba.com

Print Date	Terms	Rep	
	01/01/12	ZKR	
Quantity	Description	Price Each	Amount
1	ANNUAL UB SOFTWARE SUPPORT FROM 01/01/12 TO 12/31/12	3,434.00	3,434.00
		57.55230	
		Subtotal	\$3,434.00
		Sales Tax (0.0%)	\$0.00
		Payments/Credits	\$0.00
		Balance Due	\$3,434.00

PLEASE RETURN THIS WITH
YOUR PAYMENT.
THANK YOU

SOFTWARE MAINTENANCE AGREEMENT

THIS SOFTWARE MAINTENANCE AGREEMENT ("Agreement") is made as of the Effective Date by and between AVR, Inc. with offices located at 2000 W Governors Circle Suite M, Houston, Texas 77092 (hereinafter "AVR, Inc.") and City of Ovilla with offices located at South Cockrell Hill Rd. Ovilla, TX 75154 (hereinafter "Customer").

WITNESSETH:

WHEREAS, AVR, Inc. has licensed to Customer that certain Licensed Software and Documentation as defined in that certain Software License Agreement by and between AVR, Inc. as Lessor and Customer as Licensee for that certain computer software known as uVision ("Software License"), which is incorporated herein by this reference; and

WHEREAS, effective use of the Licensed Software and Documentation requires certain maintenance, training and user support services; and

WHEREAS, AVR, Inc. is in the business of maintaining the Licensed Software and Documentation and has the expertise to maintain the Licensed Software and Documentation; and

WHEREAS, AVR, Inc. is in the business of providing computer software training and support services for the Licensed Software; and

WHEREAS, Customer desires AVR, Inc. to provide Customer with computer software maintenance, training and user support services for the Licensed Software and Documentation.

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, AVR, Inc. and Customer hereby agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS

Section 1.01 -- Recitals: The above recitals and identification of parties is true and correct.

Section 1.02 -- Definitions: The following definitions shall apply:

(1) Computer: The term "Computer" shall mean the computer as defined in the Software License, including any and all additional or replacement equipment attached thereto or integrated therewith by Customer during the Maintenance Term as well as any updates, revisions, or upgrades thereto.

(2) Defect: The term "Defect" shall mean any deviation between the actual performance, utility and functionality of the Licensed

Software on the Computer and the performance, utility, and functionality of the Licensed Software as represented in the Documentation. The term "Defect" shall also mean any inefficiency or problem encountered in using, operating or executing the Licensed Software.

(3)

Documentation: The term "Documentation" shall mean the user manuals, systems documentation, brochures, product and service descriptions and training materials for the Licensed Software including all modifications, improvements, replacements, updates, enhancements, additions, upgrades and changes thereto made from time to time during the Maintenance Term.

(4)

Effective Date: The term "Effective Date" shall mean the date this Agreement is signed by AVR, Inc..

(5)

Enhancement: The term "Enhancement" shall mean a change to the Licensed Software desired by Customer involving substantial programming additions or modifications to the source code of the Licensed Software which is performed by AVR, Inc. pursuant to Section 3.02 of this Agreement for use solely by Customer.

(6)

Implement: The term "implement" and variants thereof (including, but not limited to, the terms "implementation", "implementing" and "implemented") shall mean to install and make fully operational for user access and use.

(7)

Licensed Software: The term "Licensed Software" shall mean uVision as defined in the Software License and as improved, modified, replaced, updated, enhanced, upgraded, corrected, maintained and further developed from time to time by AVR, Inc. during the Maintenance Term.

(8)

Maintenance: The term "Maintenance" shall mean the work required by AVR, Inc. to keep its software operating as intended, but does not specifically include (unless purchased by the Customer) the additional services listed in Section 3.04 below)

(9)

Maintenance Term: The term "Maintenance Term" shall mean a period starting with the Effective Date and continuing for twelve (12) consecutive months or until terminated under this Agreement. This Agreement shall automatically renew starting with the first anniversary of the Effective Date and each anniversary thereafter, unless notice of its election not to renew is delivered to the non-terminating party within sixty (60) days of the

then current term.

(10) **Update:** The term "Update" shall mean any and all corrections, updates, additions, or changes to the Licensed Software.

ARTICLE II: MAINTENANCE SERVICES

Section 2.01 -- Error Correction: AVR, Inc. shall correct any Defects in the Licensed Software within a reasonable time after such Defect is reported to AVR, Inc. by Customer, during normal business hours 8:00 a.m. to 5:00 p.m. CST Monday to Friday, excluding holidays as follows:

(1) **Problem Reporting:** Upon discovering a Defect, Customer shall report the Defect ("Service Request") to Help Desk by prompt communication by telephone, e-mail or faxing a report. The Help desk will be responsible for facilitating Error Correction Services. A Help Desk coordinator will be responsible for logging and tracking Errors after they have been reported by Customer, contacting the Technical Coordinator to confirm receipt of a Problem Report and jointly determining the priority level of the Error. Priority levels will be determined as follows:

A. Priority "Level 1" - Means a Discrepancy with the software which causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Software inoperable or significantly impacts functionality. Discrepancy given this priority have no viable workaround or voidance procedure. These discrepancies will be addressed immediately. Customer will be advised by the Help Desk as to the statue of efforts to resolve the "Level 1" Error.

B. Priority "Level 2" - Means a Discrepancy with the software which results in an inconvenience to users but do not render the software inoperable, but which have an important impact on functionality. These discrepancies will be addressed after all "Level 1" errors have been resolved.

C. Priority "Level 3" - Means a Discrepancy in the software which can easily be avoided or detoured. Discrepancy given this priority have a workaround and which does not have impact on functionality. These are low priority issues that shall be responded to within (48) hours after receiving request.

(2) **Telephone Support:** Within one (1) business day of receiving a Service Request, AVR, Inc. shall provide unlimited telephone support in the form of consultations, assistance and

advice concerning use of the Licensed Software and correction of the Defect.

(3) **Off-site Support:** If a Defect cannot be corrected through telephone support AVR, Inc. shall immediately begin conducting tests and analysis at AVR, Inc.'s facility designed to reproduce, isolate and correct the Defect on a first priority basis using data and information provided to AVR, Inc. by Customer. Customer shall submit to AVR, Inc. all such data and information which AVR, Inc. may reasonably require to reproduce the Defect on AVR, Inc.'s computer located at AVR, Inc.'s facility.

(4) **On-Site Support:** If a Defect can not be corrected at AVR, Inc. we shall provide qualified software engineers at Customer's facility for the purpose of correcting the Defect ("On-site Services"). AVR, Inc. shall implement work around processes designed to minimize the impact of the Defect while AVR, Inc. continues on-site testing and analysis procedures for the purposes of reproducing, isolating and correcting the Defect.

Section 2.02 -- Software Updates: AVR, Inc. shall implement all Updates on the Computer within thirty days after the date that such Update is released by AVR, Inc. Along with any Updates provided to Customer by AVR, Inc. hereunder, AVR, Inc. shall provide documentation describing the purpose, function and utility of such Update.

ARTICLE III: CUSTOMER SUPPORT

Section 3.01 -- Customer Consultations: AVR, Inc. shall provide Customer with unlimited telephone consultations in answering questions concerning use of the Licensed Software. AVR, Inc. shall respond to any such questions on a priority basis.

Section 3.02 -- Program Modifications: Upon discovering a desired Enhancement in the Licensed Software, Customer may request implementation of the Enhancement. AVR, Inc. shall implement such Enhancements, at its discretion, as of the software release of the Licensed Software next following the date implementation of the Enhancement is requested. Along with any Enhancements provided to Customer by AVR, Inc. hereunder, AVR, Inc. shall provide documentation describing the purpose, function and utility of such Enhancement. Such modifications shall not jeopardize the basic functionality of the Software or coverage of the Software under this Section. AVR, Inc. reserves the right and ownership of all Enhancements and may at its discretion provide these Enhancement to all Customer at the next release of Licensed Software Update. These services are normally charged on a time and materials basis including expenses and are subject to availability.

Section 3.03 -- Data Storage & Recovery: AVR, Inc. shall offer assistance, upon purchase of such additional services by Customer, to recover the files of the Licensed Software upon Customer request, providing the Customer has exercise one of the following option;

- A) Purchased and is current with payment for a "Back up Disaster Program" thru AVR, Inc. If purchased, Customer must use this service as it is intended on regularly scheduled intervals. This service connects to Customer's server to generates a full back up each night of either/or Utility Billing and Accounting Software. Checks for corruption and/or FTP transmission problems. AVR, Inc. guarantees that 3 out of the 5 back ups per week will be usable and free of corruption. This service is an added back up to Customer normal back up routine and should not be relied upon as the sole source of data storage.
- B) Purchased and is current with payment for "Statement Outsource Printing" thru AVR, Inc. If purchased, Customer must use this service as it is intended on regularly scheduled intervals. The backup process is an added feature of this service and AVR, Inc. guarantees that 3 out of the 5 back ups per week will be usable and free of corruption. This service is an added back up to Customer's normal back up routine and should not be relied upon as the sole source of data storage.
- C) Provide AVR, Inc. with Customer most recent backup data on a media device that is compatible with AVR, Inc. equipment. AVR, Inc. Licensed Software Data recovery shall be performed according to methodology and time frame established by AVR, Inc. This service will be performed and invoiced at the published labor rate of AVR, Inc. exclusive of any and all travel related cost and applicable taxes. This option provides no guarantee of success by AVR, Inc. since the backup data is being created and provided solely by Customer.

Section 3.04 -- Additional Services and Charges: AVR, Inc. may and does offer additional services such as training and consulting under separate agreements. Such services can be preformed at a site and time mutually agreeable. These services are normally charged on a time and materials basis including expenses and are subject to availability. AVR, Inc. reserves the right to charge for services outside of the range of normal support services. Such services considered outside of the range of normal support services are (1) Implementing Rate Changes, (2) Rate Analysis Consulting, (3) Training (New or existing

employee (s)), (4) Interface(s) for GIS, Accounting, Hand Held or Online Payments, (5) Statement Processing, (6) Online bill presentment and payment hosting, (7) Special or modified programs, (8) Data Storage & Recovery, (9) Additional district or cycle setup, (10) Troubleshooting Network or Hardware Issues, (11) Troubleshooting problems in non-AVR Software supported products, or in combination of AVR Software supported and non-supported products where the problem occurs in the non-AVR software product, (12) Other cases where it is judged highly likely that the suspected problem is not the responsibility of AVR Software. When a situation occurs where a reported problem is likely to fall outside of the range of supported services, you will be advised of the potential of incurring charges to have AVR, Inc. software work on the problem. An estimate of the cost of the additional services will be prepared and delivered to you, by appropriate means, for your approval and agreement. Should we find that the problem is, indeed, caused by a supported product, no charges will be incurred. However, if it is proven that the problem is not the responsibility of AVR, Inc. software, you will be charged for the time spent at the rates specified in the estimate/service agreement. Should you not agree that the requested service fall out of the bounds of supported services, your account representative at AVR, Inc. will mediate the issue for you.

ARTICLE IV: TRAINING

Section 4.01 -- Classroom Training: Representatives of Customer (as designated by Customer) shall have the right to attend classroom training at the classroom facilities of AVR, Inc. as described in the Proposal Documentation during the initial implementation. Such classroom training shall provide instruction and guidance on using and operating the Licensed Software, including, but not limited to, performing all of the functions and processes described in the Documentation. Such classroom instruction shall be made available to Customer on an as needed basis. After initial implementation this service will be performed and invoiced at the published labor rate of AVR, Inc.

Section 4.02 -- On-Site Training: During the initial implementation days of the License Software, as described in the Proposal Documentation AVR, Inc. shall provide on-site individual training and customer support to Customer as purchased by Customer. Such on-site training shall include individualized instruction and training on using and operating the Licensed Software for persons designated by Customer. Such training shall include instructions and guidelines on performing all of the functions and processes described in the Documentation. After initial implementation this service will be performed and invoiced at the published labor rate of AVR, Inc. exclusive of any and all travel related cost and applicable taxes.

ARTICLE V: PAYMENT

Section 5.01 -- Maintenance Fees: Customer shall pay the Maintenance Fee on the Effective Date of this Agreement in accordance with Schedule A which is attached and incorporated herein to this Agreement, and shall further pay for all renewals of said Agreement on each anniversary of the Effective Date, subject to receipt of notice from AVR, Inc. that such Maintenance Fee is due and payable per Section 5.04 immediately below. Payment of the Maintenance Fee shall be subject to a thirty (30) day grace period.

Section 5.02 -- Customer Support Fees: The program modification services described in Section 3.02 shall be performed at the published labor rates of AVR, Inc. and will incur additional Maintenance Fee on approved modification equal to a percentage of the current retail value of modification. The Data recovery services described in Section 3.03 shall be performed by AVR, Inc. at the published labor rates of AVR, Inc. The additional services described in Section 3.04 shall be performed at the published labor rates of AVR, Inc. and may incur additional Maintenance Fee equal to a percentage of the current retail value of modification.

Section 5.03 -- Costs: The fees set forth above shall exclude all applicable taxes for (federal, state, county, local, or other taxes arising in the United States or its states (or other internal jurisdictions). Customer shall pay shipping and insurance charges for products shipped between AVR, Inc. and Customer.

Section 5.04 -- Invoicing and Payment: AVR, Inc. shall invoice Customer annually in advance for any maintenance fees for providing services under this Agreement pursuant to Section 5.01 immediately above herein. Customer shall pay any such invoice in full within thirty (30) days after receipt by Customer.

ARTICLE VI: TERMINATION

Section 6.01 -- Termination Limitations: This Agreement may only be terminated as provided under this Article VI.

Section 6.02 -- Termination: Starting one (1) year after the Effective Date, either party may terminate this Agreement with sixty (60) days written notice of termination to the other party.

Section 6.03 -- Re-instatement after Termination: Customer shall be charged a re-instatement fee equivalent to twenty-five percent (25%) of the current retail value of the SOFTWARE if the re-instatement fee occurs within twelve (12) months of the original cancellation date. Beyond twelve (12) months from the original cancellation date, the re-instatement fee will be fifty percent (50%) of the current retail value of the SOFTWARE. In addition to the re-instatement fee, Customer must pay the appropriate annual Maintenance Fee calculated at the current published prices, in order to re-instate support.

Section 6.04 -- Termination for AVR, Inc. Failure: Notwithstanding any provision to the contrary herein, Customer shall have the right to terminate this Agreement upon providing AVR, Inc. with ten (10) days advance written notice in the event any one of the following occurs:

- (1) Termination of Business Activity: AVR, Inc. terminates or suspends business operations;
- (2) Bankruptcy: AVR, Inc. becomes insolvent, bankrupt, makes an assignment for the benefit of creditors or becomes subject to any bankruptcy or insolvency proceeding under any Federal or state statute;

Section 6.05 -- Force Majeure: If AVR, Inc. is unable to perform its obligations under this Agreement for causes beyond its reasonable control, including without limitation, an act of government, fire, flood, power shortage or blackouts, breakdown of telephone lines and services, failure of Internet, accident, acts of public enemy, war, rebellion, labor dispute or unrest, insurrection, sabotage, transportation delays (other than administrative oversights), shortage of raw material, energy or machinery, acts of God, government or the judiciary, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.

ARTICLE VII: WARRANTY AND INDEMNIFICATION

Section 7.01 -- Maintenance Warranty: AVR, Inc. warrants that all Updates and Enhancements implemented by AVR, Inc. shall be fully compatible with each other, the Licensed Software and the Computer. AVR, Inc. warrants that the Licensed Software shall be kept current to AVR internal standards.

Section 7.02 -- Service Warranty: The services to be provided by AVR, Inc. hereunder shall be performed on a best efforts basis and in a timely and professional manner by qualified software personnel familiar with the Licensed Software, and shall conform to the standards generally observed in the industry for similar services. Such services shall be in compliance with all applicable laws, rules, regulations or orders.

Section 7.03 -- Software Modifications: If the Licensed Software is modified by any party other than AVR, Inc., the maintenance warranty granted in Section 7.01 shall be void.

Section 7.04 -- Original Development: Lessor represents and warrants that use of any Updates or Enhancements by Customer shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party.

Section 7.05 -- Documentation Warranty: AVR, Inc.

warrants that the Documentation shall be kept current with the Updates and Enhancements for the Licensed Software as such Updates and Enhancements are released.

Section 7.06 (a) -- Indemnification by AVR: AVR, Inc. shall defend, indemnify and hold harmless Customer (including employees, consultants, agents, and subcontractors of Customer) against any liability arising from the failure of AVR, Inc. to perform the services described under this Agreement or any claim by any third party against Customer arising from, or related to, Customer's use of any Update or Enhancement, including (but not limited to) any claimed violations of trade secrets, proprietary information, trademark, copyright or any patent rights. If Customer's quiet enjoyment and use of any Update or Enhancement is disrupted as a result of a third party claim, AVR, Inc. shall perform one or all of the following actions within one year of the date such third party's claim is discovered by Customer:

Section 7.06 (b) -- Indemnification by Customer: Subject to the preceding paragraph, Customer shall defend, indemnify and hold harmless AVR, Inc. (including employees, consultants, agents, and subcontractors of AVR) against any liability and/or claims brought against AVR, Inc. arising from the failure of Customer to perform the services required of Customer and described under this Agreement arising from, or related to such claims being based upon allegations that software data Customer was lost, damaged, and/or destroyed without Customer first having previously purchased and maintained the service of AVR, Inc. under paragraph 3.03 of this Agreement.

Section 7.06 (c) -- Conditions to Indemnification: The foregoing obligations are conditioned upon: (a) prompt written notices by the indemnified party to the indemnifying party of any claim, action or demand for which indemnity is claimed; (b) complete control of the defense and settlement thereof by the indemnifying party, provided that no settlement of an indemnified claim shall be made without the consent of the indemnified party, such consent not to be unreasonably withheld or delayed; and (c) reasonable cooperation by the indemnifying party may request. The indemnified party shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Section 7.06 (d) -- Definition of "Claims": For purpose of Section 7.06 "Claims" means losses, actions, liabilities, damages, expenses and reasonable attorneys' fee and court costs.

- (1) Replacement: Replace the Update or Enhancement, at AVR, Inc.'s cost, with a compatible, functionally equivalent and non-infringing software product; or
- (2) Modification: Modify the Update or

Enhancement to avoid the infringement without frustrating the purpose for which the Update or Enhancement was developed or reducing the capability of the Update or Enhancement; or

(3) License: Obtain a license for Customer to use the Update or Enhancement for the remainder of the Maintenance Term.

