

**REGULAR CALLED CITY COUNCIL MEETING
March 16, 2017**

MINUTES OF THE REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS THAT WAS HELD **MARCH 16, 2017** AT 7:00 P.M. PM IN THE COUNCIL CHAMBER, CITY HALL, 1200 SOUTH COMMERCE, OVERTON, TEXAS.

PRESENT:

C. R. Evans Jr., Mayor
Jerry Clark
Lawrence Davis
Michael Paul Williams

ABSENT:

Philip Cox, Mayor Pro Tem
John Posey

Also in attendance were, Charles Cunningham, City Manager, Clyde Carter, Police Chief, Pamela Raney, Finance Director, Deborah Vondrasek, Cemetery Clerk, Rachél Gafford, City Secretary and Wendy Bates, Accountant representing staff; Michael Vinson representing the Overton Volunteer Fire Department, Warden David Hudson, representing Billy Moore Correctional Facility, Charles Robinson, Jr. and Dale Grandstaff, representing the public.

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

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

II. PROCLAMATION / RECOGNITION / APPOINTMENTS

1. Mayor Evans issued the following two proclamations in support of
 - a. Proclamation for Don't Mess with Texas / Rusk County Trash Off Event.

III. CITIZEN FORUM -

Dale Grandstaff issued a complaint that a flush valve that he claims is on Hwy 850 west of Honzell road has not been flushed for several years. It serves the eight houses on the western side of Lake Overton.

IV. CITIZEN'S REQUEST - None

V. CONSENT AGENDA

1. City Council to review, make possible corrections and approve minutes of a Regular Called Meeting of the City Council held on February 16, 2017.

Councilman Davis made a motion to approve the Consent Agenda as submitted.

Councilman Clark seconded the motion.

Mayor Evans called for discussion. No discussion.

Mayor Evans called for a vote.

Motion carried 3 – 0 – 0; Mayor Pro-Tem Cox and Councilman Posey absent.

VI. OLD BUSINESS

1. Present revised meeting schedule for the City Council as updated March 13, 2017.
 - a. Mayor to receive request, if any, for leave of absence from any Council Member from future meetings.

City Manager Cunningham presented the meeting calendar for April 2017.

Mayor Evans called for request for any excused absences for the April 16, 2017 Regular Council Meeting.

No requests for excused absences received.

2. City Council to discuss, consider and take action on **RESOLUTION NO. 2017-03-16**, a Resolution of the City of Overton, Texas, to approve a Settlement Agreement between the City of Overton and Management and Training Corporation (MTC) that effectuates a withdrawal of a claim filed by MTC with the Public Utilities Commission (PUC) of Texas regarding fees for Water and Sewer Services for MTC that were adopted by the City Council and became effective August 1, 2016; and authorizes the Mayor to execute said Agreement if approved and adopted by the City Council.

City Manager Cunningham presented a staff report regarding negotiations with MTC of a settlement Agreement concerning an increase in rates for the prison that had been implemented in August 2016 and subsequently resulted in a claim being filed with the PUC by MTC protesting the new rates. The settlement Agreement was a compromise on modifying the rates based on certain factors including a restructuring of existing debt that allowed for a reduction in the rates to the prison while still recovering cost to provide services to it. Final agreement reached between MTC and the City of Overton as approved by both party's attorneys and it was recommended that the Council approve the Agreement as presented. s.

Councilman Davis made a motion to approve the Settlement Agreement as submitted and authorize the Mayor to execute said Agreement.

Councilman Clark seconded the motion.

Mayor Evans called for discussion. No discussion.

Mayor Evans called for a vote.

Motion carried 3 – 0 – 0; Mayor Pro-Tem Cox and Councilman Posey absent.

3. City Council to hear, review, consider and/or take action on second reading of **Ordinance No. 2017-1-19B**; an Ordinance amending Ordinance No. 2014-07-29B "Appendix A" City of Overton- Schedule of Fees, by updating certain fees imposed by the City for Water and Sewer Services for Class 3 Customers;

containing a severability clause; repealing all ordinances in conflict herewith; providing for publication and an effective date.

City Manager Cunningham presented staff report and amended fee schedule Ordinance per the final agreement reached between MTC and the City of Overton as approved by both party's attorneys.

Councilman Clark made a motion to approve Ordinance No. 2017-1-19B as submitted.

Councilman Williams seconded the motion.

