

**SPECIAL CALLED CITY COUNCIL MEETING
March 23, 2015**

MINUTES OF THE SPECIAL CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD ON **MARCH 23, 2015** AT 7:00 PM IN THE COUNCIL CHAMBER, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

PRESENT:

C. R. Evans Jr., Mayor
John Ed Welch, Mayor Pro-Tem
Pat Beets
Jerry Clark
Philip Cox

ABSENT:

John Posey

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

- I. **CALL TO ORDER** - Mayor Evans called the meeting to order at 7:06 p.m.
1. The Invocation and the Pledge of Allegiance was dispensed with by Mayor Evans. as it was given by Councilman Posey

II. **CONSENT AGENDA**

None

III. **CITIZEN FORUM**

None

I. **NEW BUSINESS (Review, consider and/or take action)**

1. REVIEW, DISCUSS, CONSIDER AND TAKE ACTION ON **RESOLUTION 2015-03-23A**, A RESOLUTION TO RATIFY A DECISION OF THE OVERTON MUNICIPAL DEVELOPMENT CORPORATION TO PARTICIPATE IN FUNDING OF REPLACEMENT AND UPSIZING 1,700 FEET OF A 10" SEWER TRUNK LINE TO 15" SDR-26 HW SEWER PIPE, WITH ATTENDANT APPURTANANCES.

City Manager Cunningham presented the Chronicle of Events leading up to the emergency need to replace the existing 10" Clay Sewer Trunk Line out that runs from Hwy 850 Northward to the junction with the 16" Main South of the Sewer Plant. City Manager Cunningham stated that he had requested a loan from the OMDD Board for their assistance to fund the replacement sewer line project and the OMDD had approved a ten year 0% interest loan in the amount of 100,000.00 to pay for the replacement and upsizing of the sewer line.

Mayor Pro Tem Welch asked if this was a project that needed to be sent out for bid.

City Manager Cunningham responded that since this was an emergency situation (as shown in the Chronicle of Events in the Council Agenda Packet) that the City would not be required to put this work out for bid.

Councilman Cox made a motion to approved RESOLUTION NO. 2013-03-23A; A Resolution To ratify the decision of the Overton Municipal Development Corporation to participate in funding of replacement and upsizing 1,700 Feet of a 10” sewer trunk line to 15” sdr-26 hw sewer pipe, with attendant appurtenances. Councilman Clark seconded the motion. Motion carried 4 – 0; Councilman Posey absent. (Attachment 1)

- 2. AUTHORIZE EXECUTION OF A CONTRACT WITH AAA SANITATION INC. TO REPLACE AND UPSIZE 1,700 FT OF A 10” SEWER TRUNK LINE.

Councilman Cox made a motion to accept the contract agreement from AAA Sanitation Inc. to replace and upsize 1,700 feet of a 10” Sewer Trunk Line in the amount of \$91,100.00. Mayor Pro Tem Welch seconded the motion. Motion carried 4 – 0; Councilman Posey absent. (Attachment 2)

- 3. HEAR, CONSIDER AND/OR TAKE ACTION ON **RESOLUTION NO. 2015-03-23B**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS RESCHEDULING THE APRIL REGULAR CITY COUNCIL MEETING FROM THURSDAY, APRIL 16, 2015 TO THURSDAY APRIL 23, 2015.

Councilman Beets made a motion to approve RESOLUTION NO. 2015-03-23B rescheduling the Regular Called Council Meeting for April from Thursday, April 16, 2015 to Thursday, April 23, 2015. Councilman Cox seconded the motion. Motion carried 4 – 0; Councilman Posey absent. (Attachment 3)

IV. ADJOURNMENT

Mayor Pro Tem Welch made a motion that the meeting be adjourned. Councilman Clark seconded the motion. Motion carried 4– 0 Councilman Posey absent.

With no further business, the meeting was adjourned at 7:23 P.M.

Minutes approved and submitted and/or corrected this 23rd day of April, 2015.

C.R. Eason Jr.
C. R. Eason Jr.