Section 7.07 -- Authorized AVR, Inc.: AVR, Inc. hereby represents and warrants that AVR, Inc. is authorized to provide the maintenance, customer support and training services described under this Agreement.

ARTICLE VIII: INTELLECTUAL PROPERTY AND INSURANCE

Section 8.01 -- Update Ownership and Title: Title to any Update or Enhancement including applicable ownership rights to patents, copyrights, trademarks and trade secrets therein shall remain the exclusive property of AVR, Inc..

Section 8.02 -- Confidentiality: AVR, Inc. hereby acknowledges that in providing the maintenance, training and customer support services described hereunder, AVR, Inc. may learn information which is confidential and proprietary to Customer or the patients of Customer. AVR, Inc. hereby agrees not to disclose any information identified by Customer as confidential or proprietary.

Section 8.03 -- Security Regulation: In providing services under this Agreement, AVR, Inc. shall insure that its employees, servants and agents obey all reasonable instructions, directions and regulations of Customer while on the premises of Customer.

ARTICLE IX: MISCELLANEOUS

Section 9.01 -- Reasonable Assistance: Customer shall provide AVR, Inc. with reasonable access to the Licensed Software, Documentation and the Computer upon request by AVR, Inc. for purposes of rendering services hereunder.

Section 9.02 -- Assignments: All assignments of rights under this Agreement by AVR, Inc. without the prior written consent of Customer shall be void.

Section 9.03 -- Entire Agreement: Excepting the Software License, this Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning maintenance, customer support or training services for the Licensed Software.

Section 9.04 -- Amendments and Modifications: Waivers, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by an authorized representative of

both parties.

Section 9.05 -- Severability: If a provision of this Agreement is rendered invalid by legislation, or by a court of last resort, the remaining provisions shall remain in full force and effect.

Section 9.06 -- Captions: The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 9.07 -- Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 9.08 -- Governing Law: This Agreement is governed by the laws of the State of Texas with venue in Harris County, Texas

Section 9.09 -- Notice: Notices shall be in writing and shall be deemed delivered in person when delivered by hand or mailed postage prepaid by Certified or Registered Mail -- Return Receipt Requested -- to the person and address designated below. Notice shall be deemed given on the date of receipt -- as evidenced in the case of Certified or Registered Mail by Return Receipt

AVR, INC.: c/o Ron Emberg, CEO.
2000 W Governors Circle Suite M.
Houston, Texas 77092

CUSTOMER:
City of Ovilla
South Cockrel Hill Rd.
Ovilla, TX 75154

Section 9.10 -- Pronouns/Gender: Pronouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

Section 9.11 -- Bankruptcy: If either party must institute, defend, appear or attend a bankruptcy proceeding as a result of the filing of bankruptcy by the other party, fees and expenses shall be born by the filing party. If either party has a bankruptcy proceeding filed against it, the other party shall recover attorney fees, expert witness fees, and other costs incurred in connection with the bankruptcy proceeding, hearing or trial.

Section 9.12 -- Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach.

Failing to enforce a provision of this Agreement shall

not constitute a waiver or create an estoppel from enforcing such provision.

Section 9.13 -- Relationship of the Parties: It is agreed that the relationship of the parties is primarily that of Customer and AVR, Inc.. Nothing herein shall be construed as creating partnership, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

Section 9.14 -- Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the American Arbitration Association Rules. Arbitration shall occur in Houston, Harris County, Texas. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall be initially responsible for one-half of the costs of said arbitration with the possible reimbursement of legal and arbitration costs being an issue subject to decision in said arbitration. Qualified Arbitrators shall be selected by the parties in accordance with the American Arbitration Association Rules. Each Party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure. The Arbitration shall be administered by the American Arbitration Association.

Section 9.15 -- Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under this Agreement are true, correct and accurate as of the date of this Agreement to the best of their knowledge.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

AVR, INC.

Signature: 
TITLE: CEO
DATE: 11-15-11

CUSTOMER: City of Ovilla

Signature: _____

TITLE: _____

DATE: _____

FOR YOUR RECORDS

SOFTWARE MAINTENANCE AGREEMENT

THIS SOFTWARE MAINTENANCE AGREEMENT ("Agreement") is made as of the Effective Date by and between AVR, Inc. with offices located at 2000 W Governors Circle Suite M, Houston, Texas 77092 (hereinafter "AVR, Inc.") and City of Ovilla with offices located at South Cockrell Hill Rd. Ovilla, TX 75154 (hereinafter "Customer").

WITNESSETH:

WHEREAS, AVR, Inc. has licensed to Customer that certain Licensed Software and Documentation as defined in that certain Software License Agreement by and between AVR, Inc. as Lessor and Customer as Licensee for that certain computer software known as uVision ("Software License"), which is incorporated herein by this reference; and

WHEREAS, effective use of the Licensed Software and Documentation requires certain maintenance, training and user support services; and

WHEREAS, AVR, Inc. is in the business of maintaining the Licensed Software and Documentation and has the expertise to maintain the Licensed Software and Documentation; and

WHEREAS, AVR, Inc. is in the business of providing computer software training and support services for the Licensed Software; and

WHEREAS, Customer desires AVR, Inc. to provide Customer with computer software maintenance, training and user support services for the Licensed Software and Documentation.

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, AVR, Inc. and Customer hereby agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS

Section 1.01 -- Recitals: The above recitals and identification of parties is true and correct.

Section 1.02 -- Definitions: The following definitions shall apply:

(1) Computer: The term "Computer" shall mean the computer as defined in the Software License, including any and all additional or replacement equipment attached thereto or integrated therewith by Customer during the Maintenance Term as well as any updates, revisions, or upgrades thereto.

(2) Defect: The term "Defect" shall mean any deviation between the actual performance, utility and functionality of the Licensed

Software on the Computer and the performance, utility, and functionality of the Licensed Software as represented in the Documentation. The term "Defect" shall also mean any inefficiency or problem encountered in using, operating or executing the Licensed Software.

(3) Documentation: The term "Documentation" shall mean the user manuals, systems documentation, brochures, product and service descriptions and training materials for the Licensed Software including all modifications, improvements, replacements, updates, enhancements, additions, upgrades and changes thereto made from time to time during the Maintenance Term.

(4) Effective Date: The term "Effective Date" shall mean the date this Agreement is signed by AVR, Inc..

(5) Enhancement: The term "Enhancement" shall mean a change to the Licensed Software desired by Customer involving substantial programming additions or modifications to the source code of the Licensed Software which is performed by AVR, Inc. pursuant to Section 3.02 of this Agreement for use solely by Customer.

(6) Implement: The term "implement" and variants thereof (including, but not limited to, the terms "implementation", "implementing" and "implemented") shall mean to install and make fully operational for user access and use.

(7) Licensed Software: The term "Licensed Software" shall mean uVision as defined in the Software License and as improved, modified, replaced, updated, enhanced, upgraded, corrected, maintained and further developed from time to time by AVR, Inc. during the Maintenance Term.

(8) Maintenance: The term "Maintenance" shall mean the work required by AVR, Inc. to keep its software operating as intended, but does not specifically include (unless purchased by the Customer) the additional services listed in Section 3.04 below)

(9) Maintenance Term: The term "Maintenance Term" shall mean a period starting with the Effective Date and continuing for twelve (12) consecutive months or until terminated under this Agreement. This Agreement shall automatically renew starting with the first anniversary of the Effective Date and each anniversary thereafter, unless notice of its election not to renew is delivered to the non-terminating party within sixty (60) days of the

then current term.

(10) Update: The term "Update" shall mean any and all corrections, updates, additions, or changes to the Licensed Software.

ARTICLE II: MAINTENANCE SERVICES

Section 2.01 -- Error Correction: AVR, Inc. shall correct any Defects in the Licensed Software within a reasonable time after such Defect is reported to AVR, Inc. by Customer, during normal business hours 8:00 a.m. to 5:00 p.m. CST Monday to Friday, excluding holidays as follows:

(1) Problem Reporting: Upon discovering a Defect, Customer shall report the Defect ("Service Request") to Help Desk by prompt communication by telephone, e-mail or faxing a report. The Help desk will be responsible for facilitating Error Correction Services. A Help Desk coordinator will be responsible for logging and tracking Errors after they have been reported by Customer, contacting the Technical Coordinator to confirm receipt of a Problem Report and jointly determining the priority level of the Error. Priority levels will be determined as follows:

A. Priority "Level 1" - Means a Discrepancy with the software which causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Software inoperable or significantly impacts functionality. Discrepancy given this priority have no viable workaround or voidance procedure. These discrepancies will be addressed immediately. Customer will be advised by the Help Desk as to the statue of efforts to resolve the "Level 1" Error.

B. Priority "Level 2" - Means a Discrepancy with the software which results in an inconvenience to users but do not render the software inoperable, but which have an important impact on functionality. These discrepancies will be addressed after all "Level 1" errors have been resolved.

C. Priority "Level 3" - Means a Discrepancy in the software which can easily be avoided or detoured. Discrepancy given this priority have a workaround and which does not have impact on functionality. These are low priority issues that shall be responded to within (48) hours after receiving request.

(2) Telephone Support: Within one (1) business day of receiving a Service Request, AVR, Inc. shall provide unlimited telephone support in the form of consultations, assistance and

advice concerning use of the Licensed Software and correction of the Defect.

(3) Off-site Support: If a Defect cannot be corrected through telephone support AVR, Inc. shall immediately begin conducting tests and analysis at AVR, Inc.'s facility designed to reproduce, isolate and correct the Defect on a first priority basis using data and information provided to AVR, Inc. by Customer. Customer shall submit to AVR, Inc. all such data and information which AVR, Inc. may reasonably require to reproduce the Defect on AVR, Inc.'s computer located at AVR, Inc.'s facility.

(4) On-Site Support: If a Defect can not be corrected at AVR, Inc. we shall provide qualified software engineers at Customer's facility for the purpose of correcting the Defect ("On-site Services"). AVR, Inc. shall implement work around processes designed to minimize the impact of the Defect while AVR, Inc. continues on-site testing and analysis procedures for the purposes of reproducing, isolating and correcting the Defect.

Section 2.02 -- Software Updates: AVR, Inc. shall implement all Updates on the Computer within thirty days after the date that such Update is released by AVR, Inc. Along with any Updates provided to Customer by AVR, Inc. hereunder, AVR, Inc. shall provide documentation describing the purpose, function and utility of such Update.

ARTICLE III: CUSTOMER SUPPORT

Section 3.01 -- Customer Consultations: AVR, Inc. shall provide Customer with unlimited telephone consultations in answering questions concerning use of the Licensed Software. AVR, Inc. shall respond to any such questions on a priority basis.

Section 3.02 -- Program Modifications: Upon discovering a desired Enhancement in the Licensed Software, Customer may request implementation of the Enhancement. AVR, Inc. shall implement such Enhancements, at its discretion, as of the software release of the Licensed Software next following the date implementation of the Enhancement is requested. Along with any Enhancements provided to Customer by AVR, Inc. hereunder, AVR, Inc. shall provide documentation describing the purpose, function and utility of such Enhancement. Such modifications shall not jeopardize the basic functionality of the Software or coverage of the Software under this Section. AVR, Inc. reserves the right and ownership of all Enhancements and may at its discretion provide these Enhancement to all Customer at the next release of Licensed Software Update. These services are normally charged on a time and materials basis including expenses and are subject to availability.

Section 3.03 -- Data Storage & Recovery: AVR, Inc. shall offer assistance, upon purchase of such additional services by Customer, to recover the files of the Licensed Software upon Customer request, providing the Customer has exercised one of the following option;

- A) Purchased and is current with payment for a "Back up Disaster Program" thru AVR, Inc. If purchased, Customer must use this service as it is intended on regularly scheduled intervals. This service connects to Customer's server to generate a full back up each night of either/or Utility Billing and Accounting Software. Checks for corruption and/or FTP transmission problems. AVR, Inc. guarantees that 3 out of the 5 back ups per week will be usable and free of corruption. This service is an added back up to Customer normal back up routine and should not be relied upon as the sole source of data storage.
- B) Purchased and is current with payment for "Statement Outsource Printing" thru AVR, Inc. If purchased, Customer must use this service as it is intended on regularly scheduled intervals. The backup process is an added feature of this service and AVR, Inc. guarantees that 3 out of the 5 back ups per week will be usable and free of corruption. This service is an added back up to Customer's normal back up routine and should not be relied upon as the sole source of data storage.
- C) Provide AVR, Inc. with Customer most recent backup data on a media device that is compatible with AVR, Inc. equipment. AVR, Inc. Licensed Software Data recovery shall be performed according to methodology and time frame established by AVR, Inc. This service will be performed and invoiced at the published labor rate of AVR, Inc. exclusive of any and all travel related cost and applicable taxes. This option provides no guarantee of success by AVR, Inc. since the backup data is being created and provided solely by Customer.

Section 3.04 -- Additional Services and Charges: AVR, Inc. may and does offer additional services such as training and consulting under separate agreements. Such services can be performed at a site and time mutually agreeable. These services are normally charged on a time and materials basis including expenses and are subject to availability. AVR, Inc. reserves the right to charge for services outside of the range of normal support services. Such services considered outside of the range of normal support services are (1) Implementing Rate Changes, (2) Rate Analysis Consulting, (3) Training (New or existing

employee (s)), (4) Interface(s) for GIS, Accounting, Hand Held or Online Payments, (5) Statement Processing, (6) Online bill presentment and payment hosting, (7) Special or modified programs, (8) Data Storage & Recovery, (9) Additional district or cycle setup, (10) Troubleshooting Network or Hardware Issues, (11) Troubleshooting problems in non-AVR Software supported products, or in combination of AVR Software supported and non-supported products where the problem occurs in the non-AVR software product, (12) Other cases where it is judged highly likely that the suspected problem is not the responsibility of AVR Software. When a situation occurs where a reported problem is likely to fall outside of the range of supported services, you will be advised of the potential of incurring charges to have AVR, Inc. software work on the problem. An estimate of the cost of the additional services will be prepared and delivered to you, by appropriate means, for your approval and agreement. Should we find that the problem is, indeed, caused by a supported product, no charges will be incurred. However, if it is proven that the problem is not the responsibility of AVR, Inc. software, you will be charged for the time spent at the rates specified in the estimate/service agreement. Should you not agree that the requested service fall out of the bounds of supported services, your account representative at AVR, Inc. will mediate the issue for you.

ARTICLE IV: TRAINING

Section 4.01 -- Classroom Training: Representatives of Customer (as designated by Customer) shall have the right to attend classroom training at the classroom facilities of AVR, Inc. as described in the Proposal Documentation during the initial implementation. Such classroom training shall provide instruction and guidance on using and operating the Licensed Software, including, but not limited to, performing all of the functions and processes described in the Documentation. Such classroom instruction shall be made available to Customer on an as needed basis. After initial implementation this service will be performed and invoiced at the published labor rate of AVR, Inc.

Section 4.02 -- On-Site Training: During the initial implementation days of the License Software, as described in the Proposal Documentation AVR, Inc. shall provide on-site individual training and customer support to Customer as purchased by Customer. Such on-site training shall include individualized instruction and training on using and operating the Licensed Software for persons designated by Customer. Such training shall include instructions and guidelines on performing all of the functions and processes described in the Documentation. After initial implementation this service will be performed and invoiced at the published labor rate of AVR, Inc. exclusive of any and all travel related cost and applicable taxes.

ARTICLE V: PAYMENT

Section 5.01 -- Maintenance Fees: Customer shall pay the Maintenance Fee on the Effective Date of this Agreement in accordance with Schedule A which is attached and incorporated herein to this Agreement, and shall further pay for all renewals of said Agreement on each anniversary of the Effective Date, subject to receipt of notice from AVR, Inc. that such Maintenance Fee is due and payable per Section 5.04 immediately below. Payment of the Maintenance Fee shall be subject to a thirty (30) day grace period.

Section 5.02 -- Customer Support Fees: The program modification services described in Section 3.02 shall be performed at the published labor rates of AVR, Inc. and will incur additional Maintenance Fee on approved modification equal to a percentage of the current retail value of modification. The Data recovery services described in Section 3.03 shall be performed by AVR, Inc. at the published labor rates of AVR, Inc. The additional services described in Section 3.04 shall be performed at the published labor rates of AVR, Inc. and may incur additional Maintenance Fee equal to a percentage of the current retail value of modification.

Section 5.03 -- Costs: The fees set forth above shall exclude all applicable taxes for (federal, state, county, local, or other taxes arising in the United States or its states (or other internal jurisdictions). Customer shall pay shipping and insurance charges for products shipped between AVR, Inc. and Customer.

Section 5.04 -- Invoicing and Payment: AVR, Inc. shall invoice Customer annually in advance for any maintenance fees for providing services under this Agreement pursuant to Section 5.01 immediately above herein. Customer shall pay any such invoice in full within thirty (30) days after receipt by Customer.

ARTICLE VI: TERMINATION

Section 6.01 -- Termination Limitations: This Agreement may only be terminated as provided under this Article VI.

Section 6.02 -- Termination: Starting one (1) year after the Effective Date, either party may terminate this Agreement with sixty (60) days written notice of termination to the other party.

Section 6.03 -- Re-instatement after Termination: Customer shall be charged a re-instatement fee equivalent to twenty-five percent (25%) of the current retail value of the SOFTWARE if the re-instatement fee occurs within twelve (12) months of the original cancellation date. Beyond twelve (12) months from the original cancellation date, the re-instatement fee will be fifty percent (50%) of the current retail value of the SOFTWARE. In addition to the re-instatement fee, Customer must pay the appropriate annual Maintenance Fee calculated at the current published prices, in order to re-instate support.

Section 6.04 -- Termination for AVR, Inc. Failure: Notwithstanding any provision to the contrary herein, Customer shall have the right to terminate this Agreement upon providing AVR, Inc. with ten (10) days advance written notice in the event any one of the following occurs:

- (1) Termination of Business Activity: AVR, Inc. terminates or suspends business operations;
- (2) Bankruptcy: AVR, Inc. becomes insolvent, bankrupt, makes an assignment for the benefit of creditors or becomes subject to any bankruptcy or insolvency proceeding under any Federal or state statute;

Section 6.05 -- Force Majeure: If AVR, Inc. is unable to perform its obligations under this Agreement for causes beyond its reasonable control, including without limitation, an act of government, fire, flood, power shortage or blackouts, breakdown of telephone lines and services, failure of Internet, accident, acts of public enemy, war, rebellion, labor dispute or unrest, insurrection, sabotage, transportation delays (other than administrative oversights), shortage of raw material, energy or machinery, acts of God, government or the judiciary, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.