Mayor Evans called for discussion. No discussion.

Mayor Evans called for a vote.

Motion carried 3 – 0 – 0; Mayor Pro-Tem Cox and Councilman Posey absent.

VII. NEW BUSINESS

1. City Council to hear, review and consider staff report on results of a study conducted to locate, test and assess the conditions of the City's fire hydrants.

City Manager Cunningham presented a staff report regarding the results of the fire hydrant study that showed that a majority of the 135 hydrants in the fire protection system were in need of repair. The City Manager proposed a four-year repair and /or replacement plan that would be phased in beginning this fiscal year with up to ten hydrants scheduled for repair. The base amount would be \$5,000 plus cost of parts. Depending on the availability of additional funds, he proposed that more hydrants be added this fiscal year with an approximate 20 hydrants per year being repaired over the next four years. This repair program would be included in the budget beginning in the next fiscal year.

VIII. CITY ADMINISTRATION'S MONTHLY REPORTS

1. Fire Department Monthly Report
2. Police Department Monthly
3. Department of Finance Monthly Report

City Manager Cunningham presented monthly departmental reports.

1. City Secretary's Monthly Report

City Secretary presented City Secretary monthly report.

2. City Manager's Monthly Report

City Manager Cunningham presented City Manager monthly report.

No Action Taken

IX. ADJOURNMENT

Councilman Clark made a motion to adjourn.

Councilman Williams seconded the motion.

Mayor Evans called for discussion. No discussion.

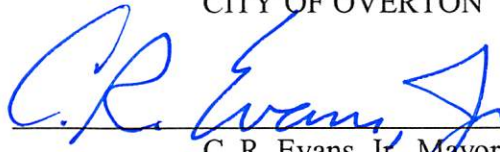
Mayor Evans called for a vote.

Motion carried 3 – 0 – 0; Mayor Pro-Tem Cox and Councilman Posey absent.

With no further business, the meeting was adjourned at **7:59 P. M.**

Minutes approved and submitted and/or corrected this **20th** day of **April, 2017.**

CITY OF OVERTON


C. R. Evans, Jr., Mayor

Attested by:


Rachél Gafford, City Secretary

ATTACHEMENT A PROCLAMATION - RUSK COUNTY CLEAN UP EVENT



PROCLAMATION "2017 DON'T MESS WITH TEXAS TRASH OFF" "Rusk County Trash Off Event & Trash Off Day"

WHEREAS, the City Council of Overton, Texas met in a regular called meeting on the 16th day of March, 2017; and

WHEREAS, this Council takes great pride in Overton and in being a part of Rusk County and encourages all residents of Overton to be responsible citizens in litter prevention and waste reduction; and

WHEREAS, the presence of litter in our community presents health hazards to our citizens and will more likely cause more littering in the area, that leads to the devaluing of property; and

WHEREAS, by contrast, a clean community discourages littering and improves overall community quality of life along with increased property values; and

WHEREAS, community cleanup and beautification projects are welcomed by this Council as a cost-effective method of keeping the City clean and saving tax payer money by reducing the need to have City funds spent on cleaning up litter; and

WHEREAS, this Council encourages its citizens to take pride in our community and be a participant in the "Rusk County Trash Off Day" by working with their community leaders to make this a successful week of cleanup that will make Overton a better place to live.

NOW, THEREFORE, BE IT PROCLAIMED, that the City Council of the City of Overton, Rusk County, Texas in conjunction with the State of Texas, sets April 1 through April 15, 2017 as "Don't Mess with Texas"/ Rusk County Trash Off Event and officially supports April 8, 2017 as Rusk County Trash Off Day"

SIGNED AND APPROVED this 16th day of March, 2017.



CITY OF OVERTON, TEXAS

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

Attest:
Rachel Gafford
Rachel Gafford, City Secretary

City of Overton, TX
Page 1 of 3

RESOLUTION NO. 2017-03-16
Adoption of Settlement Agreement

RESOLUTION NO. 2017-03-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS APPROVING AND ADOPTING A SETTLEMENT AGREEMENT BETWEEN THE CITY OF OVERTON (CITY) AND MANAGEMENT AND TRAINING CORPORATION (MTC); AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, on July 14th 2016 the City Council of the City of Overton adopted ORDINANCE NO. 2016-05-19B that had the effect of increasing water and sewer rates for Class 3 Commercial customers to wit MTC; and