Attested by:

Rachél Gafford
Rachél Gafford, City Secretary

ATTACHMENT 1
RESOLUTION NO. 2015-03-23A

RESOLUTION NO: 2015-03-23A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, TO RATIFY A DECISION OF THE OVERTON MUNICIPAL DEVELOPMENT CORP. ORATION TO PARTICIPATE IN FUNDING OF REPLACEMENT AND UPSIZING 1,700 FEET OF A 10" SEWER TRUNK LINE TO 15" SDR-26 HW SEWER PIPE, WITH ATTENDANT APPURTANANCES.

THE STATE OF TEXAS §
COUNTY OF RUSK §

WHEREAS, the OMDD met on March 23rd 2015 to consider funding of a project to replace a critical sewer trunk line on an emergency basis; and

WHEREAS, funds generated by sales and use tax revenue for the Development District are available for funding of said project; and

WHEREAS, the City Council of the City of Overton agrees to accept OMDD funds for such project under the terms and conditions specified in their motion to approve the funding.

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


The City Council of the City of Overton ratifies and approves the loan of \$ 100,000.00 that was approved for funding by the OMDD using funds generated from sales tax for such purposes; and authorizes the Mayor to execute the PROMISSORY NOTE, included herein as Exhibit A.

APPROVED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS 23rd DAY OF MARCH, 2015.

CITY OF OVERTON


C.R. Evans, Jr., Mayor



ATTEST:

Rachel Gafford, City Secretary

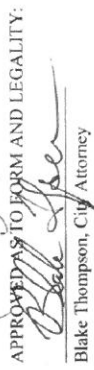
APPROVED AS TO FORM AND LEGALITY:

Blake Thompson, City Attorney

EXHIBIT A

PROMISSORY
NOTE

DATE AND PARTIES. The date of this Promissory Note (NOTE) is March 23, 2015.

The parties and their addresses are:

LENDER:
Overton Municipal Development District ("OMDD")
1200 S. Commerce Street
OVERTON, TX 75684

BORROWER:
CITY OF OVERTON ("City")
a Texas Local Government Agency
DRAWER D
OVERTON, TX 75684

Note Date	Note Number	Note Amount
March 23, 2015	# 000003	\$100,000.00

PROMISE TO PAY - For value received, City promises to pay OMDD, at OMDD's address, or at such other location as OMDD may designate, the principal sum of \$100,000.00 until this Note matures or this obligation is accelerated.

PAYMENT - City agrees to pay this Note in a total of ten (10) installments of \$ 10,000.00 each beginning March 23, 2016, and on the same date each year for ten more years thereafter.

PREPAYMENT - This Loan may be prepaid in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until the NOTE is paid in full.

LOAN PURPOSE. The purpose of this Loan was to finance replacement of 1,700 feet of 10" clay sewer pipe with a 15" PVC Pipe.

INTEREST AND SECURITY- The NOTE is considered an unsecured, no interest loan.

WARRANTIES AND REPRESENTATIONS - The signatories warrant that they have the right and authority to enter into this NOTE. The execution and delivery of this NOTE will not violate any agreement governing the City or to which it is a party.

APPLICABLE LAW. This NOTE is governed by the laws of the State of Texas and the United States of America, except to the extent such state laws are preempted by federal law.

THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND, TO THE EXTENT PERMITTED BY LAW, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT VERBAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN VERBAL AGREEMENTS BETWEEN THE PARTIES.

SIGNATURES. By signing, The City agrees to the terms contained in this is NOTE, and acknowledges receipt of a copy of this NOTE.

FOR CITY OF OVERTON:

BY 
CR Evans, Mayor



ATTEST: 
Raehal Gafford, City Secretary

APPROVED AS TO FORM AND LEGALITY:


Blake Thompson, City Attorney

ATTACHMENT 2 AAA SANITATION & CITY OF OVERTON AGREEMENT

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**City of Overton, Texas
Agreement between
Owner and Contractor for Replacement
and Upsizing of 1,700 feet of 10" Sewer
Trunk Line to a 15" SDR-26 HW Sewer
Pipe with the Attendant Appurtenances.**

AGREEMENT made as of the 24th day of March in the year 2015.