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Section 7.02 -- Service Warranty: The services to be provided by AVR, Inc. hereunder shall be performed on a best efforts basis and in a timely and professional manner by qualified software personnel familiar with the Licensed Software, and shall conform to the standards generally observed in the industry for similar services. Such services shall be in compliance with all applicable laws, rules, regulations or orders.

Section 7.03 -- Software Modifications: If the Licensed Software is modified by any party other than AVR, Inc., the maintenance warranty granted in Section 7.01 shall be void.

Section 7.04 -- Original Development: Lessor represents and warrants that use of any Updates or Enhancements by Customer shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party.

Section 7.05 -- Documentation Warranty: AVR, Inc.

warrants that the Documentation shall be kept current with the Updates and Enhancements for the Licensed Software as such Updates and Enhancements are released.

Section 7.06 (a) -- Indemnification by AVR: AVR, Inc. shall defend, indemnify and hold harmless Customer (including employees, consultants, agents, and subcontractors of Customer) against any liability arising from the failure of AVR, Inc. to perform the services described under this Agreement or any claim by any third party against Customer arising from, or related to, Customer's use of any Update or Enhancement, including (but not limited to) any claimed violations of trade secrets, proprietary information, trademark, copyright or any patent rights. If Customer's quiet enjoyment and use of any Update or Enhancement is disrupted as a result of a third party claim, AVR, Inc. shall perform one or all of the following actions within one year of the date such third party's claim is discovered by Customer:

Section 7.06 (b) -- Indemnification by Customer: Subject to the preceding paragraph, Customer shall defend, indemnify and hold harmless AVR, Inc. (including employees, consultants, agents, and subcontractors of AVR) against any liability and/or claims brought against AVR, Inc. arising from the failure of Customer to perform the services required of Customer and described under this Agreement arising from, or related to such claims being based upon allegations that software data Customer was lost, damaged, and/or destroyed without Customer first having previously purchased and maintained the service of AVR, Inc. under paragraph 3.03 of this Agreement.

Section 7.06 (c) -- Conditions to Indemnification: The foregoing obligations are conditioned upon: (a) prompt written notices by the indemnified party to the indemnifying party of any claim, action or demand for which indemnity is claimed; (b) complete control of the defense and settlement thereof by the indemnifying party, provided that no settlement of an indemnified claim shall be made without the consent of the indemnified party, such consent not to be unreasonably withheld or delayed; and (c) reasonable cooperation by the indemnifying party may request. The indemnified party shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Section 7.06 (d) -- Definition of "Claims": For purpose of Section 7.06 "Claims" means losses, actions, liabilities, damages, expenses and reasonable attorneys' fee and court costs.

- (1) Replacement: Replace the Update or Enhancement, at AVR, Inc.'s cost, with a compatible, functionally equivalent and non-infringing software product; or
- (2) Modification: Modify the Update or

Enhancement to avoid the infringement without frustrating the purpose for which the Update or Enhancement was developed or reducing the capability of the Update or Enhancement; or

- (3) License: Obtain a license for Customer to use the Update or Enhancement for the remainder of the Maintenance Term.

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ARTICLE IX: MISCELLANEOUS

Section 9.01 -- Reasonable Assistance: Customer shall provide AVR, Inc. with reasonable access to the Licensed Software, Documentation and the Computer upon request by AVR, Inc. for purposes of rendering services hereunder.

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both parties.

Section 9.05 -- Severability: If a provision of this Agreement is rendered invalid by legislation, or by a court of last resort, the remaining provisions shall remain in full force and effect.

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Section 9.07 -- Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 9.08 -- Governing Law: This Agreement is governed by the laws of the State of Texas with venue in Harris County, Texas

Section 9.09 -- Notice: Notices shall be in writing and shall be deemed delivered in person when delivered by hand or mailed postage prepaid by Certified or Registered Mail -- Return Receipt Requested -- to the person and address designated below. Notice shall be deemed given on the date of receipt -- as evidenced in the case of Certified or Registered Mail by Return Receipt

*AVR, INC.: c/o Ron Emberg, CEO,
2000 W Governors Circle Suite M,
Houston, Texas 77092*

CUSTOMER:

City of Ovilla
South Cockrell Hill Rd.
Ovilla, TX 75154

Section 9.10 -- Pronouns/Gender: Pronouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

Section 9.11 -- Bankruptcy: If either party must institute, defend, appear or attend a bankruptcy proceeding as a result of the filing of bankruptcy by the other party, fees and expenses shall be born by the filing party. If either party has a bankruptcy proceeding filed against it, the other party shall recover attorney fees, expert witness fees, and other costs incurred in connection with the bankruptcy proceeding, hearing or trial.

Section 9.12 -- Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach.

Failing to enforce a provision of this Agreement shall

not constitute a waiver or create an estoppel from enforcing such provision.

Section 9.13 -- Relationship of the Parties: It is agreed that the relationship of the parties is primarily that of Customer and AVR, Inc.. Nothing herein shall be construed as creating partnership, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

Section 9.14 -- Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the American Arbitration Association Rules. Arbitration shall occur in Houston, Harris County, Texas. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall be initially responsible for one-half of the costs of said arbitration with the possible reimbursement of legal and arbitration costs being an issue subject to decision in said arbitration. Qualified Arbitrators shall be selected by the parties in accordance with the American Arbitration Association Rules. Each Party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure. The Arbitration shall be administered by the American Arbitration Association.

Section 9.15 -- Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under this Agreement are true, correct and accurate as of the date of this Agreement to the best of their knowledge.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

AVR, INC.

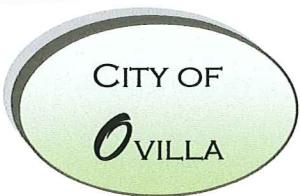
Signature *Ron Emberg*
TITLE: C EO
DATE: 11-15-11

CUSTOMER: City of Ovilla

Signature: _____

TITLE: _____

DATE: _____



Ovilla City Council

AGENDA ITEM REPORT

Item(s) Numbers: 1 & 2 (City Secretary use only)

Meeting Date: November 28, 2011

Department: Administration

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Attachments:

Proposed Ordinance
Tax Code Section 11.253 (excerpt)

Agenda Item / Topic:

ITEM 1. **Public Hearing and Discussion** – Receive Comments and discussion to consider the approval of taxation of goods-in-transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.

ITEM 2. **Discussion/Action** – Consider Ordinance 2011-028 relating to the approval of taxation of goods-in-transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.

Discussion / Justification:

The legislature has mandated that cities must re-ratify their approval of taxation or else they will lose the existing tax.

Recommendation / Staff Comments:

Staff recommends approval.

Sample Motion(s):

"I MAKE A MOTION THAT COUNCIL APPROVES/DENIES ORDINANCE 2011-028 RELATING TO THE TAXATION OF GOODS-IN-TRANSIT, PURSUANT TO TEXAS TAX CODE 11.253 AS PRESENTED."

**CITY OF OVILLA, TEXAS
ORDINANCE 2011-028**

**AN ORDINANCE OF THE CITY OF OVILLA, TEXAS RELATING TO
APPROVAL OF TAXATION OF GOODS-IN-TRANSIT, WHICH WOULD
OTHERWISE BE EXEMPT PURSUANT TO TEXAS TAX CODE, SECTION
11.253; AND PROVIDING AN EFFECTIVE DATE ON AND AFTER ITS
ADOPTION**

WHEREAS, on November 26, 2007 the City Council of the City of Ovilla, Texas adopted Ordinance No. 08-007 in order for goods-in-transit to remain subject to taxation by the City of Ovilla, Texas in accordance with Texas Tax Code Section 11.253; and

WHEREAS, the 82nd Texas Legislature in its First Special Session has enacted Senate Bill 1, which amends Texas Tax Code Section 11.253; and

WHEREAS, Texas Tax Code Section 11.253(j-1) was added to 11.253 by Senate Bill 1, and which provides for a local option under which a taxing unit may tax such goods-in-transit otherwise exempt, if the governing body of such taxing unit after conducting a public hearing, takes official action to tax such personal property; and

WHEREAS, the City Council, after determining all legal requirements of notice have been met and that the governing body having conducted a public hearing on November 28, 2011, at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit; is of the opinion that it is in the best interest of the City to continue to tax such goods-in-transit;

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

SECTION 1.

That goods-in-transit, as defined by Texas Tax Code Section 11.253(a) (2), as amended by Senate Bill 1 enacted by the 82nd Texas Legislature in its First Special Session, shall remain subject to taxation by the City of Ovilla, Texas for the year 2012 and every year thereafter.

SECTION 2.

That this ordinance shall become and be effective on and after its adoption.

PASSED AND APPROVED this the 28th day of November, 2011.

Bill Vansyckle, Mayor

ATTEST:

Pam Woodall Higgins, City Secretary

Sec. 11.253. TANGIBLE PERSONAL PROPERTY IN TRANSIT. (a)

In this section:

(1) "Dealer's motor vehicle inventory," "dealer's vessel and outboard motor inventory," "dealer's heavy equipment inventory," and "retail manufactured housing inventory" have the meanings assigned by Subchapter B, Chapter 23.

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is detained at a location in this state in which the owner of the property does not have a direct or indirect ownership interest for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(3) "Location" means a physical address.

(4) "Petroleum product" means a liquid or gaseous material that is an immediate derivative of the refining of oil or natural gas.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit.

(c) The exemption provided by Subsection (b) is subtracted from the market value of the property determined under Section 23.01 or 23.12, as applicable, to determine the taxable value of the property.

(d) Except as provided by Subsections (f) and (g), the chief appraiser shall determine the appraised value of goods-in-transit under this subsection. The chief appraiser shall determine the percentage of the market value of tangible personal property owned by the property owner and used for the production of income in the preceding calendar year that was contributed by goods-in-transit. For the first year in which the exemption applies to a taxing unit, the chief appraiser shall determine that percentage as if the exemption applied in the preceding year. The chief appraiser shall apply that percentage to the market value of the property owner's tangible personal property used for the production of income for the current year to determine the appraised value of goods-in-transit for the current year.

(e) In determining the market value of goods-in-transit that in the preceding year were assembled, stored, manufactured, processed, or fabricated in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(f) If the property owner was not engaged in transporting goods-in-transit to another location in this state or outside this state for the entire preceding year, the chief appraiser shall calculate the percentage of the market value described in Subsection (d) for the portion of the year in which the property

owner was engaged in transporting goods-in-transit to another location in this state or outside this state.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) in the current year, the chief appraiser shall determine the market value of the goods-in-transit to be exempt by determining, according to the property owner's records and any other available information, the market value of those goods-in-transit owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for assembling, storing, manufacturing, processing, or fabricating purposes was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(i) Property that meets the requirements of this section constitutes goods-in-transit regardless of whether the person who owns the property on January 1 is the person who transports the property to another location in this state or outside this state.

(j) The governing body of a taxing unit, in the manner required for official action by the governing body, may provide for the taxation of goods-in-transit exempt under Subsection (b) and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(k) A property owner who receives the exemption from taxation provided by Subsection (b) is not eligible to receive the exemption from taxation provided by Section 11.251 for the same property.

AGENDA ITEM REPORT

Item(s) Number: 3 (City Secretary use only)

Meeting Date: November 28, 2011

Department: Administration

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Attachments:

Invoices / quote sheets

Agenda Item / Topic:

ITEM 3. Discussion/Action – Update Council with audio/visual technical equipment and Council may take any action deemed necessary.

Discussion / Justification:

Mayor Vansyckle has been working with Best Buy for the purchase of audio/visual equipment. The cost slightly exceeded the amount Council had approved. He will offer updates on the status.

Recommendation / Staff Comments:

Staff recommends approval.

Sample Motion(s):

"I MAKE A MOTION THAT COUNCIL APPROVES/DENIES _____."

Audio/Visual Equipment

Date	Purchased From	Description	Amount
9/27/2011	Best Buy		4,937.02
10/20/2011	Best Buy	Projection Screen	89.99
10/5/2011	Best Buy	Handheld Wireless Microphone	20.00
10/18/2011	Best Buy		187.45
10/21/2011	Best Buy		369.96
10/20/2011	Guitar Center		138.48
10/26/2011	Best Buy		(105.44)
11/7/2011	John Binford	Tablet PC Testing, Drop Box	206.25
11/11/2011	John Binford	Set Up Tablets, wireless router	168.75
			<hr/> 6,012.46



21253070 - 020714 - 0003 - 0004 - 2

XXXX-XXXX-XXXX-8639

Statement Date
11/03/11

INDIVIDUAL CARDHOLDER ACTIVITY

WOODALL, PAM				XXXX-XXXX-XXXX-6907
		Monthly Limit \$7,500	Cash Limit* \$00	
Sale Date	Post Date	Reference Number	Type of Activity	Amount
10-03	10-05	05410191277174570063908	BEST BUY 00009720 RICHLFIELD MN	4,937.02
10-05	10-07	05410191279174570086949	BEST BUY 00009720 RICHLFIELD MN	89.99 ✓
10-13	10-17	55541861288072000490125	FOUR SEASONS HOTELS HOUSTON TX 000005567 ARRIVAL: 10-10-11	684.45
10-18	10-20	05410191292174570076752	BEST BUY 00009720 RICHLFIELD MN	187.45
10-20	10-24	05410191294174570115855	BEST BUY 00009720 RICHLFIELD MN	20.00 ✓
10-20	10-24	55541861294004015098538	GUITAR CENTER #440 DALLAS TX	138.48
10-21	10-24	05410191295174570129210	BEST BUY 00009720 RICHLFIELD MN	369.96
10-26	10-27	05410191299295101206957	BEST BUY MHT 00002568 FARMERS BRANC TX	105.44 CR
10-31	11-01	55436871304733046288578	TEXAS MUNICIPAL CLERKS 940-5653488 TX TOTAL PURCHASES/ADVANCES/CREDITS	250.00 6,571.91

MAYOR -
Pam school

WHITEMAN, RANDY				XXXX-XXXX-XXXX-6915
		Monthly Limit \$10,000	Cash Limit* \$00	
Sale Date	Post Date	Reference Number	Type of Activity	Amount
10-07	10-07	55432861280000306703511	HOTELS.COM US 800-219-4606 WA	275.86
10-18	10-24	55499671295206983602001	ICSC NEW YORK NY TOTAL PURCHASES/ADVANCES/CREDITS	270.00 545.86 ✓

PILAND, BRAD				XXXX-XXXX-XXXX-6923
		Monthly Limit \$5,000	Cash Limit* \$00	
Sale Date	Post Date	Reference Number	Type of Activity	Amount
10-18	10-20	55541861292010181563868	THE HOME DEPOT 6505 WAXAHACHIE TX	198.60
10-27	10-31	55541861301010181123530	THE HOME DEPOT 6505 WAXAHACHIE TX	311.72
11-02	11-03	55547501306253083010212	LONE STAR WESTERN & CA WAXAHACHIE TX TOTAL PURCHASES/ADVANCES/CREDITS	449.22 959.54 ✓

*Cash Advance Limit is a portion of your Total Monthly Limit
**Available Cash Line is a portion of your Available Credit Line

Bill Vansyckle

From: BBFBCustomerSupport@bestbuy.com
Sent: Tuesday, October 04, 2011 2:03 PM
To: Bill Vansyckle
Subject: Thank you for your Best Buy For Business order

Order Date: 10/04/2011

**Thank you for your order****Billing Address**

Bill Vansyckle
City of Ovilla
105 COCKRELL HILL RD
OVILLA, TX 75154

Shipping Address

Bill Vansyckle
City of Ovilla
105 COCKRELL HILL RD
OVILLA, TX 75154

Dear Bill Vansyckle,

We are currently processing your order and will notify you by e-mail when your order ships, is ready for store pickup, or when a home delivery date has been confirmed. Please note that a Best Buy For Business Account Manager may contact you if additional information is needed to complete the order. To check the status of your order, select the "Order Status" button below. For more information, see our [Shipping Policy](#).

Order Number: 224926260

[Order Status](#)

Qty	Product Description	Price	Total Price
1	Elite Manual Series M99NWS1 - projection screen - 99 in (252 cm) Item BB10820180 Retek SKU 9613594 Return Process In-store or by mail. See Policy .	\$89.99	\$89.99

Standard Delivery Ground

Total: **\$89.99**

Tax: \$0.00

ORDER TOTAL: **\$89.99**

At Best Buy For Business, we work hard to earn your business every day:

- More than 100,000 business-class technology products including notebooks, networks, servers and software.
- More brand-name manufacturers: Apple, HP, Lenovo, Microsoft, Toshiba and many more.
- Personalized service: online, in stores, by phone and at your office
- Volume discounts, commercial warranty plans and available financing.

Have you enrolled in the Best Buy Reward Zone program?

As a member, you earn rewards points on most business purchases, redeemable

Bill Vansyckle

From: BBFBCustomerSupport@bestbuy.com
Sent: Thursday, October 20, 2011 1:36 PM
To: Bill Vansyckle
Subject: Thank you for your Best Buy For Business order

Order Date: 10/20/2011

Thank you for your order**Billing Address**

Bill Vansyckle
City of Ovilla
105 COCKRELL HILL RD
OVILLA, TX 75154

Shipping Address

Bill Vansyckle
City of Ovilla
105 COCKRELL HILL RD
OVILLA, TX 75154

Dear Bill Vansyckle,

We are currently processing your order and will notify you by e-mail when your order ships, is ready for store pickup, or when a home delivery date has been confirmed. Please note that a Best Buy For Business Account Manager may contact you if additional information is needed to complete the order. To check the status of your order, select the "Order Status" button below. For more information, see our [Shipping Policy](#).

Order Number: 224993682

[Order Status](#)

Qty	Product Description	Price	Total Price
1	Audio-Technica Freeway 200 Series Handheld Wireless Microphone System Item BB10975531 Retek SKU 8889651 Return Process In-store or by mail. See Policy .	\$20.00	\$20.00
Store Pickup - FARMERS BRANCH TX, 4255 LYNDON B JOHNSON FWY MIDWAY/LBJ SHOPPING CTR (Store# 256)			

Total: **\$20.00**

Tax: \$0.00

ORDER TOTAL: **\$20.00**

At Best Buy For Business, we work hard to earn your business every day:

- More than 100,000 business-class technology products including notebooks, networks, servers and software.
- More brand-name manufacturers: Apple, HP, Lenovo, Microsoft, Toshiba and many more.
- Personalized service: online, in stores, by phone and at your office
- Volume discounts, commercial warranty plans and available financing.