WHEREAS, on October 12, 2016 Management & Training Corporation (MTC) petitioned the Public Utilities Commission (Docket No. 46436) to review the rate increase imposed by Ordinance No. 2016-05-19B for "Commercial 3" customers; and

WHEREAS, as a result of that petition a re-analysis was made of water and sewer rates for "Commercial 3" customers based on re-financing certain debt issues that were an integral part of the rate setting process; adjusting some common-to-all portions of debt issues and excluding some portions of debt and a proposal for reduced rates were proposed as part of a Settlement Agreement that was negotiated between the City of Overton, Texas and MTC, that was satisfactory to both parties;

WHEREAS, MTC has agreed to the terms and conditions of the Settlement Agreement which is deemed to be in the interest of the City as well;

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

SECTION 1: That the City Council approve and adopt RESOLUTION NO. 2017-03-16 which approves and adopts the formal Settlement Agreement between CITY and MTC as found in EXHIBIT A which is attached and incorporated herein; and

SECTION 2: That the City Council authorize the Mayor to execute said Settlement Agreement on behalf of the City of Overton.

AND IT IS SO RESOLVED.

APPROVED AND ADOPTED by the City Council of the City of Overton, Texas on this 16th day of March, 2017.

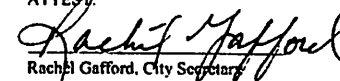
City of Overton, TX
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RESOLUTION NO. 2017-03-16
Adoption of Settlement Agreement

CITY OF OVERTON

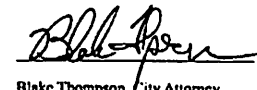
By: 
C.R. Evans Jr., Mayor

ATTEST:


Rachel Gafford, City Secretary



APPROVED AS TO FORM AND LEGALITY:


Blake Thompson, City Attorney

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EXHIBIT A

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions of Terms. As used in this Agreement, except as otherwise provided herein, the following terms have the meanings ascribed in this section.

"Agreement" means this "Retail Water and Wastewater Services Agreement Between the City of Overton and Management & Training Corporation."

"Overton" means the City of Overton, Texas, a Texas general law city.

"Overton's Water System" means all water treatment, transmission and distribution facilities, lines, mains, reservoirs, pump stations, residential, commercial and industrial connections and appurtenances, expansions, improvements, enlargements, betterments and replacements thereof.

"Overton's Wastewater System" means all of Overton's collection and holding facilities, lift stations, a wastewater treatment plant, facilities to convey the treated effluent to the point of discharge or place of use or other disposal including any and all meters, valves, telemetry equipment and ancillary facilities necessary or desirable to collect domestic wastewater generated by Overton's customers, to store and treat that wastewater, and to store, convey and discharge or use or otherwise dispose of such treated effluent.

"Overton's Systems" means "Overton's Water System" and "Overton's Wastewater System" collectively.

"Cost of Service" means the cost to provide water or wastewater service as described in Section 13.043(f) of the Texas Water Code, as it may be amended from time to time.

"MTC" means Management & Training Corporation, a Delaware corporation licensed to do business in Texas.

"MTC Customer" means the Billy Moore Correctional Center pursuant to the contract entered into between MTC and the Texas Department of Criminal Justice (the "Contract").

"Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition of insufficiency of service or of facilities resulting in social distress. The term includes Force Majeure and acts of third parties which cause Overton's Systems to be unable to provide the water services or wastewater services agreed to be provided herein.

"Force Majeure" means acts of God, acts of the public enemy, orders of any kind of any governmental entity or any civil or military authority, acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties, epidemics, landslides, lightning, earthquakes, fires, hurricanes, blue northers, floods, washouts, droughts, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

EXHIBIT A

**RETAIL WATER AND WASTEWATER SERVICES AGREEMENT
BETWEEN THE CITY OF OVERTON
AND MANAGEMENT & TRAINING CORPORATION**

THIS RETAIL WATER AND WASTEWATER SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the City of Overton, Texas ("Overton"), a Texas home rule city, and Management & Training Corporation ("MTC"), a Delaware corporation licensed to do business in Texas, effective April 1, 2017, (the "Effective Date"). Overton or MTC may each be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

1. Overton owns, operates and maintains water supply wells and a water distribution and delivery system consisting of water storage facilities, water transmission and distribution facilities and related appurtenances to serve the needs of its customers;