BETWEEN the Owner:
City of Overton, Texas (hereafter
"Owner" or City")
1200S. Commerce Street,
Overton, Texas 75684

and the Contractor
AAA Sanitation Inc.
Utility Division
211 N. Hill Ave.
Tyler, Texas, 75702

The Project is described as:
Work to replace approximately 1,700 feet
of the 10" sewer line with a 15" PVC line
beginning North of Hwy 850 and running
North for 1,700 ft. to the Junction of 6"
Line and install 5 manholes.

For and in consideration of the mutual terms, conditions and covenants of this Agreement and all accompanying documents between Owner and Contractor, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor agree as follows:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Proposed Bid by Contractor and Map and are as fully a part of the Contract Documents as attached to this Agreement or repeated herein. In the event of any conflict within or between Contract Documents, this Agreement shall have precedence over any others and the terms hereof shall prevail over any other terms.

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or verbal.

ARTICLE 2 THE WORK OF THIS CONTRACT

CONTRACTOR shall fully execute the Work, and any individual part or portion of the

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Work, described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

The Work of this Contract shall be as enumerated in Exhibit "A," attached hereto and incorporated herein by reference for all purposes. Work to be commenced, prosecuted, and completed in accordance with the timelines and requirements delineated in this Agreement.

ARTICLE 3 ISSUANCE OF NOTICE TO PROCEED; DATE OF FINAL COMPLETION.

The date of commencement of the Work shall be March 24th, 2015.

CONTRACTOR shall achieve Final Completion of the Work no later than 30 days from the date of Commencement of Work.

ARTICLE 4 CONTRACT PRICE

OWNER shall pay Contractor the Contract Sum in current funds for Contractor's performance of the Contract. The Contract Sum shall be an amount not to exceed twenty-thousand dollars (\$91,100.00) subject to additions and deductions as provided in the Contract Documents.

The Contract Sum is based upon the following unit prices which are described in the Contract Documents and are hereby accepted by Owner:

CONTRACTOR'S RESPONSIBILITIES:

DESCRIPTION	Units	Unit Price	Extension
1 15" SDR-26 HW Sewer Pipe	1,700 Linear Ft.	\$ 34.00	\$ 57,800.00
2 Manhole- D-6 Deep	4 Ea	\$ 2,800.00	\$ 11,200.00
3 Manhole Dog house	1 Ea	\$ 3,500.00	\$ 3,500.00
4 4" Sewer Service Tie-ins	2 Ea	\$ 750.00	\$ 1,500.00
5 24" Casing spacers, End Seals	20 Linera Ft.	\$ 105.00	\$ 2,100.00
6 Site Cleaning	1 LS	\$ 5,000.00	\$ 5,000.00
7 Bypass Pumping	1 LS	\$ 5,000.00	\$ 5,000.00
8 Mobilization	2 LS	\$ 5,000.00	\$ 5,000.00
			Total \$ 91,100.00

The Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Proposal. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by the CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with the CONTRACTOR the preliminary determinations on such

matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

OWNER'S RESPONSIBILITIES:

OWNER to provide on a timely basis and on the schedule required by CONTRACTOR the following materials in the quantities specified herein-

- Shall clear and clean up right of way and access road, and return them to a maintained condition.

ARTICLE 5 PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Owner to Contractor when:

CONTRACTOR has fully performed the Contract except for Contractor's responsibility to correct work, and to satisfy other requirements, if any, which extend beyond final payment; and

OWNER'S final payment to CONTRACTOR shall be made no later than thirty (30) days after receipt of invoice from CONTRACTOR. In no event shall final payment be required to be made prior to thirty (30) days after all Work on the Contract has been fully performed and defects if any, in the work discovered prior to final payment shall be treated as nonconforming Work and shall be corrected by CONTRACTOR prior to final payment, and shall not be treated as warranty items.

ARTICLE 6 INSURANCE REQUIREMENTS:

All insurance required by the Contract Documents shall be obtained from *survivor* insurance companies that are duly licensed by the State of Texas and authorized to issue insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to the OWNER and shall be issued by a surety which complies with the requirements of Art. 7.191, Texas Insurance Code (1997) and which is otherwise acceptable to the OWNER.