Pam Higgins

From: John Binford [REDACTED]
Sent: Friday, November 11, 2011 4:02 PM
To: Pam Higgins
Subject: Invoice #1550 from John Binford

Status: Not Paid
Date: 11/11/2011
Invoice # 1550

John Binford

[REDACTED]

[REDACTED]

UNITED STATES

Phone:

Fax:

Pam Higgins

City of Ovilla

105 S. Cockrell Hill

Ovilla, TX 76065

Pam Higgins

City of Ovilla

Salesperson	Job	Payment Terms	Due Date
John Binford		Net 15	11/26/2011

Description	Qty.	Unit Price	Line Total
Hourly labor	2.5	\$75.00	\$187.50

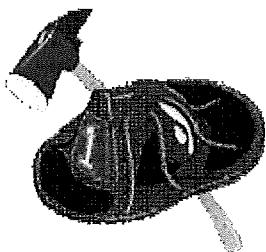
set up tablets, wireless router, and clean files on front desk PC 1 \$0.00 \$0.00 T

Subtotal	\$187.50
Sales Tax	\$0.00
Total	\$187.50
Payments	\$0.00
Balance Due	\$187.50

*- 18.75
168.75*

Make all checks payable to John Binford

Thank you for your business!



*Your small business and home
computer professional.*

5105230

Pam Higgins

From: John Binford
Sent: Monday, November 07, 2011 5:39 PM
To: Pam Higgins
Subject: Invoice #1547 from John Binford

Status: Not Paid
Date: 11/7/2011
Invoice # 1547

John Binford

UNITED STATES

Phone:

Fax:

Pam Higgins

City of Ovilla

105 S. Cockrell Hill

Ovilla, TX 76065

Pam Higgins
City of Ovilla

John Binford

Hourly labor

Tablet PC testing, Fire Dept accounting fix, Dropbox,

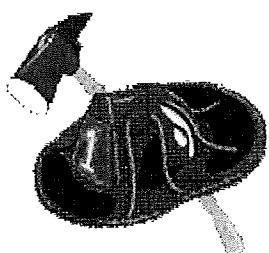
Salesperson	Job	Payment Terms	Due Date
John Binford		Net 15	11/22/2011

Description	Qty.	Unit Price	Line Total
Hourly labor	3	\$75.00	\$225.00
Tablet PC testing, Fire Dept accounting fix, Dropbox,	1	\$0.00	\$0.00 T
Subtotal			\$225.00
Sales Tax			\$0.00
Total			\$225.00
Payments			\$0.00
Balance Due			\$225.00

Make all checks payable to John Binford

18.25
206.25
✓
Thank you for your business!

Your small business and home
computer professional.



AGENDA ITEM REPORT

Item(s) Number: 4 (City Secretary use only)

Meeting Date: November 28, 2011

Department: Administration

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Attachments:

None

Agenda Item / Topic:

ITEM 4. **Discussion/Action** – Determine Council's response to Oncor regarding the many outages in Ovilla during the past two years.

Discussion / Justification:

In response to citizen complaints, the Council asked the City Administrator to write a formal complaint to the PUC on Oncor's many outages. Although the FD has some information on outages, they did not have them all. The City Administrator asked Oncor for records on outages for the last year. The request started Oncor to begin efforts to explain their outages, however, they did not want to supply information they felt could be used against them in a complaint. There was some indecision as to whether we continued the complaint to the PUC or deal directly with Oncor. It was decided to continue the complaint, which prompted Oncor to cutoff communication until after the complaint is routed thru the PUC.

Councilman Doug Hunt wants to the Council to consider returning to direct talks with Oncor.

Recommendation / Staff Comments:

Sample Motion(s):

"I MAKE A MOTION THAT COUNCIL APPROVES/DENIES _____."



Ovilla City Council

AGENDA ITEM REPORT

Item(s) Number: 5 (City Secretary use only)

Meeting Date: November 28, 2011

Department: Other

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Attachments:

Complaint / Response

Agenda Item / Topic:

ITEM 5.

Discussion/Action – City Council will hear a complaint filed by City Administrator Randy Whiteman in open session pursuant to the Council Procedures on Hearing Complaints.

Discussion / Justification:

Recommendation / Staff Comments:

Sample Motion(s):

Complaint filed by City Administrator

received

11.09.2011

Hard delivered

PLW

Randy Whiteman City Administrator

November 9, 2011

Supporting information for the ethics complaint filed against Bill Vansyckle.

I left a copy of the dismissal letter I sent to Rodney Ramsey on the Mayor's desk. Later, the Mayor came in and said he wanted to talk to me about the letter. He said you can't send this letter. I said I already had. He said you don't have the authority to fire Mr. Ramsey. He said the Council hired him. I said no Sir, if you remember you came in to my office after you won the Mayor's race and told me to fire Robin Lane and to hire Rodney and I said I did not know if I had the authority and you told me you had already checked and I did. So I let Robin go and hired Rodney as instructed. Council wasn't notified until after the fact.

The Mayor then said that Mr. Ramsey is filing a complaint against you so we need to suspend this action until that is heard. I said, I did this without knowing of the complaint and it is immaterial to my letter so I won't rescind it. The Mayor said well what you wrote here is not all the story. I said what is? And he did not respond. I asked to see the complaint. He said he didn't have it yet that he had requested Mr. Ramsey to get him one notarized he said all he had was an email from Mr. Ramsey. I asked, what is the nature of the complaint? The Mayor said well it is civil maybe criminal and it is in line with ticket fixing. I said I am not going to suspend action based on something that may come about, the dismissal stands. The Mayor Vansyckle asked, did you mail the letter and I said yes. Later that day I received a copy of a written complaint from Mr. Ramsey that was received by the City Secretary. She told me the Mayor hand delivered the complaint to the City. I subsequently learned that the Mayor asked the City Secretary to fax my letter to Mr. Ramsey that morning. He then left and told her he was going to the attorney's office and to let him know by cell phone if TOASE called. Later he returned carrying the notarized complaint from Mr. Ramsey. It appears the Mayor went straight to Mr. Ramsey and they worked together revising the complaint. I believe the attempt to fire me was in retaliation for me relieving Mr. Ramsey of his duties and that Mayor Vansyckle's actions denied me due process. I provide the fact that the original complaint was not provided to me (even when I asked for it) and that the Mayor provided a copy of my dismissal letter to Mr. Ramsey and then assisted him in providing a second complaint that was altered to reflect my dismissal letter as proof of his interference. Further proof of the Mayor's intentions is evident in that he supplied the first complaint to only three members of the council. Two of those members referred to the complaint prior to the scheduled council meeting and told others that I was to be fired even though the complaint had yet to be heard by the whole council. Councilman Dickey told the ACM of Red Oak at the Tuesday Sept 6 Red Oak Chamber Breakfast that, we are firing the City Administrator tomorrow night. Councilman Hunt told EDC Board Member John Knight the same thing in a phone conversation the evening of Wed. Sept 7 and went on to say that they had offered me a chance to resign and I had refused. What Mr. Hunt was referring to was that Tim Sralla with TOASE, the City's attorney, had called on me on the morning of Sept. 7 and told me that I was to be offered a chance to resign and be paid through December if I would leave before I responded to the complaint from Mr. Ramsey. I explained to Mr. Sralla that he was too late that I had already given my response to the City Secretary and the Mayor had just left city hall with a copy. Mr. Sralla said well he had not been told to rescind the offer so was I interested and I said no. As to the existence of two separate versions of the complaint, in a conversation I had with Mayor Pro-tem Leverentz I suspected that there was more than

one version of the complaint as he referenced Bubba's BBQ in the complaint he saw and it was not referenced in the complaint provided to me. The Mayor shared the first complaint with the Mayor Pro-tem and Councilman Dickey and Councilman Hunt. He did not share the first complaint with Councilman Wade or Councilman Dormier nor did he provide it to me when I asked to see it the day I notified him I had removed Mr. Ramsey. Though I suspected there was more than one draft of Mr. Ramsey's complaint I only became aware of the original version when the Mayor produced it for a citizen's PIA request it was never supplied to me.

In regard to the Mayor's relationship with Mr. Ramsey, on one occasion, after I had retained Mr. Ramsey, I heard the Mayor talking on his cell phone and he identified the call as to Mr. Ramsey's law firm. He thanked the caller for a job to serve papers and he told them his billing info. After the call I asked him if he was working with Mr. Ramsey, you know you can't do that. He said no he was just getting that job for someone else. I told him you gave them your info for the invoice. He said well it wasn't for him. On another occasion the Mayor approached me and said that he wanted me to set up a meeting with Mike Dooly, Mr. Ramsey, himself and myself. He said we needed to talk about "burden of proof". He went on to describe a case very similar to a case Mr. Dooly had. I said that is the Walker case, I said you are not supposed to be talking cases with the prosecutor. He said he was just talking cases in general with Mr. Ramsey nothing specific. I said why are you talking to him at all? He said it came up when they were talking other non Ovilla cases. I said I don't mind setting up the meeting but why are you attending. He got mad and said because he has 35 yrs of experience. He said Richard gets to talk engineering. I left on that note. He then sent me an email several days later and said set up a meeting between Mike Dooly and Mr. Ramsey. I passed the info to Mr. Dooly.

I have listed 11 separate ethics charges against the Mayor .

1. The Mayor overstepped his authority when he told me to suspend my removal of Mr. Ramsey.
2. The Mayor demonstrated Abuse of Power when he failed to follow Ovilla's Employee Personnel Handbook in his handling of the complaint against me and instead tried to remove me in a hasty special meeting.
3. The Mayor demonstrated Official Oppression when he purposely withheld Mr. Ramsey's original complaint from the whole council in an effort to eliminate support for me on the council.
4. The Mayor demonstrated Official Oppression when he purposely withheld the Mr. Ramsey's original complaint from me to thwart my defense against the accusation.
5. The Mayor's actions to fax Mr. Ramsey my letter and then personally deliver the doctored complaint showed bias against me.
6. The Mayor failed to declare a conflict of interest or excuse himself from the complaint process even though he had participated with Mr. Ramsey in the filing of the complaint.

7. The Mayor's participation with Mr. Ramsey in his second draft of the complaint shows an unhealthy relationship exists and that his participation in the complaint denied me due process as he was the one administering the investigation.

8. The Mayor violated the Open Meetings Act in meeting with or having correspondence with several councilmen prior to the Council meeting where they discussed offering me to resign prior to the meeting or firing me if I didn't.

9. The Mayor failed to identify a conflict of interest with Mr. Ramsey and that the conflict of interest was material in his unfair handling of the complaint against me.

10. The Mayor's efforts to get me fired were in retaliation of my removal of Mr. Ramsey and provide grounds for a Whistle Blowers Suit against the City.

11. The Mayor demonstrated abuse of power when he went to the City Secretary and ordered her to allow him to view my personnel file, the Mayor copied my social security number down violating my right to personal privacy.

List of Witnesses

Councilman Doug Hunt

Councilman James Wade

Councilman Richard Dormier

Councilman Mike Dickey

Mayor Pro-tem Tom Leverentz

City Secretary Pam Woodall

Bill Vansyckle, Mayor
Tom Leverenz, Mayor Pro-Tem, Place 1
Michael Dickey, Councilmember, Place 2



James Wade, Councilmember, Place 3
Doug Hunt, Councilmember, Place 4
Richard Dormier, Councilmember, Place 5
Randy Whiteman, City Administrator

October 28, 2011

Mr. Randy Whiteman
City Administrator
City of Ovilla

RE: Filed Complaint

Dear Randy,

Pursuant to the City's Procedures on Hearing of Ethics Complaints, you will need to submit any and all written statements or documents to support the complaint filed by you on September 07, 2011, (and subsequently confirmed on October 24, 2011 with Council) to my office. Please reference the City's procedures if you have any questions, as it states that if no additional/supporting documents are received within five business days, then the Complain will be considered as filed.

Respectfully,


Pam Woodall Higgins

CC: Mayor Pro-Tem Tom Leverenz
Place 3 Council Member James Wade

Pam Higgins

From: Pam Higgins [phiggins@cityofovilla.org]
Sent: Wednesday, November 02, 2011 10:56 AM
To: 'James Wade'; 'Douglas Hunt'; 'Richard Dormier'
Cc: Randy Whiteman (rwhiteman@cityofovilla.org)
Subject: Complaint time-line

RE: Complaint and Randy's time-period for submittals.

Honorable Council,

Mayor Pro-Tem has asked me to advise you that due to Randy's absence of three days this week (EDC Conference in San Antonio), he has allowed an extension to Randy for his submittal of statements/documents until next Wednesday, November 9. This extension will give Randy 5 days, as outlined in the Ovilla Governance Policy/Hearing of Complaints.

Thank you.

Pam

Pam Woodall Higgins

City Secretary
City of Ovilla
105 S. Cockrell Hill Rd.
Ovilla, TX 75154
WK: 972.617.7262
FAX: 972.515.3221
www.cityofovilla.org



ATTENTION PUBLIC OFFICIALS!

A "Reply to All" of this e-mail could lead to violations of the Texas Open Meetings Act. Please reply only to the sender.

Pam Higgins

From: Randy Whiteman [rwhiteman@cityofovilla.org]
Sent: Wednesday, November 09, 2011 9:28 AM
To: Pam Higgins
Subject: Ethics
Attachments: ethics complaint mayor.doc

Pam,

Here is my complaint on the Mayor. I understand the two versions of the complaint from Rodney and my original response will be included in the information provided to the council. If you need copies of any of those let me know.

Thanks,

Randy

Affidavit

From: **R. P. Ramsey** (occides@hotmail.com)

Sent: Fri 8/26/11 4:05 PM

To: Bill Vansyckle (pi.van@hotmail.com); mwdickey@mwdickey.com

2 attachments

affidavit for Ovilla 082611.rtf (17.1 KB) , affidavit for Ovilla 082611.wpd (22.0 KB)

see the attached

Gandhi said, "Almost anything you do will be insignificant, but it is very important that you do it." R.P.R.

AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF ELLIS §

I, Rodney Pat Ramsey, am over the age of 18 and fully competent to make this affidavit, and hereby on oath state the following:

A short time after being hired as the Prosecutor for the Municipal Court of the City of Ovilla I was contacted by Randy Whiteman, in his capacity as City Manager for the City of Ovilla, who advised me he wanted to meet me for lunch to discuss a matter involving the Municipal Court. We met at **Bubba's Barbeque** at Ovilla Road and IH 35E.

In the conversation Mr. Whiteman stated that he had been made aware that I had lowered the fine on a few misdemeanor cases and dismissed others. Mr. Whiteman stated that he did not want any citations dismissed.

I advised Mr. Whiteman that one or two of those dismissals were for citations that had been written for city ordinance violations and the citizens had come to City Hall and came into compliance by getting the permits they were unaware they needed. I know one was for someone replacing sections of a fence because the contractor had put up a fence that was too high and had to be replaced.

I advised him that it seemed only fair to give these people a break because they had immediately obtained a permit and corrected the violation. I told him that it was not good public policy to punish the citizens in this fashion without giving them some form or warning before issuing the citation and it could cause the city to develop a bad reputation.

I told him that punishment for punishment's sake was not a good theory when enforcing

city ordinance violations, and in fact if the true reason behind the ordinance is compliance, then that has been satisfied when the citizen gets the required permits. I expressed my opinion that City Ordinances are designed to protect the citizens and the City by ensuring compliance, and never designed to be a revenue source. I also suggested that if it appeared that the City was using citations strictly for revenue without granting the prosecutor any discretion on dismissals it could tarnish the image of the City of Ovilla.

Mr. Whiteman advised me that he did not care if the City of Ovilla had the worst reputation in Ellis County, he wanted a 100% conviction rate on all citations issued within the City of Ovilla and he did not want a single citation dismissed.

I advised Mr. Whiteman that I believed his statement could easily be construed as a quota which would be illegal in Texas. I further advised Mr. Whiteman that his statement also violates the Separation of Powers Doctrine. His statement as the Executive Branch of City Government was attempting to unlawfully interfere with duties of the prosecutor, or Judicial Branch.

I explained that my job as prosecutor is not to convict, but to seek justice. I also advised him that as prosecutor I made my determinations on what to do with citations on an individual and case by case basis. I informed him that his demanding that 100% of all citations be prosecuted was an improper infringement upon the duties and decisions of the prosecutor.

I explained why and how I make my decisions based upon the concepts of Justice and Fairness within the confines of Constitutional and Statutory protections afforded all citizens of the State of Texas. I also informed him that the Judge has the final say regarding dismissals of any complaints, but that the Judge would be unable to continue a prosecution if the prosecutor refused to take testimony.

It was apparent that Mr. Whiteman was not satisfied with my decision to reject his demand that I prosecute all citations, but my duty as a licensed attorney, prosecutor, and officer of the Court was not open for discussion.

Since that date I have had almost no contact, and very little in way of conversation with Mr. Whiteman.

In July the public works department had reported a possible violation involving an alleged tampering with a water meter by a citizen of Ovilla. The case was improperly filed as tampering with a water meter and was subsequently dismissed as lacking in probable cause needed for prosecution. The citizen had permission of the City to use the meter and had been using the meter and the water for over twenty years. The meter was a second meter placed on his property and had never been read for usage for over twenty years.

In speaking with the defendant I discovered that the City had placed a water meter at the edge of his property and allowed him access and use of the meter so he could water the city property within the median of the roadway which runs by his property. This meter was put in over twenty years ago and had never had a single reading of water usage by the water department. The defendant had been using the meter for over twenty years to perform the service for the city and had at one time received a letter from the City thanking him for his service to the community for watering city property.

After the first ticket, the citizen had also gone down to the city and paid to have the meter put in his name to avoid any further problems with the city.

I was contacted by the defendant again in the month of August and he advised me he had received another citation, this time for theft of water. He also advised me that he had cancelled

his contract for the meter and was no longer going to assist the City by continuing the watering of City Property as he has done for over twenty years.

I contacted the public works employee "Brad" and asked him what was going on. He advised that the citizen had been caught using the water meter to water his garden, or flower bed. I asked Brad how much water had been used. He did not have the information. I asked Brad if he had been the person who granted the Citizen the right to access and use the meter. He advised he was not. I asked him if he knew who was. He did not. I asked him if he knew if the man had permission to use the meter and if that permission was limited. He did not have the answers.

I advised Brad that in order to prosecute the citizen we would have to say how much water he had used and at what rate. He did not have the information. I also advised that we would be required to prove that the man did not have permission to use the meter and water for purposes other than watering the median. I took the time to explain the burden of proof and also to discuss the reasons behind this event. I discussed the defenses of waiver, estoppel, laches, release, and also touched on whether it would be in the City's best interest to possibly answer for all unpaid hours this man spent watering the median for the benefit of the city.