2. Overton also owns, operates and maintains a wastewater collection, treatment and disposal system;

3. MTC is a retail customer of Overton pursuant to a contract entered into between MTC and the Texas Department of Criminal Justice wherein MTC manages the Billy Moore Correctional Center (the "Prison" or the "MTC Customer"), which management includes but is not limited to operating and maintaining the Prison's water and wastewater systems;

4. On July 14, 2016, Overton adopted Ordinance No. 2016-05-19B, wherein Overton increased its water and wastewater rates to MTC;

5. MTC duly filed a petition with the Public Utility Commission of Texas (the "Commission") protesting Overton's rate change and requesting the Commission review the newly adopted rates (the "Appeal"); and

6. Overton and MTC now desire to resolve and settle the outstanding issues related to the appropriate rates Overton may charge MTC for water and wastewater services and enter into this Agreement to evidence these agreed terms.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Overton and MTC agree as follows:

EXHIBIT A

ARTICLE II

PROVISION OF WATER AND WASTEWATER SERVICE

Section 2.01. Quantity. Subject to the terms and conditions set forth herein, Overton agrees to provide retail water and wastewater service to MTC in amounts sufficient for MTC to continue normal operations of the Prison, which shall include but is not limited to the provision of adequate water and wastewater services.

Section 2.02. Nondiscrimination. Water and wastewater service provided to MTC by Overton will be nondiscriminatory and consistent with Overton's policies, rules and regulations as amended from time to time and the law.

Section 2.03. Delivery Points. Water delivered by Overton will be delivered at the master meter owned by Overton located at the Prison, 8500 FM 3053 N, Overton, TX, 75684.

Section 2.04. Quality of Water Delivered to MTC Customer; Information Between Parties. The water delivered by Overton hereunder will be potable water of a quality conforming to the requirements of all applicable federal or state laws, rules, regulations or orders, including requirements of the Texas Commission on Environmental Quality, or its successors, for human consumption and other domestic use.

ARTICLE III

CHARGES, BILLING AND FINANCIAL MATTERS

Section 3.01. Water Service. Overton will provide water service to MTC as a Class 3 commercial retail customer of Overton on the same general terms and conditions as other Class 3 commercial retail customers of Overton, except as provided below.

a. For a period of three (3) years, beginning on the Effective Date, Overton and MTC agree that the monthly charge for water service shall be based on the amount of water used by the Prison as measured by the six-inch meter set for measuring such use, during each of the twelve (12) billing cycles in a particular year, and shall be at the following rates:

Base Rate: \$7,518.00 per month for the first 1,000,000 gallons
Volume Rate: \$4.52 per month for each 1,000 gallons over the base amount

Commencing on the third (3rd) anniversary date of this Agreement, Overton may adjust its water rates for MTC in accordance with Overton's Cost of Service to MTC using the standard American Water Works Association rate making principles, but such adjustment shall not exceed a five percent (5%) increase per year.

Section 3.02. Wastewater Service. Overton will provide wastewater collection and treatment service to MTC as a Class 3 commercial retail customer of Overton on the same general terms and conditions as other Class 3 commercial retail customers of Overton.

a. For a period of three (3) years, beginning on the Effective Date, Overton and MTC agree that the monthly charge for wastewater service shall be based on the amount of water used

EXHIBIT A

by the Prison as measured by the six-inch meter set for measuring such use, during each of the twelve (12) billing cycles in a particular year, and shall be at the following rates:

Base Rate: \$8,318.00 per month for the first 1,000,000 gallons
Volume Rate: \$4.48 per month for each 1,000 gallons over the base amount

Commencing on the third (3rd) anniversary date of this Agreement, Overton may adjust its wastewater rates for MTC in accordance with Overton's Cost of Service to MTC using the standard American Water Works Association rate making principles, specifically including by way of example and not by limitation the cost of operating and maintain the wastewater lift station serving the Prison. Additionally, the City's wastewater rate adjustment for MTC shall not exceed a five percent (5%) increase per year.

ARTICLE IV

ADEQUACY OF FACILITIES

Section 4.01. Overton's Systems to be Self-Sufficient. Overton's Systems will be comprised of facilities that are considered reasonable and necessary by Overton to provide water and wastewater services to MTC. If Overton is unable to provide water and wastewater services to MTC, any payments due under Article III above will be prorated or abated, as appropriate to the level of service.