Required Policies include:

- Workers' Compensation and Employers' Liability Insurance;
- Commercial General Liability Insurance.

ARTICLE 7 OTHER CONTRACT DOCUMENTS

Other documents, if any, forming part of the Contract Documents are as follows:

- CONTRACTOR Proposal for Work - **Exhibit A Attached**
- Repaired Map showing location of repairs - **Exhibit B Attached**

ARTICLE 8 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

The CONTRACTOR warrants and guarantees to the OWNER that all Work will be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. The CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than the CONTRACTOR, Subcontractors or Suppliers;
2. leaks in the sewer line that have been repaired under the terms of this contract; or
3. normal wear and tear under normal usage.

If any work is found to be defective, the CONTRACTOR shall promptly, without cost to the OWNER and in accordance with the OWNER's written instructions:

1. correct such defective Work, or, if it has been rejected by the OWNER, remove it from the site and replace it with Work that is not defective; and
2. satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

ARTICLE 9 INDEMNITY

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the OWNER, its Project Manager, and all employees, agents and officials of OWNER from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

1. is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws and regulations regardless of the negligence of any such person or entity.

The indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for the CONTRACTOR or any such Subcontractor. Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

FOR: CONTRACTOR

AAA Sanitation Inc.

BY: *Mark Barker*

Printed Name: Mark Barker

Title: Utility Super.

Date Signed: 3-24-15



FOR: OWNER

City of Overton, Texas

BY: *CR Evans, Jr.*

Printed Name: CR Evans

Title: Mayor

Date Signed: 3-23-2015

ATTEST:

Rachel Gafford
Rachel Gafford, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Blake Thompson
Blake Thompson, City Attorney

ARTICLE 10 MISCELLANEOUS PROVISIONS

Where reference is made in this Agreement to a provision of any document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Owner's representative is:
Charles Cunningham
City Manager
City of Overton
(503) 834-3171 (office)

Contractor's representative is:
Mark Barker
Utility Superintendent
AAA Sanitation Inc.
211 N. Hill Avenue
Tyler, Texas 75702

Owner agrees to pay Contractor from available funds for satisfactory performance of this Agreement in accordance with the proposal submitted therefor, subject to proper additions and deductions, all as provided in this Agreement, and Owner agrees to make payments on account thereof as provided therein.

Although this Agreement is drawn by Owner, both parties hereto expressly agree and assent that, in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

This Agreement shall be enforceable in Overton, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Rusk County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Both parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by an arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

The parties, by execution of this Agreement, bind themselves, their heirs, successors, assigns, and legal representatives for the full and faithful performance of the terms and provisions hereof.

This Agreement is entered into as of the day and year first written above and is executed in at least two (2) original copies, of which one is to be delivered to Contractor and the remainder to Owner.

ATTACHMENT 3
RESOLUTION NO. 2015-03-23B

RESOLUTION NO. 2015-03-23B

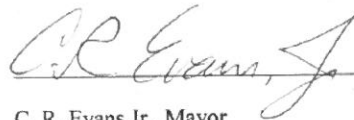
**A RESOLUTION OF THE CITY OF OVERTON, TEXAS,
RESCHEDULING THE APRIL REGULAR CITY COUNCIL
MEETING FROM THURSDAY, APRIL 16, 2015 TO
THURSDAY, APRIL 23, 2015.**

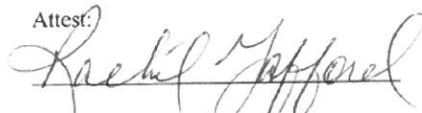
WHEREAS, the City Council shall set the time and place of meetings; and

WHEREAS, the April Regular City Council meeting coincides with a date when a Quorum may not be able to be gathered;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Overton, Texas to change the April Regular City Council meeting from Thursday, April 16, 2014 to Thursday, April 23, 2014 at 7:00 p.m. in the Council Chambers located at City Hall, 1200 S. Commerce St.

PASSED AND APPROVED by the City Council of the City of Overton on this 23rd day of **March**, 2015.


C. R. Evans Jr., Mayor

Attest:

Rachél Gafford, City Secretary