In the end Brad was flippant in his response and stated that it appeared that I have all of the citizens defenses figured out for him. I responded that my job requires me to follow certain ethical and legal considerations to ensure that the city is not accused of malicious prosecutions or the filing of frivolous actions. I also advised him I would not prosecute the case.

When I appeared for Court on August 25, Randy Whiteman, Brad, and an unidentified water employee were present. I have never seen Randy Whiteman in the court for the entire period I have acted as prosecutor for the City of Ovilla. It was obvious that my conversation with

Brad had been shared with Mike Dooley and Mr. Whiteman was there to see if I dismissed the case or not.

I waited until all other cases had been resolved before addressing the issue. Mr. Dooley had the file prepared with photos and had evidently asked the water department employee to be present for trial, even though I had advised the case was to be dismissed. I approached Brad and asked him if he really wanted to push this issue after I had already advised him I would not prosecute the case.

Mike Dooley interrupted and stated that it was his case and not Brads and that he had pictures of the water hose being used to water something on the citizens property. I told him that did not matter because the city had allowed the man to use the meter and water for over twenty years without question, and that we could not prove that he did not have permission to take the water. Mr. Dooley advised that the citizen had to prove that and we didn't. I informed Mr. Dooley, as I have had to do on previous occasions, that the burden of proof is on the State and not the defendant, and the defendant doesn't have to prove anything.

This is not the first case that has been filed by Mr. Dooley that is lacking in probable cause, but it is the first one that was filed against my advice and brought before the court after I had made it known the case would not be prosecuted.

It was obvious to me that Mr. Dooley, Brad, and Randy Whiteman had discussed the matter prior to the trial. It is also known to me that Randy Whiteman, by his own statements wants all cases prosecuted, regardless of their merit and regardless of the consequences.

Mr. Dooley has been argumentative on issues of law in the past and refuses to take the advise of legal counsel. He has repeatedly made statements that indicate he is not concerned

about whether the State can prove it's burden and firmly believes the defendant has to prove their innocence in a criminal matter. He has stated that he does not know why he bothers to write the tickets if I am just going to dismiss them or reduce the fine. I have attempted to explain the costs associated with Jury Trials, which are always more than we recover. I have attempted to explain my duty to ensure that Justice is done while also attempting to be a good steward of the City's financial interest. My words have fallen on deaf ears.

Brad was informed before the hearing that I was going to dismiss the new allegation, for several reasons, all of which were to protect the interest of the City. Mr. Dooley issued a citation for theft which had no more chance of being convicted than his original charge of tampering. What I do not understand is why there is an apparent vendetta against someone that is important enough to push the case against the will of the prosecutor.

Very, very few citations are dismissed. Very few citations are resolved by plea bargain, but those that are negotiated are done so in the interest of justice and on a case by case basis. If the City of Ovilla wants a 100% prosecution rate, and a prosecutor who will pursue frivolous cases or cases lacking in the proof necessary to convict, then the City of Ovilla needs another prosecutor. I intend to follow the legal and ethical duties imposed by law.

Signed this _____, August, 2011

Rodney Pat Ramsey
Prosecutor for Municipal Court
City of Ovilla, Texas

BEFORE ME, the undersigned authority, this day personally appeared Rodney Pat Ramsey and

by oath stated that the facts herein stated are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME before me on this _____ day of August, 2011.

Notary Public in and for the State of Texas
My commission expires:

AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF ELLIS §

I, Rodney Pat Ramsey, am over the age of 18 and fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I informed the City Manager, Randy Whiteman I had decreased the amount of fines on some misdemeanor cases and dismissed others. Mr. Whiteman stated to me he did not want any citations dismissed.

I advised Mr. Whiteman that some of the dismissals were for citations which had been written for city ordinance violations which the citizens subsequently obtained permits and were in compliance. I told the City Manager it was not good public policy to punish the citizens without giving a warning before issuing a citation and it could create bad reputation.

I told the City Manager that punishment for punishments sake was not a good theory when enforcing city ordinance violations, and in fact if the true reason behind the ordinance is compliance, then that has been satisfied when the citizen obtains the required permits. I expressed my opinion that City Ordinances are designed to protect the citizens and the City by ensuring compliance, and never designed to be a revenue source. I also suggested that if it appeared that the City was using citations strictly for revenue generation without granting the prosecutor any discretion would tarnish the image of the City of Ovilla.

Mr. Whiteman advised me that he did not care if the City of Ovilla had the worst reputation in Ellis County, he wanted a 100% conviction rate on all citations issued within the City of Ovilla and he did not want a single citation dismissed.

5-00

I advised Mr. Whiteman that I believed his statement could easily be construed as a quota which is illegal. I further advised Mr. Whiteman that his statement also violates the Separation of Powers Doctrine. His statement as the Executive Branch of City Government was attempting to unlawfully interfere with duties of the prosecutor, or Judicial Branch.

I explained that my job as prosecutor is not to convict, but to seek justice. I also advised him that as prosecutor I made my determinations on what to do with citations on an individual and case by case basis. I informed him that his demanding that 100% of all citations be prosecuted was an improper infringement upon the duties and decisions of the prosecutor and illegal. I also informed the City Manager that the Judge has the final say regarding dismissals of any complaints. The City Manager made it clear that this was not negotiable and he wanted 100% of all citations prosecuted without further discussion.

In July the public works department reported a possible violation involving an alleged tampering with a water meter by a citizen of Ovilla. The case was improperly filed as tampering with a water meter and was subsequently dismissed as lacking in probable cause needed for prosecution. The citizen had permission of the City to use the meter and had been using the meter and the water for over twenty years. The meter was a second meter placed on his property and had never been read for usage for over twenty years.

In speaking with the defendant I discovered that the City had placed a water meter at the edge of his property and allowed him access and use of the meter so he could water the city property within the median of the roadway which runs by his property. This meter was put in over twenty years ago and had never had a single reading of water usage by the water department. The defendant had been using the meter for over twenty years to perform the service for the city and had at one time

6-17
received a letter from the City thanking him for his service to the community for watering city property.

After the first ticket, the citizen had also gone down to the city and paid to have the meter put in his name to avoid any further problems with the city.

I was contacted by the defendant again in the month of August and he advised me he had received another citation, this time for theft of water. He also advised me that he had cancelled his contract for the meter and was no longer going to assist the City by continuing the watering of City Property as he has done for over twenty years.

I contacted the public works employee Brad Piland. He stated the citizen had been caught using the water meter to water his garden, or flower bed. I asked Brad Piland how much water had been used. He did not have the information. I asked Brad Piland if he had been the person who granted the Citizen the right to access and use the meter. He advised he was not. I asked him if he knew who was. He did not. I asked him if he knew if the man had permission to use the meter and if that permission was limited. He did not have the answers.

I advised Brad Piland that in order to prosecute the citizen we would have to say how much water he had used and at what rate. He did not have the information. I also advised that we would be required to prove that the man did not have permission to use the meter and water for purposes other than watering the median. I took the time to explain the burden of proof and also to discuss the reasons behind this event and the pros and cons of other legal issues.

In the end Brad Piland was curt and flippant in his response and stated that it appeared that I have all of the citizens defenses figured out for him. I responded that my job requires me to follow certain ethical and legal considerations to ensure that the city is not accused of malicious

7-15
C
prosecutions or the filing of frivolous actions. I also advised him I would not prosecute the case.

When I appeared for Court on August 25, Randy Whiteman, Brad Piland, and an unidentified water employee were present. I have never seen Randy Whiteman in the court for the entire period I have acted as prosecutor for the City of Ovilla. It was obvious that my conversation with Brad Piland had been shared with Mike Dooley and the City Manager was present to encourage the prosecution of the case.

I waited until all other cases had been resolved before addressing the issue. Mr. Dooley had the file prepared with photos and had evidently asked the water department employee to be present for trial, even though I had advised the case was to be dismissed. I approached Brad Piland and asked him if he really wanted to push this issue after I had already advised him I would not prosecute the case.

Mike Dooley interrupted and stated that it was his case and not Mr. Piland's and that he had pictures of the water hose being used to water something on the citizens property. I told him that did not matter because the city had allowed the man to use the meter and water for over twenty years without question, and that we could not prove that he did not have permission to take the water. Mr. Dooley advised that the citizen had to prove that and we didn't. I informed Mr. Dooley, as I have had to do on previous occasions, that the burden of proof is on the State and not the defendant, and the defendant doesn't have to prove anything.

This is not the first case that has been filed by Mr. Dooley that is lacking in probable cause, but it is the first one that was filed against my advice and brought before the court after I had made it known the case would not be prosecuted.

It was obvious to me that Mr. Dooley, Brad Piland, and Randy Whiteman had discussed the

matter prior to the trial. It is also known to me that Randy Whiteman, by his own statements wants all cases prosecuted, regardless of their merit and regardless of the consequences.

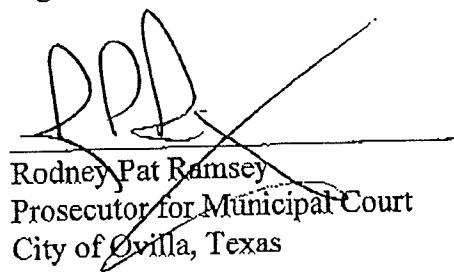
Mr. Dooley has been argumentative on issues of law in the past and refuses to take the advise of legal counsel. He has repeatedly made statements that indicate he is not concerned about whether the State can prove it's burden and firmly believes the defendant has to prove their innocence in a criminal matter. He has stated that he does not know why he bothers to write the tickets if I am just going to dismiss them or reduce the fine. I have attempted to explain the costs associated with Jury Trials, which are always more than we recover. I have attempted to explain my duty to ensure that Justice is done while also attempting to be a good steward of the City's financial interest. My words have fallen on deaf ears.

Brad Piland was informed before the hearing that I was going to dismiss the new allegation, for several reasons, all of which were to protect the interest of the City. Mr. Dooley issued a citation for theft which had no more chance of being convicted than his original charge of tampering. What I do not understand is why there is an apparent vendetta against someone that is important enough to push the case against the will of the prosecutor.

Very few citations are dismissed. Very few citations are resolved by plea bargain, but those that are negotiated are done so in the interest of justice and on a case by case basis. I believe Randy Whiteman, Michael Dooley and Brad Piland have conspired to obtain a 100% prosecution rate, and will seek a prosecutor who will pursue frivolous cases or cases lacking in the proof necessary to convict which is contrary to the ethics and duties imposed by law.

9 -1

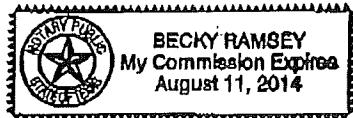
Signed this 30th, August, 2011


Rodney Pat Ramsey
Prosecutor for Municipal Court
City of ~~O~~villa, Texas

BEFORE ME, the undersigned authority, this day personally appeared Rodney Pat Ramsey and by oath stated that the facts herein stated are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME before me on this 30 day of August, 2011.


Notary Public in and for the State of Texas
My commission expires:



Place 5 Dormier seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

Council's Request for Consideration of Future Agenda Items

Place 5, Dormier:

Submitted a written request (and read aloud) for a future agenda item-referencing paragraph 3 of Mr. Whiteman's request (letter) to Council to open an investigation into the relationship between the Mayor and Mr. Ramsey and the handling of the complaint against Randy. Place 5 requested that the Mayor recuse himself from the discussion and investigation of these matters and that Mayor Pro-Tem Leverentz contact the city attorney and handle all aspects of these issues. That the city attorney be present at the council meeting for this proposed agenda item and that it be placed first on the agenda for the evening to avoid costly attorney time. The written request is attached and part of the permanent written minutes.

Place 4, Hunt:

Shared a good time at a local bowling tournament (bowling for badges to aid the Red Oak Service League) attended by Place 4, Place 5, Mayor Pro-Tem and Chief Moon.

Place 3, Wade:

None

Mayor:

Will accept Place 5 Dormier's request for the agenda item noted and will "hand it over" to Mayor Pro-Tem Leverentz.

Place 2, Dickey:

Absent

Mayor Pro-Tem Leverentz: Praised Mr. Hunt for his dedication and time spent for a successful Heritage Day event.

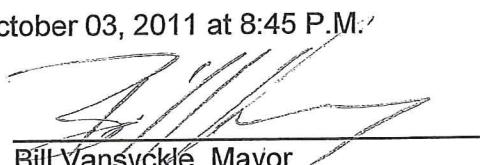
City Administrator, Randy Whiteman reminded Council that the Planning & Zoning Commission were researching with staff and considering an amendment to the codification ordinance, Section 30.5 Accessory Building materials and would have a recommendation to the Council soon.

Adjournment

Place 3 Wade made a motion to adjourn the meeting of October 03, 2011 at 8:45 P.M.

Mayor Pro-Tem Leverentz seconded the motion.

VOTE: The motion carried unanimously.



Bill Vansyckle, Mayor

ATTEST:



Pam Woodall Higgins

Approved October 24, 2011

Attachment: Written future agenda item request from PL5 Dormier.

Bill Vansyckle, Mayor
Tom Leverentz, Mayor Pro-Tem
Michael Dickey, Place Two

Doug Hunt, Place Four
James Wade, Place Three
Richard Dormier, Place Five

PLACE 5 REQUEST FOR FUTURE AGENDA ITEM
CITY OF OVILLA
OCTOBER 3, 2011

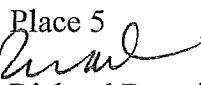
On September 8, 2011, I requested a copy of the City Administrator's response to former City Prosecutor Ramsey's letter of complaint regarding his dismissal by Randy Whiteman. I was refused a copy of the letter by the City Secretary at the direction of the Mayor. I then called the City Attorney, and upon requesting the letter from the City Attorney, he emailed the entire city council a copy of the Administrator's letter. The Administrator's response addressed Mr. Ramsey's complaint against him and also requested that "the City investigate the Mayor's handling of this complaint and his relationship with the complainant."

On September 26, 2011 the entire City Council received a second letter from Mr. Ramsey. On September 27, 2011 I emailed the Mayor and requested the status of the second letter from the former prosecutor and received a reply from the Mayor that he had sent the new letter to the City Attorney "requesting our procedure to respond." As of the time I am writing this request, the City Council has not received any further update on the status of the above issues.

I am requesting a future agenda item for our next regular meeting to discuss and take appropriate action, if any, deemed necessary by the City Council to address (1) the City Administrator's request that the City investigate the Mayor's handling of the original Prosecutor complaint and his relationship with the former prosecutor, if any, and (2) to discuss the status and action needed to deal with all of the former prosecutor's letters to the City.

I request that the Mayor recuse himself from the discussion and investigation of these matters from this point forward and that Mayor ProTem Leverentz contact the City Attorney immediately and handle all aspects of these issues that would normally be performed for the City Council by the Mayor or City Administrator. I also request the City Attorney be present at our city council meeting for this proposed agenda item to provide guidance on how an "investigation" should be performed, if it is determined to be warranted by the City Council. I would also request that this be the first agenda item of the night to reduce the cost of attorney time at the meeting.

I understand it will require three city councilmen to request this item to make it an agenda item, unless the Mayor decides to place it on the agenda himself.

Place 5

Richard Dormier

In regard to dismissal of Rodney Ramsey as City Prosecutor

I left a copy of the dismissal letter I sent to Rodney Ramsey on the Mayor's desk. Later, the Mayor came in and said he wanted to talk to me about the letter. He said you can't send this letter. I said I already had. He said you don't have the authority to fire Mr. Ramsey. He said the Council hired him. I said no Sir, if you remember you came in to my office after you won the Mayor's race and told me to fire Robin Lane and to hire Rodney and I said I did not know if I had the authority and you told me you had already checked and I did. So I let Robin go and hired Rodney as instructed. I notified the Council after the fact. He said well Mr. Ramsey is filing a complaint against you so we need to suspend this action until that is heard. I said, I did this without knowing of the complaint and it is immaterial my letter so I won't rescind it. He said well what you wrote here is not all the story. I said what is? And he did not respond. I said can I see the complaint? He said he didn't have it yet that he had requested Mr. Ramsey to get him one. He said he had an email. I asked, what is the nature of the complaint? He said well it is civil maybe criminal and it is in line with ticket fixing. I said I am not going to suspend action based on something that may come about the dismissal stands. He asked did you mail the letter and I said yes. Later that day I received a complaint from the City Sec. she told me the Mayor hand delivered the complaint to the City. I also, believe that a copy of my dismissal letter was hand delivered to Mr. Ramsey by the Mayor as well, as there was not time for the US Mail to have delivered the letter before Mr. Ramsey responded. I believe the charge against me is in retaliation for me relieving Mr. Ramsey of his duties and that Mr. Ramsey and Mayor Vansyckle are conspiring to get me fired in retaliation. I believe that the Mayor overstepped his duties in soliciting the complaint against me and in his personal prompting and handling of the complaint has created an unfair bias against me and my defense.

In closing, I believe I had both the authority and cause to dismiss Mr. Ramsey. His dismissal was necessary as his actions against the city staff destroyed the working relationship needed to operate as our prosecutor. His own letter displays his animosity toward Brad and Mike even though they were only acting in the official capacity of their positions. In defense of myself I will remind the council that I was just given a performance review and the review was overwhelmingly positive. Mr. Ramsey is a disgruntled ex-contractor and his complaint should be looked at in that light.

I further formally request that the City investigate the Mayor's handling of this complaint and his relationship with the complainant.

A handwritten signature in black ink, appearing to read "John" or "John H. [illegible]".

Randy Whiteman City Administrator

September 7, 2011

In response to Mr. Ramsey's allegations.

In June of 2009 shortly after his election, Mayor Vansyckle came to my office and suggested I let our existing prosecutor Robin Lane go and hire Rodney Ramsey. Mr. Vansyckle then swore in Mr. Ramsey. (Exhibit N) Mr. Ramsey was never appointed by the Council.

On or about August 29, 2009 our court clerk Jessica told me that she had a call from a lady who wanted complain about court. I took the call and the lady's name was Lavender and she said she was calling to complain about her court appearance. She said she wanted to know why the person right before her with a dog at large was dismissed but hers wasn't. She said she asked the prosecutor and he told her the ACO officer dismissed it. I told her I would check in to it to see if there was any impropriety by the ACO officer and take appropriate action. I then explained that each case though similar stands alone and you can't automatically expect the same outcome just because it is the same charge. She said she understood and would I check because if he was doing that, then it was wrong. She did not say I needed to get back with her as it would not change the outcome of her case.