ARTICLE V

SETTLEMENT OF PENDING RATE CASE

Section 5.01. Dismissal of CCN Litigation. Upon execution of this Agreement, MTC shall petition for dismissal of or withdraw its petition to the PUC concerning its pending rate case at the Texas Public Utility Commission.

ARTICLE VI

TERM; DEFAULT; REMEDIES; INDEMNIFICATION; INSURANCE

Section 6.01. Term; Extensions. This Agreement will be executed by the authorized representatives of Overton and MTC and will continue in effect until January 1, 2023, unless earlier terminated in accordance with the provisions hereof.

Section 6.02. Termination.

a. Without prejudice to any provisions hereof setting forth terms for automatic expiration or expiration in the event of a default, this Agreement may also be terminated by mutual agreement of the parties. Notwithstanding the foregoing, if the Texas Department of Criminal Justice terminates the Contract or the funding for the Contract, MTC may terminate this Agreement immediately, upon written notice, without penalty.

b. In the event that proceedings in bankruptcy, whether voluntary or involuntary are filed by MTC, Overton may take any measure it deems necessary to protect the interests of Overton including, without limitation, the termination of this Agreement on thirty (30) days written notice to MTC.

EXHIBIT A

Section 6.03. Default.

a. In the event either party defaults in the payment of any amounts due the other party under this Agreement or in the performance of any material obligation under this Agreement, the non-defaulting party shall have the right, after providing notice and an opportunity to cure, to pursue one or all of the following remedies: (i) to terminate this Agreement in full without thereby incurring any liability whatsoever; (ii) to recover from the defaulting party any outstanding costs and/or expenses incurred by the non-defaulting party that would otherwise be due under this Agreement; (iii) to pursue all other legal or equitable remedies; and (iv) to recover from the defaulting party all expenses incurred in pursuing its legal rights hereunder, including reasonable attorneys' fees. Notwithstanding anything herein to the contrary, prior to the non-defaulting party exercising any of the remedies identified in this Section 6.03, the non-defaulting party agrees that it will give the defaulting party written notice of any default and the defaulting party shall have ten (10) days, with respect to a monetary default, and thirty (30) days with respect to a non-monetary default, to cure such default before the non-defaulting party shall have the right to exercise remedies hereunder.

Section 6.04. Waiver of Sovereign Immunity: Chapter 271, TEXAS LOC. GOV'T CODE. To the extent authorized by Sections 271.152 and 271.153 of the Local Government Code, and only to the extent limited by the provisions of this Section 6.04, Overton hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable as described herein with respect to its performance, and/or failure to fully and timely perform each and every one of its obligations under this Agreement.

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.01. Records. Overton and MTC each agree to preserve, for a period of at least five (5) years from the termination of this Agreement, all books, records, test data, charts and other records pertaining to this Agreement. Overton and MTC will each, respectively, have the right at all reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 7.02. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance will ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected thereby, provided, however, in such event the parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

Section 7.03. Entire Agreement; Modifications. This Agreement constitutes the sole agreement between the parties hereto relating to the rights herein granted and the obligations herein assumed and supersedes any and all prior understandings, negotiations, representations or agreements, whether oral or written. This Agreement will be subject to change or modification only with the mutual written consent of Overton and MTC.

EXHIBIT A

Section 7.04. Addresses and Notices. Unless otherwise notified in writing by the other, the attention addresses, addresses, telephone numbers, facsimile numbers and e-mail addresses of Overton and MTC are as follows:

Overton: City of Overton
Attn: City Manager
P.O. Drawer D
Overton, Texas 75684

MTC: Senior Vice President – Corrections
300 North Marketplace Drive
Centerville, Utah 84014

Section 7.05. Assignability; Successors Rights. This Agreement may not be assigned by either party to any other entity without the express written consent of the other party, which consent will not be unreasonably withheld or delayed. This Agreement and the terms and provisions hereof will be binding upon and inure to the benefit of the respective successors, assigns and legal representatives of the parties hereto.