I went to Mr. Dooly and asked him about the case. He said at court before the first case the Prosecutor Rodney Ramsey came up to him and said he had had a phone call from the Mayor and that the Mayor wanted the case dismissed. Dooly said he looked at him like "What?" He said he hesitated as he didn't know what to say and Rodney said you know he signs our paychecks. Dooly said he told him he didn't want to dismiss it but do he didn't care. He said Rodney also told him Rodney would talk to the Mayor and inform him that he should not be requesting dismissals. (Exhibit A)

On or about the Monday following August 29th I went to the Mayor and asked him if he had talked to Rodney and if so, did he instruct Rodney to dismiss the case. He said he had talked to Rodney about cases in general and his philosophy on court but not about a specific case. I told him it was my understanding that it was improper for him to have contact with the Prosecutor. He asked me why I was asking all the questions and I told him I had a complaint from someone who witnessed the dismissal. And I was investigating the dismissal.

I then contacted Rodney and asked him to meet for lunch the next day. Later that afternoon the Mayor asked me had I finished my investigation. I said no I was meeting Rodney tomorrow. The Mayor got angry and said, why are you continuing this witch hunt? I did not respond.

The next day I asked Rodney about the dismissal. Rodney said Mike dismissed it. I said, Mike said you told him the Mayor wanted it dismissed. He said you told him he could do what he wanted but that the Mayor signs our checks. Rodney got loud and said Mike is lying. He said the only person who can dismiss it is the one filing the charge and he said he asked Mike what he wanted to do and he said he didn't care so it was dismissed. I asked him if he talked with the Mayor about the case and he said he talked to the Mayor all the time they were friends. He then said you can't win all your cases some will get dismissed. I said I understand that but we don't file cases just to be filing cases. We believe every one of them to have merit or we wouldn't file them. However, we understand that some will be dismissed for

procedural reasons outside our control but we don't file them expecting to dismiss. We discussed municipal court in general and Rodney told me he knows attorneys and judges all over the area and he can get things dismissed and they can too and that is the way the system worked. He then told me specific scenarios he had where he had charges dismissed in other courts. I ended the conversation by assuring Rodney that I was not out to influence his prosecutions but I was following up a complaint from a citizen about the inconsistency of outcomes. I told him I would be suggesting to Mr. Dooly to be clearer in his answers. So there would not be any further misunderstandings of his response.

That afternoon I counseled Mike Dooly on using open ended statements that could be interpreted differently than he intended. I said if you are asked directly about dismissing a case you should answer directly.

The day after my meeting with Rodney I was met in my office at arrival by the Mayor and Mayor Pro-tem, the Mayor said he was there because Rodney had contacted him and was considering resigning as prosecutor because he felt I might be trying to influence his prosecution. I told him I did not know how he could think that when I assured him at the end of our meeting I was not. The Mayor then asked why did you continue the investigation after you and I had talked, and he asked was I after him (the Mayor)? I said no, I continued the investigation because I had a complaint against Dooly dismissing one case over another and I needed to talk to Rodney. I said I was not after him (the Mayor). I said I was just handling the complaint. I said I determined that Rodney had taken Mike's statement of "I don't care" as sufficient reason to drop the case. I told him I did not see any wrong doing on Mike's part so I was finished with my investigation. He said great glad to know there is not a problem. And then insisted we hug to signify there were no hard feelings and we got up and hugged. Mr. Leverentz was present at this meeting and can verify the hug.

That incident was the only time I had a conversation with Rodney about any court cases other than my witness statements for the Walker trial.

I find it very misleading that Mr. Ramsey chose to omit the date of the conversation that we had concerning case dismissals. It is obvious that Mr. Ramsey was trying to infer that the conversation we had in 2009 happened recently and in reference to the recent water theft. The only conversation we ever had about cases happened 2 years prior and was concerning Mr. Dooly's alleged dismissal of a case. I explained to him then that I had a complaint and I was following up on it. I never ordered him to prosecute 100% of the cases and the history of the court in the 2 years he has been prosecutor shows that there has not been 100% prosecution rate. There is no evidence that he has ever been directed by me or reprimanded by me for his prosecution rate during his tenure. In his own letter he says he has dismissed and plea bargained cases on several occasions and again without any interference or influence by me. (Exhibit B) He claims that I never attend court and that I was only there to pressure his prosecution of Mr. Grinage. That is also a baseless untruth as I have attended court from time to time and with Mr. Ramsey in attendance and not in attendance. As to my being in attendance August 25 just to influence his prosecution of Mr. Grinage, that too is baseless. I inquired about the case before court and was told that the case was only to be a pre-trial where Mr. Grinage would make a plea. I was obviously not there to influence Mr. Ramsey, as I had no reason to expect there would be a trial. (Exhibit

C) I came to court to talk to the Judge as he had sent me a note to discuss the City's jail contract. I planned to stay and hear how Mr. Grinage pled and then leave. However, I did not get to talk to the Judge before trial as he was late. I only stayed because the docket was going fast it seemed easier to wait than to try to see him on another court day.

As to the charges against Mr. Grinage, the City was proceeding against a citizen for unlawful use of the city water. In July I provided Mr. Dooly with two possible charges that I had consulted with the City's general counsel about in an email. (Exhibit M) Mr. Dooly took those two charges (Exhibit P) to Mr. Ramsey and he chose to pursue the tampering charge for court July 28 and told Mr. Dooly we could not prove the criminal mischief without damages. That was the last contact that Mr. Dooly had with Rodney until court in August. Mr. Ramsey pulled the tampering charge before the July court began. Mr. Ramsey contends that the man had permission to use the water free without limitations and that is why he dismissed it. However, that is contrary to City ordinance which states that Free service is prohibited Ovilla Code Sec 13.03.042 (Exhibit D). Not only is it against city code, State law clearly says that only the City Council can grant a gift and only then if the Council declares a municipal purpose (Exhibit E). There is no record of the Council declaring the public purpose so that can't be a defense. And even if there were a declaration it specifically says the use has to be for a public purpose and safe guards put in place to make sure it remains so. There is no public purpose in Mr. Grinage watering his yard or garden. Lastly, Mr. Ramsey claims that Mr. Grinage provided him a letter given to him from the city thanking him for "watering the city property". The letter Mr. Grinage provided the court (Exhibit F) says thank you for erecting and maintaining the entrance sign. There is no reference to watering or city property in the letter Mr. Grinage gave the court so how can that be the proof to dismiss the case? Mr. Ramsey as the prosecutor has a duty to assist building the City's case not in trying to berate the witnesses or the charging officer to not proceed when warranted. After Mr. Ramsey pulled the tampering charge and denied he made no effort to discuss his doing so with Mr. Dooly. Since he had already told Mr. Dooly he would not accept the criminal mischief charge, Mr. Dooly decided to file a theft of service charge. When Mr. Ramsey heard of the second charge he called Brad, who was only the witness in the case, and asked him about the case (Exhibit B). Mr. Ramsey made no contact with Mr. Dooly who was the one who filed the charges. Mr. Ramsey contends in his letter that he let Mr. Dooly know and Mr. Dooly went over him. Again, Mr. Dooly never talked to him until court and then only after he heard him questioning Brad. If he did not agree with the charge he should have suggested in a civil tone one he could get behind. There was a crime committed and an appropriate charge is out there. No one is questioning whether Mr. Grinage volunteered his time to his HOA to maintain the median but that does not relieve him from prosecution for a crime. Ovilla has many volunteers who serve unselfishly without expectation. Dale Helm, for one, has volunteered countless hours to the City over many years and never received favors in return nor would he ever take advantage of the situation in the way Mr. Grinage is charged.

In closing, there is no justification for the behavior of Mr. Ramsey. He was dismissed because he demonstrated disrespect for the Court and those in attendance and he displayed that he can't be civil to the people in the City he has to work with (Exhibit G,H,I, J&K). He was discharged with cause in accordance with the letter of agreement. (Exhibit L &O)

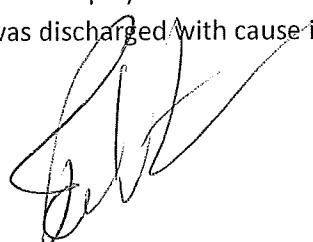


Exhibit Q

Timeline

June 2009 Mayor asked me to hire Rodney Ramsey as Prosecutor

June 19, 2009 I signed Engagement letter with Rodney Ramsey

June 24, 2009 Mayor swears in Rodney Ramsey as City Prosecutor

August 27, 2009 Municipal Court

On or about

August 28, 2009 I received a phone call from Mrs. Lavender complaining about how the person in front of her at court had their case dismissed.

August 31, 2009 I talked to ACO officer Mike Dooly and Mayor Bill Vansyckle as to the complaint

Sept. 1, 2009 I met with Rodney Ramsey concerning the complaint.

Sept. 2, 2009 I met with the Mayor and Mayor Pro-tem in my office concerning my investigation.

June 2011 I discussed with ACO Mike Dooly the water theft at the Brookwood entrance

June 2011 I discussed with TOASE possible charges, there were two, meter tampering and a class C misdemeanor criminal mischief

June 2011 I gave the charges to Mike Dooly to discuss with Rodney

June 2011 Rodney chose the tampering charge

July 28, 2011 Rodney Ramsey dismissed the tampering charge

July 29, 2011 I instructed Mike Dooly to file the second charge I was unaware Mr. Ramsey refused the criminal mischief

August 25, 2011 I attended court and witnessed Mr. Ramsey's actions.

August 29, 2011 I wrote the letter dismissing Rodney Ramsey.

August 30, 2011 I gave letter to the Court Clerk Jessica to mail. She reported back shortly that it was mailed.

I gave a copy of the letter to Mayor Vansyckle

I received a copy of the complaint against me from Mr. Ramsey.

Pam Higgins

From: Mike Dooly [mdooly@cityofovilla.org]
Sent: Friday, August 28, 2009 2:21 PM
To: Pam Higgins
Cc: Jason Robinson; mikedooly83@yahoo.com
Subject: Citation Dismissal- Pam Please put this in my personal file
Attachments: Citation Dismissal.docx

Citation Dismissal

On Thursday August 27, 2008 The Court Clerk Jessica Foresman ask me if I had heard about the dismissal of the complaint against the contractor. I said "Nope, I have been at a training school all week. She had received a message from the Attorney Rodney Ramsey that he had been told to dismiss the complaint. I didn't know of any reason why we should. Later that day, approximately 7:30 pm during court session , the City Attorney Rodney Ramsey came to where I was and stated he had received an email from the Ovilla Mayor Bill Van Syckle requesting we dismiss the charge of failure to register an animal from 115 Suburban,he stated " I know that this puts us in a bad spot because he hires us and fires us and now he is making requests like this. But I wouldn't dismiss this without your ok. I replied "How can I go against what the mayor is requesting?" The case was dismissed by the city attorney. After the court session I asked Attorney Ramsey "How am I supposed to do my job if my citations are going to be continually dismissed by the Mayor? at this point Ovilla Police Officer Mark Bounds was present. Attorney Ramsey stated" I will speak to Mayor Van Syckle about this, take him out to lunch and get him straightened out. While I have no problems dismissing any citation that I have made mistakes in , I feel undo pressure and I have concerns when dismissals come from the Mayors office without proper procedure and policy. I do not file a complaint without following proper procedure and research of the ordinance. Both of these complaints that were dismissed were done so after Standard Operating Procedure was followed by myself and each complaint can be referenced to the City of Ovilla Code of Ordinances. I have no concern doing any and all work assigned to my office, my concern is that I am expected to enforce the City of Ovilla Code of Ordinances equally and feel that requests coming from the Mayors office that are not following the proper chain of command could have effects on my employment. As I have been informed in the Ovilla City Council meeting "If You cannot enforce these ordinances we will find someone that will"



received
8.30.2011 2:20pm
Hand delivered by
Mayor Lansyckie

August 30, 2011

Randy Whiteman
City Administrator
City of Ovilla

By facsimile: 972-515-3221

Re: Termination letter.

Mr. Whiteman,

I have received your letter dated August 29, 2011. Although I find point-counterpoint correspondence typically nonproductive, in situations like these it is necessary to address each allegation. I will do so in the order they were made.

I was not in Court on August 25, 2010. My conduct was not appalling, but necessary at the time to address an attempt by you, Mike Dooley, and Brad Piland to engage in a malicious prosecution of a citizen of Ovilla in a case lacking probable cause. My "outburst", as you have termed it, was no outburst, but the result of Mike Dooley's statement that a citizen had to prove his innocence in a criminal matter. You can see my affidavit filed in this matter for further clarification.

I have never shown any disrespect for Judge Kurth, the Court, or other members of the court staff. Your allegation is wholly conclusory, lacking in fact, and a complete falsehood. Your statements in that regard are denied and rejected a false.

Mr. Dooley was not verbally attacked, that is also denied. Mr. Dooley was rebuked for attempting to willfully and maliciously prosecute a citizen on a case lacking probable cause. This was Mr. Dooley's second attempt in two months to engage in this conduct with the same citizen after the case was dismissed last month.

My conduct has never been unprofessional in the courtroom. That can be confirmed by the Judge. Your allegation is a libelous attack on my professionalism, character and integrity, and is actionable. The only unprofessional conduct committed that night was a conspiracy to violate the civil rights of an Ovilla citizen by employees of the City of Ovilla.

In regard to the issue of termination. I am not an employee Mr. Whiteman. I am an appointee. I serve the City of Ovilla at the will and pleasure of the City Council. You simply do not have the authority to terminate my relationship with the City.

I have done what I am required to do ethically as a licensed attorney in the State of Texas. I am charged to seek justice. What your employees attempted to do was unjust. I have informed you before that I the gatekeeper of criminal complaints and allegations and the decision to prosecute or dismiss a case is solely my responsibility.

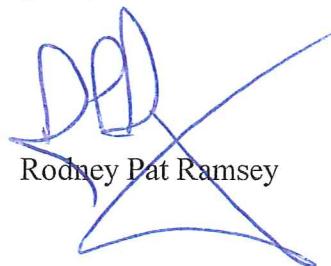
I will address this issue with the City Council and the City Attorney. In my opinion, your actions and conduct in this matter could reasonably be construed as the Tort of Libel;

interference with a business relationship; and possibly constitute some level of public corruption. I am investigating what protections may be available to me under the Texas Whistleblower Act. A copy of this letter is being hand delivered to the Mayor for the City of Ovilla as I believe the Council is the appropriate authority to notice of the alleged violations pursuant to the Act.

Your prior attempts to pressure me into prosecution of all cases before the court, regardless of the merit was bad enough. Now you attempt to wrongfully terminate me for my refusal to prosecute a citizen in a case lacking probable cause. Your actions in this matter show your prior attempts to force, or bully me into a 100% prosecution rate is still part of your agenda as City Manager. Please see my Affidavit for further clarification.

In closing, I don't need the job in Ovilla. I enjoy serving the citizens of Ovilla. I have attempted to do as charged by law, by seeking Justice and conducting myself in a professional manner as prosecutor for the City of Ovilla.

I am prepared to defend myself against your false and malicious allegations. I am also prepared to file suit against you in your individual capacity in order to refute your baseless allegations.



Rodney Pat Ramsey

Hand delivered 8/30/11
To Mayor Von Syckle



cc: File
Honorable Scott Kurth - Municipal Court Judge
Tim Sralla - City Attorney
Tom Leverentz - Mayor Pro Tem
Bill Van Syckle - Mayor by hand delivery.

AUG/30/2011/TUE 10:12 AM

7-10

RECEIVED 08/30/2011 10:07
FAX No.

P. 001/001

Bill Vansyckle, Mayor
Tom Leverenz, Mayor Pro-Tem, Place 1
Michael Dickey, Councilmember, Place 2



James Wade, Councilmember, Place 3
Doug Hunt, Councilmember, Place 4
Richard Dornier, Councilmember, Place 5
Randy Whiteman, City Administrator

August 29, 2011

Rodney Ramsey
201 E. Main Street Suite 203
Waxahachie, TX 75165

Mr. Ramsey,

Your conduct at court on August 25, 2010 was appalling. Your outburst in the hallway and broadcast throughout the adjacent courtroom was deplorable. You showed total disrespect for Judge Kurth and the other members of his court staff as well as for the citizens in attendance. You compounded your outburst by verbally attacking Mr. Dooly an officer of the court and an employee of the City of Ovilla. Your unprofessional conduct will not be tolerated. For that reason, in accordance with Item 2 of the engagement letter dated June 9, 2009, I am terminating our relationship. Please return any files or materials that are the property of the City of Ovilla immediately.

Thank you,

A handwritten signature in black ink, appearing to read "Randy Whiteman".

Randy Whiteman
City Administrator

cc: Mayor Bill VAnsycle

AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF ELLIS §

I, Rodney Pat Ramsey, am over the age of 18 and fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I informed the City Manager, Randy Whiteman I had decreased the amount of fines on some misdemeanor cases and dismissed others. Mr. Whiteman stated to me he did not want any citations dismissed.

I advised Mr. Whiteman that some of the dismissals were for citations which had been written for city ordinance violations which the citizens subsequently obtained permits and were in compliance. I told the City Manager it was not good public policy to punish the citizens without giving a warning before issuing a citation and it could create bad reputation.

I told the City Manager that punishment for punishments sake was not a good theory when enforcing city ordinance violations, and in fact if the true reason behind the ordinance is compliance, then that has been satisfied when the citizen obtains the required permits. I expressed my opinion that City Ordinances are designed to protect the citizens and the City by ensuring compliance, and never designed to be a revenue source. I also suggested that if it appeared that the City was using citations strictly for revenue generation without granting the prosecutor any discretion would tarnish the image of the City of Ovilla.

Mr. Whiteman advised me that he did not care if the City of Ovilla had the worst reputation in Ellis County, he wanted a 100% conviction rate on all citations issued within the City of Ovilla and he did not want a single citation dismissed.

5-10

I advised Mr. Whiteman that I believed his statement could easily be construed as a quota which is illegal. I further advised Mr. Whiteman that his statement also violates the Separation of Powers Doctrine. His statement as the Executive Branch of City Government was attempting to unlawfully interfere with duties of the prosecutor, or Judicial Branch.

I explained that my job as prosecutor is not to convict, but to seek justice. I also advised him that as prosecutor I made my determinations on what to do with citations on an individual and case by case basis. I informed him that his demanding that 100% of all citations be prosecuted was an improper infringement upon the duties and decisions of the prosecutor and illegal. I also informed the City Manager that the Judge has the final say regarding dismissals of any complaints. The City Manager made it clear that this was not negotiable and he wanted 100% of all citations prosecuted without further discussion.

In July the public works department reported a possible violation involving an alleged tampering with a water meter by a citizen of Ovilla. The case was improperly filed as tampering with a water meter and was subsequently dismissed as lacking in probable cause needed for prosecution. The citizen had permission of the City to use the meter and had been using the meter and the water for over twenty years. The meter was a second meter placed on his property and had never been read for usage for over twenty years.

In speaking with the defendant I discovered that the City had placed a water meter at the edge of his property and allowed him access and use of the meter so he could water the city property within the median of the roadway which runs by his property. This meter was put in over twenty years ago and had never had a single reading of water usage by the water department. The defendant had been using the meter for over twenty years to perform the service for the city and had at one time

6-1
received a letter from the City thanking him for his service to the community for watering city property.

After the first ticket, the citizen had also gone down to the city and paid to have the meter put in his name to avoid any further problems with the city.

I was contacted by the defendant again in the month of August and he advised me he had received another citation, this time for theft of water. He also advised me that he had cancelled his contract for the meter and was no longer going to assist the City by continuing the watering of City Property as he has done for over twenty years.

I contacted the public works employee Brad Piland. He stated the citizen had been caught using the water meter to water his garden, or flower bed. I asked Brad Piland how much water had been used. He did not have the information. I asked Brad Piland if he had been the person who granted the Citizen the right to access and use the meter. He advised he was not. I asked him if he knew who was. He did not. I asked him if he knew if the man had permission to use the meter and if that permission was limited. He did not have the answers.

I advised Brad Piland that in order to prosecute the citizen we would have to say how much water he had used and at what rate. He did not have the information. I also advised that we would be required to prove that the man did not have permission to use the meter and water for purposes other than watering the median. I took the time to explain the burden of proof and also to discuss the reasons behind this event and the pros and cons of other legal issues.

In the end Brad Piland was curt and flippant in his response and stated that it appeared that I have all of the citizens defenses figured out for him. I responded that my job requires me to follow certain ethical and legal considerations to ensure that the city is not accused of malicious

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prosecutions or the filing of frivolous actions. I also advised him I would not prosecute the case.

When I appeared for Court on August 25, Randy Whiteman, Brad Piland, and an unidentified water employee were present. I have never seen Randy Whiteman in the court for the entire period I have acted as prosecutor for the City of Ovilla. It was obvious that my conversation with Brad Piland had been shared with Mike Dooley and the City Manager was present to encourage the prosecution of the case.

I waited until all other cases had been resolved before addressing the issue. Mr. Dooley had the file prepared with photos and had evidently asked the water department employee to be present for trial, even though I had advised the case was to be dismissed. I approached Brad Piland and asked him if he really wanted to push this issue after I had already advised him I would not prosecute the case.

Mike Dooley interrupted and stated that it was his case and not Mr. Piland's and that he had pictures of the water hose being used to water something on the citizens property. I told him that did not matter because the city had allowed the man to use the meter and water for over twenty years without question, and that we could not prove that he did not have permission to take the water. Mr. Dooley advised that the citizen had to prove that and we didn't. I informed Mr. Dooley, as I have had to do on previous occasions, that the burden of proof is on the State and not the defendant, and the defendant doesn't have to prove anything.

This is not the first case that has been filed by Mr. Dooley that is lacking in probable cause, but it is the first one that was filed against my advice and brought before the court after I had made it known the case would not be prosecuted.

It was obvious to me that Mr. Dooley, Brad Piland, and Randy Whiteman had discussed the

matter prior to the trial. It is also known to me that Randy Whiteman, by his own statements wants all cases prosecuted, regardless of their merit and regardless of the consequences.

Mr. Dooley has been argumentative on issues of law in the past and refuses to take the advise of legal counsel. He has repeatedly made statements that indicate he is not concerned about whether the State can prove it's burden and firmly believes the defendant has to prove their innocence in a criminal matter. He has stated that he does not know why he bothers to write the tickets if I am just going to dismiss them or reduce the fine. I have attempted to explain the costs associated with Jury Trials, which are always more than we recover. I have attempted to explain my duty to ensure that Justice is done while also attempting to be a good steward of the City's financial interest. My words have fallen on deaf ears.

Brad Piland was informed before the hearing that I was going to dismiss the new allegation, for several reasons, all of which were to protect the interest of the City. Mr. Dooley issued a citation for theft which had no more chance of being convicted than his original charge of tampering. What I do not understand is why there is an apparent vendetta against someone that is important enough to push the case against the will of the prosecutor.

Very few citations are dismissed. Very few citations are resolved by plea bargain, but those that are negotiated are done so in the interest of justice and on a case by case basis. I believe Randy Whiteman, Michael Dooley and Brad Piland have conspired to obtain a 100% prosecution rate, and will seek a prosecutor who will pursue frivolous cases or cases lacking in the proof necessary to convict which is contrary to the ethics and duties imposed by law.

9 -1

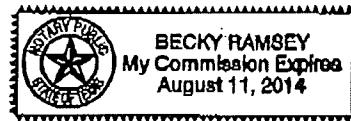
Signed this 30 th August, 2011

~~Rodney Pat Ramsey
Prosecutor for Municipal Court
City of Ovilla, Texas~~

BEFORE ME, the undersigned authority, this day personally appeared Rodney Pat Ramsey and by oath stated that the facts herein stated are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME before me on this 30 day of August, 2011.

Becky Ramsey
Notary Public in and for the State of Texas
My commission expires:



10-10

received
8.30.11 2:20PM
Faxed to City Hall

Rodney Pat Ramsey
Attorney at Law
201 East Main Street, Suite 203
Waxahachie, Texas 75165

Office 972-935-9111

Facsimile 972-935-0224

FACSIMILE TRANSMISSION

August 30, 2011

Randy Whiteman
City Administrator
City of Ovilla

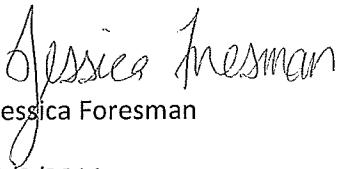
By facsimile: 972-515-3221

Re: Termination letter.

This transmission is confidential and sent for the purpose of communicating privileged information. If this transmission is received in error or receipt does not include the number of pages specified, please call 972-935-9111 immediately.

Exhibit C

Prior to court on August 25, 2011 Randy asked me if Mr. Grinage's case was set for trial. I told him "no." Mr. Grinage was set for a pretrial hearing where he was to make a plea for his case. Mr. Grinage made a plea of not guilty and waived his right to a jury trial. Judge Kurth asked Mr. Grinage if he would like to hold his trial that night, since Mr. Dooly (the complainant) was there and Mr. Grinage agreed. This is very rare since the complainant is not always present in court, and the majority of the time the Defendant requests time to prepare for a trial. Normally after a plea of not guilty the court will set the trial for the next month or two to allow time for everyone to prepare.


Jessica Foresman
9/2/2011

(d) The fund shall be used solely for the purpose of financing the acquisition, development, repair, planning and/or construction of new or existing water and wastewater lines and easements, whether inside or outside the city limits, to provide water and wastewater service to the city.

(Ordinance 06-005, secs. 1-4, adopted 11/14/05; Ordinance adopting Code)

Secs. 13.03.004–13.03.040 Reserved

Division 2. Water Service

Sec. 13.03.041 Water rates

The monthly rates for charges for services furnished by the city's waterworks system to customers, both residential and commercial, shall be as set out in the fee schedule found in appendix A of this code. (1989 Code, ch. 11, sec. 5.00)

Sec. 13.03.042 Free service prohibited

No free water service shall be allowed, except as outlined in terms of contracts with the city. (1989 Code, ch. 11, sec. 6.00)

Sec. 13.03.043 Billing date, delinquent date and disconnect date

(a) Billing date. All customers of the city's water system shall be billed for services rendered by the city on the fifteenth (15th) day of the month following the month in which service is rendered. All water bills are due on the fifteenth (15th) of the month following billing. Nonpayment of water service shall result in disconnection of water service [provided due notice and an opportunity to contest the termination has been given].

(b) Delinquent date. All bills shall be delinquent on the fifteenth (15th) of the month following billing. Delinquent charges (penalty) shall be ten percent (10%) of the outstanding bill.

(c) Disconnect date. Service shall be discontinued to all customers whose bill has not been paid by the twentieth (20th) of the month.

(1989 Code, ch. 11, sec. 7.00)

Sec. 13.03.044 Reconnection fee

If for any reason the city shall have to reconnect or recontinue services, the fee shall be as set out in the fee schedule found in appendix A of this code. (1989 Code, ch. 11, sec. 10.00)

Sec. 13.03.045 Tampering with water meter

Any person found guilty of tampering with water meters shall be subject to having his or her water service discontinued [and shall be guilty of a misdemeanor upon conviction]. (1989 Code, ch. 11, sec. 11.00)

will effect traffic patterns, report on the accident history for the area, and identify alternative traffic calming and traffic control solutions to address a traffic problem.

Is it permissible for a city to make a donation?

The issue is not whether it is okay to make a donation or give a gift, but whether an expenditure of public money serves a valid public purpose. If it is purely a charitable donation, it is prohibited by the Texas Constitution. If it is an expenditure of public funds for the achievement of a legitimate public purpose, it is acceptable.

As a general rule, a gratuitous donation or gift by a city is prohibited by the Texas Constitution, art. III, §52, and art. XI, §3, which, in part, state that the legislature may not authorize any county, city, or other political subdivision of the state to lend its credit or grant public money or anything of value in aid of an individual, association, or corporation. The purpose of these provisions is to prevent local governments from appropriating public money for private purposes.

However, the fact that private interests are *incidentally* benefited by a public expenditure does not invalidate an expenditure for a legitimate public purpose.¹ In other words, if a city determines that an expenditure accomplishes a valid public purpose, the fact that one or more individuals or corporations might benefit does not invalidate the expenditure. The key question is whether a valid public purpose is being *directly* accomplished by the expenditure. Numerous courts have been asked to invalidate or uphold particular expenditures based on whether a public purpose was being served.

The test established by several attorney general opinions is that the donation must go to a legitimate municipal purpose, the city must receive adequate consideration for its donation, and the arrangement must have sufficient controls to guarantee that city money is being used for a municipal public purpose.²

The determination of whether a particular expenditure accomplishes a public purpose must be made by the city council. Some expenditures, such as those for street repair or police protection are easily deemed to serve a public purpose, while others, such as contributing to Meals on Wheels or Crimestoppers, are more difficult. Cities may not expend public funds simply to obtain for the community the general benefits resulting from the operation of the corporate enterprise.³

The council's determination as to public purpose is subject to judicial review. According to the attorney general's opinions, what is a public purpose "cannot be answered by any precise definition" beyond "if an object is beneficial to the inhabitants and directly connected with the

¹ *Barrington v. Cokinos*, 338 S.W.2d 133, 161 (Tex. 1960).

² Op. Tex. Att'y Gen. No. DM-394 (1996), Op. Tex. Att'y Gen. No. JC-439 (2001), Op. Tex. Att'y Gen. No. JC-582 (2002), Op. Tex. Att'y Gen. No. LO 98-024 (1998).

³ *City of Corpus Christi v. Bayfront Assoc., Ltd.*, 814 S.W.2d 98 (Tex. App.--Corpus Christi 1991, writ denied).

local government it will be considered a public purpose.”⁴ However, if the council goes on record recognizing the expenditure as a valid public purpose, the courts are not likely to overturn that determination. Courts are hesitant to second guess the legislative determinations of local governments. Accordingly, in the absence of fraud on the part of the council, or a total lack of evidence that an expenditure serves a public purpose, a court is not apt to declare a particular city expenditure to be invalid.

Once a legitimate public purpose is identified, the city must consider whether contractual obligations or other forms of formal control are necessary in order for the council to ensure that the city receives its consideration -- the accomplishment of the public purpose.⁵

What notice is required by the Texas Open Meetings Act?

The Texas Open Meetings Act (Act) requires written notice of the date, hour, place, and subject of all meetings. TEX. GOV’T CODE § 551.041. The agendas for all meetings subject to the Act must be posted at least 72 hours before the meeting.

Any action taken in violation of Act’s notice requirements is voidable. TEX. GOV’T CODE § 551.141; *Swate v. Medina Community Hospital*, 966 S.W.2d 693, 699 (Tex.App. – San Antonio 1998, pet. denied). This means that an action in violation of the Act may be voided by a court pursuant to a lawsuit filed for that purpose. See *Collin County v. Home Owners’ Association for Values Essential to Neighborhoods*, 716 F.Supp. 953, 960 (N.D. Tex. 1989), *City of Bells v. Greater Texoma Utility Authority*, 744 S.W.2d 636, 640 (Tex.App. – Dallas 1987, no writ). If some, but not all, actions in a meeting are in violations of the Act, only those actions in violation may be voided.

While the date, hour, and place of a meeting are self-explanatory, whether the agenda gives the general public sufficient notice of the subjects to be discussed is often a source of confusion for city officials. The agenda serves to give the general public access to decision making by their governing body, and the specificity of the subjects listed on the agenda depends upon the situation. For example, a posted agenda listing “personnel” as a subject to be discussed may be sufficient notice in one situation, but not in another. The Texas Supreme Court has held that a subject listing of “personnel” was not sufficient notice of a discussion surrounding the hiring of a new superintendent of a school district. The hiring of a new superintendent is a matter of great public interest, held the court, and “personnel” was not specific enough to notify the general public of the discussion to be held in executive session. *Cox Enterprises, Inc v. Board of Trustees*, 706 S.W.2d 956 (Tex. 1986). The same was held to be true for the termination of a police chief. *Mayes v. City of De Leon*, 922 S.W.2d 200 (Tex.App. – Eastland 1996, writ denied). While the posting of “personnel” may be sufficient for less publicized positions, such as clerks, the TML Legal Services Department advises that more specific notice, listing the

⁴ Tex. Atty’ Gen. ORD-660 (1999), Op. Tex. Att’y Gen. No. JC-212 (2000).

⁵ Op. Tex. Att’y Gen. No. LO 94-008 (1994), Op. Tex. Att’y Gen. No. DM-394 (1996), Op. Tex. Att’y Gen. No. JC-439 (2001), Op. Tex. Att’y Gen. No. JC-582 (2002), Op. Tex. Att’y Gen. No. LO 98-024 (1998)

City of Ovilla
P.O. Box 5047
Ovilla, Texas 75154

August 13, 1981

Lou Grinage
Rt. 1, 101 Brookwood Ct.
Red Oak, Texas 75154

Dear Mr. Grinage,

--This letter is in appreciation of the work and time spent in building and erecting the beautiful sign at the entrance to the Brookwood Addition. This office has received many compliments on the sign and wished to express this to you.

On behalf of the community, please accept our thank you, so extended in gratitude. With members in our community continuing to volunteer their time, Ovilla can only become a closer knit, more actively committed community.

With appreciation,



Maureen E. Cleveland
City Secretary

Randy Whiteman

Brad [bpiland@cityofovilla.org]
Thursday, September 01, 2011 8:10 AM
Randy Whiteman
court case

Around the second week of August 2011 I was contacted by Mr. Ramsey the city prosecutor in regards to Mr. Grinage's case. At the time I had no prior knowledge of the second case being filed. The original case was filed and brought before the court and dismissed. I was called by the public works employees several months before to investigate the misuse of the water meter. When I arrived at the location there was a hose attached to the meter and running into the backyard of the home. I advised Mr. Grinage that this was not the intended use of the water or meter. It was intended for the flower bed at the entrance to Brookwood. At that time Mr. Grinage turned the water off and removed the hose. I also advised him that if he wanted to use the meter for his personal use to register the meter in his name. On 6-3-2011 Mr. Grinage came to city hall and registered the meter in his name and the account was started. On 8-2-2011 Mr. Grinage closed the account on the meter.

On August 25th 2011 I was called by Mike Dooley to come to city hall to be a witness in said case. Randall Bailey was also called to be a witness. We were called as witnesses because we saw the water being used in the backyard. Myself and Randal had no other business than to be witnesses for the city.

I was approached by Mr. Ramsey and was asked if I wanted to pursue the case any further. I told him it was not my case to pursue. At that time Mike told him it was his case not mine. Mr Ramsey then started getting defensive and yelling at Mike in the hallway by my office. Mr. Ramsey was under the impression that he was being bullied into prosecuting the case. This was not the intent of my being present at court. During the rant in the hallway I heard the door to the courtroom close. All present in the courtroom could clearly hear the discussion going on in the next building. As for the burden of proof in the case I was only the witness to the misuse of the water not the officer of the court.

Carr
Tchir T

Randy Whiteman

From: Reggie Carr [rcarr@cityofvilla.org]
Sent: Thursday, September 01, 2011 6:24 AM
To: Randy Whiteman
Subject: August 25, 2011 Municipal Court

Mr. Whiteman, in response to your email dated August 31, 2011. On August 25, 2011, I was in attendance at the Municipal Court and heard a loud voice coming from the hallway near the fire department vehicle bay. I didn't pay much attention to the voice or the conversation (as to what was being said). If there had been a breach of the peace/ or a law being broken I would have enforced that issue.

Thank you,

Officer F.R Carr
Cuilla, Police Department
105 South Cockrell Hill
Cuilla, Texas 75154
972 617 7267

Regarding Court August 25, 2011

Code Enforcement filed a complaint against Louis Grinnage 101 Brookwood Court for Theft of Service..a water hose had been observed by Public Works Dept, as running from a City water meter to the back yard and was being used to water the back yard. Brad Piland and Mark Haase were called to the scene and Brad spoke with the owner and he removed the hose from the meter. Mr. Grinnage appeared in court that night and plead Not Guilty and asked for a trial by judge, Judge Kurth said "Great we can have this tonight as I have other cases to try." My office was not prepared for trial as this was a plea night. I was provided pictures by one of the Public Works crew , Henry Castillo , as proof of the usage , I am aware if I am not the picture taker I cannot use the pictures and decided to call and ask Brad Piland and Randall Bailey to come to court as they had observed the water sprinkler being used. Henry Castillo lives further away and I didn't know if he would make it in time for court. When the time came for trial I asked Mr. Ramsey to come back to my office areas to introduce the witnesses and go over the pictures he followed me

back and was reading the complaint. He stated he had spoken to the water guy about this and I introduced him to Brad Piland with whom he had spoken. Mr. Ramsey stated 2 times in aloud voice "Do you really want to push this?" I could hear Brad speaking but I realized he was speaking about my case and I interrupted, telling him its my case, my complaints. Mr Ramsey the stated "I feel someone is trying to back door me and when I find out who" I interrupted him again and stated " No one is trying to back door you, these are my complaints." Mr. Ramsey began shouting " I wont't do it, I wont do it" he then left the office area returning to court and when Judge Kurth asked about the case Mr. Ramsey stated "The city would like to dismiss the case."

Exhibit J

Sept 6, 2011

On the night of August 25, 2011 I was in attendance at the Municipal Court hearings. During this time Randy Whiteman our City Administrator had attended court as well. In the process of court, I heard loud voices of what appeared to be Rodney Ramsey our current prosecutor verbally bashing someone. Although no one in the court room knew who he was talking to, it was apparent it was someone with the Public Works Dept since all the noise was coming from that area. At this time I looked at Randy wondering what the heck was going on. He then went over and closed the door to keep the general public from hearing the altercation.

Tammy McCoy
Tammy McCoy

Exh.2,3 K

During pre-trials at court on August 25, 2011 I did hear Rodney Ramsey yelling over in the hallway by the Public Works offices. I could not see or hear who he was talking to because I was focused on the case in front of the Judge. It was clear that Mr. Ramsey was upset and very loud. There were several people still sitting in the court room when this happened. I recall someone went and shut the door between the court room and Public Works area.

Jessica Foresman
Jessica Foresman
8/31/2011

Exhibit L

Rodney Pat Ramsey
 *Attorney at Law*
201 E. Main, Suite 203
Waxahachie, Texas 75165

June 19, 2009

Randy Whiteman
City Administrator
City of Ovilla, Texas

Re: Letter of Understanding;
Engagement of Rodney Pat Ramsey as City Prosecutor

Dear Mr. Whiteman,

This letter will serve as our agreement and understanding regarding my position as City Prosecutor for the City of Ovilla, subject to the following terms and conditions:

1. It is agreed that I am not an employee of the City and shall operate in a subcontractor status with no employer/employee relationship or benefits.
2. My services are to continue so long as approved by the City of Ovilla, and either party may discontinue the relationship with or without cause.
3. Compensation for my services are calculated on an hourly rate of \$150.00 per hour, to be billed monthly.

I am affixing my signature in approval of the above terms. You may approve this letter with your signature below.

Approved by:


Rodney Pat Ramsey
Signed June 19, 2009


Randy Whiteman
City Administrator
Signed June 29, 2009



Statement of Appointed Officer

I, RODNEY PAT RAMSEY, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value or promise any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

A handwritten signature in black ink, appearing to read 'Rodney Pat Ramsey'.

Affiant Signature

City Prosecutor for Ovilla, TX
Office to Which Appointed

City of Ovilla, Ellis County
City/County

SWORN TO and subscribed before me by affiant on this 24th day of June 2009.

A handwritten signature in black ink, appearing to read 'Bill Vansyckle'.

Signature of Person Administering Statement

Bill Vansyckle
Printed Name

MAYOR, CITY OF OVILLA

Title

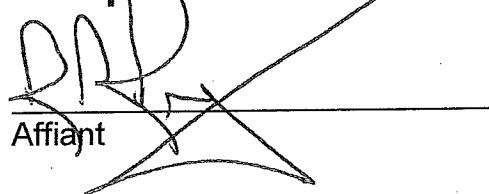
Ex 1-211-N 201



In the name and by the authority of

The State of Texas OATH OF OFFICE

I, RODNEY PAT RAMSEY, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of CITY PROSECUTOR for the City of Ovilla of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.



Affiant

SWORN TO and subscribed before me by affiant on this 24th day of June 2009.



Signature of Person Administering Oath

BILL VANSYCKLE
Printed Name

MAYOR, CITY OF OVILLA
Title

AUG/30/2011/TUE 10:12 AM

RECEIVED 08/30/2011 10:12 AM

FAX No. P. 001/001

Bill Vansyckle, Mayor
Tom Lieverenz, Mayor Pro-Tem, Place 1
Michael Dickey, Councilmember, Place 2



James Wade, Councilmember, Place 3
Doug Hunt, Councilmember, Place 4
Richard Dornier, Councilmember, Place 5
Randy Whiteman, City Administrator

August 29, 2011

Rodney Ramsey
201 E. Main Street Suite 203
Waxahachie, TX 75165

Mr. Ramsey,

Your conduct at court on August 25, 2010 was appalling. Your outburst in the hallway and broadcast throughout the adjacent courtroom was deplorable. You showed total disrespect for Judge Kurth and the other members of his court staff as well as for the citizens in attendance. You compounded your outburst by verbally attacking Mr. Dooly an officer of the court and an employee of the City of Ovilla. Your unprofessional conduct will not be tolerated. For that reason, in accordance with Item 2 of the engagement letter dated June 9, 2009, I am terminating our relationship. Please return any files or materials that are the property of the City of Ovilla immediately.

Thank you,

Randy Whiteman
City Administrator

cc: Mayor Bill VAnsycle

Exhibit 2

File two charges

Penal code

Class C Criminal Mischief

And as

Ovilla Code 13.03.045 Meter Tampering

Booking up to
Water meter - extended
period of time

[REDACTED]
1/1/2018 -
[REDACTED]

Randy Whiteman

From: Randy Whiteman [mailto:rwhiteman@cityofovilla.org]
Sent: Wednesday, June 22, 2011 12:03 PM
To: 'Pam Higgins'
Subject: FW: Impact Fee Amendment Procedure; Theft of Water Service

From: Fritz Quast [mailto:fquast@toase.com]
Sent: Tuesday, June 07, 2011 5:09 PM

To: Randy Whiteman

JCC: Tim Sralla; Ann Seward

Subject: Impact Fee Amendment Procedure; Theft of Water Service

Mr. Whiteman:

I have been asked by Mr. Sralla to answer a couple questions you have posed to him.

I. Impact Fee Amendment Procedure

As for the impact fees question, we concur with your reading of sections 395.044, 395.054, .055, .056, and .057 of the local government code. Amendments are unlike the process for originally adopting the impact fees, which requires two tiers of public hearings; the first for adopting the land use assumptions and the capital improvements plan, and the second for adopting the fee itself. Amendments to the assumptions, plan or fee require only one public hearing. The advisory committee (P&Z) needs to file its comments before the fifth business day before the council public hearing. Thus, if the hearing were held at a regular council meeting on Monday, the comments have to be filed before the preceding Monday, i.e., the Friday before. To illustrate, if the public hearing were on Monday, June 13, 2011, then the comments would have needed to be filed no later than Friday, June 3, 2011.

II. Water Theft Issue

As for the water service theft issue, I am assuming, based on how your email described the facts, that this individual did not tamper with the meter in any way; he just used water from a city facility and had a "hose hooked up to a City use only meter."

A. Possible Ordinance Violation

To the extent we might be able to argue that this is "tampering" with the meter, then clearly he violated section 13.03.045 of the Ovilla Code. It is a "misdemeanor" that is punishable by \$500 fine under section 1.01.009(a). I am not sure, however, that "tampering" includes merely hooking a hose up to the meter. But given the ordinary use of that term it might be broad enough to include the actions you describe, and there is at least one case that supports a broad

interpretation of the term under Texas law. See *Doyle v. State*, 148 S.W.3d 611 (Tex. App.—Austin 2004, pet. ref'd). Using the ordinance provision might be easier because the City would not have to prove an amount or value to the water stolen.

B. *Criminal Mischief under the Penal Code*

The other option is charging him for **criminal mischief** under section 28.03 of the penal code. Subsection (a) of that section provides:

(a) A person commits an offense if, without the effective consent of the owner:

- (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
- (2) he **intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person**; or
- (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

Tex. Pen. Code Ann. § 28.03 (Vernon 2008). Subsection (a)(1) is not applicable because (as you describe the facts) I do not believe the meter was destroyed or damaged. Subsection (a)(3) is not because it concerns vandalism. As for (a)(2), again, the term “tampers with” would probably include what you are talking about, and I believe a water meter is “tangible property.” The only question left was whether there is “pecuniary loss” or “substantial inconvenience” to the City. While inconvenient, the actions here might not have caused the City “substantial inconvenience,” i.e., unhooking the hose. While there is certainly pecuniary loss, the City would have to prove the amount to show what kind of level of offense it is. Less than \$50, and it is a class C misdemeanor. As long as we can prove beyond a reasonable doubt that some water was used, then I believe we can satisfy this.

But we might be able to make out a class A misdemeanor. Section 28.03(b) says:

Except as provided by Subsections (f) and (h), an offense under this section is:

....

(3) a **Class A misdemeanor** if:

- (A) the amount of pecuniary loss is \$500 or more but less than \$1,500; or
- (B) the actor causes in **whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;**

I cannot find an interpretation of this language, but it may apply. The question would be this: once the water reaches the City’s own meter, is it still really a “public water supply.” Finally, subsection (c) provides:

(c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

- (1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device[.]

Under the facts you have described, I am not in a position to tell whether this can be made out or not, even assuming we are still talking about public water.
Where was the water diverted or the hose attached in relation to the meter?

C. Conclusion

In conclusion, it might be feasible for the City to charge him under both the ordinance and the penal code section. Just realize that if it is a Class A, it will not be prosecuted in municipal court. Further, while I do not believe there are preemption issues between the penal code provision and the ordinance, to avoid those issues, I think the City should prosecute this as a Class C criminal mischief under the penal code. But as I will not be prosecuting this, I would encourage you to discuss this with the municipal prosecutor before you decide on the best course of action.

Please do not hesitate to call me if you would like to discuss either of these issues in more detail.

Sincerely,



TAYLOR·OLSON·ADKINS·SRALLA·ELAM

LAW OFFICES OF TAYLOR, OLSON, ADKINS, SRALLA & ELAM, L.L.P.

Frederick "Fritz" Quast

Attorney at Law

Taylor, Olson, Adkins, Sralla & Elam, L.L.P.

6000 Western Place, Suite 200

Fort Worth, Texas 76107

Telephone: 817.332.2580

Fax: 817.332.5219

Facsimile: 817.332.4740

Email: fquast@toase.com

www.toase.com

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Exhibit Q

Timeline

June 2009	Mayor asked me to hire Rodney Ramsey as Prosecutor
June 19, 2009	I signed Engagement letter with Rodney Ramsey
June 24, 2009	Mayor swears in Rodney Ramsey as City Prosecutor
August 27, 2009	Municipal Court
On or about	
August 28, 2009	I received a phone call from Mrs. Lavender complaining about how the person in front of her at court had their case dismissed.
August 31, 2009	I talked to ACO officer Mike Dooly and Mayor Bill Vansyckle as to the complaint
Sept. 1, 2009	I met with Rodney Ramsey concerning the complaint.
Sept. 2, 2009	I met with the Mayor and Mayor Pro-tem in my office concerning my investigation.
June 2011	I discussed with ACO Mike Dooly the water theft at the Brookwood entrance
June 2011	I discussed with TOASE possible charges, there were two, meter tampering and a class C misdemeanor criminal mischief
June 2011	I gave the charges to Mike Dooly to discuss with Rodney
June 2011	Rodney chose the tampering charge
July 28, 2011	Rodney Ramsey dismissed the tampering charge
July 29, 2011	I instructed Mike Dooly to file the second charge I was unaware Mr. Ramsey refused the criminal mischief
August 25, 2011	I attended court and witnessed Mr. Ramsey's actions.
August 29, 2011	I wrote the letter dismissing Rodney Ramsey.
August 30, 2011	I gave letter to the Court Clerk Jessica to mail. She reported back shortly that it was mailed.
	I gave a copy of the letter to Mayor Vansyckle
	I received a copy of the complaint against me from Mr. Ramsey.

E, P b, V R

CAUSE NUMBER: 080005510

COPY

STATE OF TEXAS

IN THE MUNICIPAL COURT

VS

CITY OF OVILLA

CHARLES M. LAVENDER

ELLIS COUNTY, TEXAS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

I, MIKE DOOLY, the undersigned affiant, do solemnly swear that I have good reason to believe and do believe that **Charles M. Lavender**, hereinafter called Defendant, on or about the 13th day of May, 2009, and before the making and filing of this complaint, in the territorial limits of City Of Ovilla, in the County of Ellis, and the State of Texas, did violate City of Ovilla Code of Ordinances Chapter 2 Section 3 4.01 to-wit: unregistered animal at 711 Georgetown.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Mike Dooley
Affiant

Sworn and subscribed before me by MIKE DOOLY a credible person, this the 14th day of
May 2009.

Jessica Foresman
Clerk of the Municipal Court
City Of Ovilla,
Ellis County, Texas

**Response to filed complaint by
Mayor Vansyckle**

received

11-17-2011 PHW

2:20pm

November 17th, 2011

Response to complaint filed by Randy Whiteman

Response to Allegations:

1. I did not tell Mr. Whiteman to suspend his removal of Mr. Ramsey
2. I followed the correct procedure in handling the complaint filed by Mr Ramsey. I requested a Notarized copy of the complaint not a phone call or email as originally received. I made Mr Whiteman aware of the potential complaint and that it was just a phone call and that I requested it in writing. Only when I personally received the written complaint I would deliver it to him and the attorney TOASE.
3. I did not withhold the original complaint from the council and did not commit official oppression. When original written complaint filed I sent directly to attorney. I asked him for the correct procedure to handle this.
4. False. I sent it when I received written complaint.
5. Nothing is violated when a faxed copy is sent. Mr Ramsey called and asked if I could come by his office. I did and he hand delivered the document to me. Again nothing violated. I did not assist mr ramsey in the preparation of said complaint. Again another lie by mr whiteman.
6. I did not assist mr ramsey in preparing his complaint. Whiteman lie again.
7. Again , I did not assist or work with mr ramsey in his filing of complaint. I filed it with our city attorney and requested the correct procedures to handle this matter. No due process was denied.
8. The only communication was with Mayor pro tem Leverenz and the City Attorney. Mr Leverenz regarding the removal of mr whiteman as city administrator. No Open Meeting act was violated. Yes, I believe that Mr Whiteman is no longer capable of representing our city. He uses city time and property to seek new employment while working in Ovilla during the past 6 to 8 months. He is destroying public trust with Ovilla citizens by forcing unfounded prosecution of City Codes and ordinances. *Yes , I will stand with or in front of the citizens of Ovilla that are being attacked by this unlawful prosecution.*
9. I have no relationship with Mr Ramsey. I handled the complaint as required and notified the City Attorney as soon as I received said documents.
10. False. I wish Mr Whiteman fired because he no longer represents Ovilla.
11. False. I never **Ordered** City Secretary. I did not copy any information on Mr Whiteman. That is a lie and slanderous statement.

Mr Whiteman filing of this complaint is only an attempt (slanderous) to defend the wrong actions in handling city affairs. He is attempting lay blame on others to defend the complaint filed by Mr Ramsey.

I strongly believe that he is being supported by the same individuals who have been attacking me as I reported to the police. Nothing in his supporting documents show any wrong actions. His statement is full of falsehoods and slanderous statements.

I followed proper procedures in regard to the Written Complaint filed by Mr Ramsey.
I have no relationship with Mr Ramsey and NO physical proof has been offered , just
false information to the committee.

Bill Vansyckle

CERTIFIED EXECUTIVE SESSION AGENDA

Date: 28 November 2011

I, Tom Leverentz, Mayor Pro-Tem of the City of Ovilla, Texas hereby convene into Executive Session at _____ p.m. on the 28th day of November 2011.

The following Council Members were in attendance:

<u>Council Members</u>	<u>Staff Members</u>	<u>Others</u>
<input type="checkbox"/> Bill Vansyckle, Mayor	<input type="checkbox"/> R. Whiteman, City Administrator	<input type="checkbox"/> City Attorney
<input type="checkbox"/> Tom Leverentz, Mayor Pro-Tem	<input type="checkbox"/> P. Woodall Higgins, City Secretary	<input type="checkbox"/> Other Legal Counsel
<input checked="" type="checkbox"/> Place 2, Michael Dickey (<i>Absent</i>)	<input type="checkbox"/>	
<input type="checkbox"/> Place 3, James Wade		
<input type="checkbox"/> Place 4, Doug Hunt		
<input type="checkbox"/> Place 5, Richard Dormier		

The following is an agenda of an Executive Session of the City of Ovilla, Texas, held pursuant to the Texas Open Meetings Act, Government Code Section:

<input type="checkbox"/> 551.071 - Consultation w/Attorney	<input type="checkbox"/> 551.072 - Real Property
<input type="checkbox"/> 551.073 - Deliberations about Gift	<input type="checkbox"/> 551.074 - Personnel Matters
<input type="checkbox"/> 551.076 - Security Personnel or Devices	<input type="checkbox"/> 551.086 - Test item (SB 595)
<input type="checkbox"/> 551.087 - Economic Development Negotiations (SB1851)	
<input type="checkbox"/> 418.183 - Homeland Security	

Said Executive Session has been conducted in order to deliberate on the following matters:

ITEM 1. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda.

- Complaint filed by City Administrator

COUNCIL WILL RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED.

The following further action was taken in open session:

I, Tom Leverentz, Mayor Pro-Tem, hereby adjourn the Executive Session at _____ p.m. on the 28th day of November 2011. No Action was taken. Any action, as a result of this Executive Session, will be taken and recorded in open session.

I certify that this agenda is a true and accurate record of the proceedings.

Tom Leverentz, Mayor Pro-Tem

***Note:** this certified agenda must be kept a minimum of two years after the date of the Executive Session, and is confidential. A person who knowingly and without lawful authority makes this record public commits a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorneys fees, and exemplary damages. Texas Government Code § 551.145.

CERTIFIED EXECUTIVE SESSION AGENDA

Date: 28 November 2011

I, Tom Leverentz, Mayor Pro-Tem of the City of Ovilla, Texas hereby convene into Executive Session at _____ p.m. on the 28th day of November 2011.

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<input checked="" type="checkbox"/> Place 2, Michael Dickey (Absent)	<input type="checkbox"/> _____	
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<input type="checkbox"/> 551.087 - Economic Development Negotiations (SB1851)	
<input type="checkbox"/> 418.183 - Homeland Security	

Said Executive Session has been conducted in order to deliberate on the following matters:

ITEM 2. The City Council will meet in closed session pursuant to Section 551.074 of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee.

- Mayor Vansyckle

COUNCIL WILL RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED.

The following further action was taken in open session:

I, Tom Leverentz, Mayor Pro-Tem, hereby adjourn the Executive Session at _____ p.m. on the 28th day of November 2011. No Action was taken. Any action, as a result of this Executive Session, will be taken and recorded in open session.

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Tom Leverentz, Mayor Pro-Tem

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