Section 7.06. Dispute Resolution.

a. Except as provided in Section 7.06(b) below, in the event a dispute shall arise with respect to this Agreement and/or the performance by the Parties hereto of their respective obligations hereunder and such dispute results in the filing of an action in court for interpretation or enforcement, then the prevailing party in such action shall be entitled, in addition to all other relief, equitable or legal, to which it may be entitled, to an award of its reasonable attorneys' fees and costs of court. As a precondition to the filing of any action in court, the Parties shall attempt to settle the dispute(s) through good faith negotiations for a period of sixty (60) days. If the good faith negotiations do not resolve the dispute(s), then the Parties shall conduct nonbinding mediation and appoint a mutually acceptable mediator fifteen (15) days from the date the negotiations fail. Each Party shall bear one-half of the cost of the mediator and its own legal expenses.

b. Notwithstanding the foregoing, if the dispute(s) involves a change or revision to Overton's Class 3 commercial customer water and/or wastewater rates, the Parties agree that MTC and/or the Prison shall have the right to appeal the rates as the only affected customer in its class pursuant to Section 13.043(c) of the Texas Water Code.

Section 7.07. Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary, neither party will unreasonably withhold or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, it being agreed and understood that each party will act in good faith and will at all times deal fairly with the other party.

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EXHIBIT A

Section 7.08. Interpretation.

a. This Agreement and all the terms and provisions hereof will be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Agreement.

b. This Agreement will not be construed as an agreement of fiduciary relationship, of partnership, of joint venture, of an equity position, or of any other form of business arrangement other than as an agreement for provision of water services. Services provided are not exclusive to MTC and may be provided to others at the sole discretion of Overton consistent with the terms of this Agreement.

c. This Agreement has been authored jointly by the parties hereto, and neither this Agreement as a whole nor any term or provision hereof will be construed as having been authored by or at the sole direction of either party.

Section 7.09. Titles and Headings. The title of this Agreement, titles and headings of articles and sections hereof have been inserted for convenience of reference only and are not to be considered a part hereof and will not in any way modify or restrict any of the terms or provisions hereof and will never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 7.10. Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts will collectively constitute a single instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 7.11. Governing Law; Venue. The terms and provisions hereof will be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Rusk County, Texas will be the place of venue for suit hereon.

Section 7.12. Authority of Parties Executing Agreement. By their execution hereof each of the undersigned parties represents and warrants to the other party to this document that he or she has the authority to execute the document in the capacity shown on this document.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which will be deemed to be an original and of equal force and effect this 16th day of March, 2017.



CITY OF OVERTON
BY: CR Evans Jr.
Mayor

MANAGEMENT & TRAINING CORPORATION
BY: Jm Magnum

ATTEST:
Lachar Yafford

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ATTACHEMENT C
ORDINANCE NO. 2017-01-19B

City of Overton

ORDINANCE NO. 2017-01-19B

ORDINANCE NO. 2017-01-19B

APPENDIX A
City of Overton - Schedule of Fees

AN ORDINANCE AMENDING ORDINANCE NO. 2014-07-29B - "APPENDIX A" CITY OF OVERTON - SCHEDULE OF FEES, BY UPDATING FEES IMPOSED BY THE CITY FOR CLASS 3 COMMERCIAL WATER AND SEWER SERVICE CUSTOMER; CONTAINING SPECIFIED TERMS FOR SUCH RATES AND CONDITIONS UNDERWHICH THEY MAY BE CHANGED AT THE END OF SUCH TERMS; A SAVINGS CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE

WHEREAS, it is desirable that the departments of the City of Overton providing service to residents and businesses remain on a sound financial basis and said services are provided in a fair and equitable manner; and

WHEREAS, it is necessary that the provisions, policies and fees for the services provided by the City be amended from time to time in order that operations of the City of Overton remain on a sound financial basis and provide said services in a fair and equitable manner; and

WHEREAS, the City of Overton, Texas (CITY) and Management & Training Corporation (MTC) have reached a Settlement Agreement as found in RESOLUTION NO. 2017-03-16 that was approved by the City Council on March 16, 2016 and stipulates the amounts, terms and conditions of rates to be charged for water and sewer services by CITY to MTC; and

WHEREAS, as a result of execution of the Settlement Agreement, MTC shall withdraw its claim to the PUC for a hearing on the rates previous imposed by CITY on MTC prior to April 1st, 2017.

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

SECTION 1: That in accordance with the Settlement Agreement reached between the City of Overton and MTC as shown in ATTACHMENT A which is incorporated herein, the City Council hereby adopts amendments to Section K.4, subsections K4.1 and K.4.2 (Water Rates - Commercial 3: Meter size 6"); Section N.4, subsections N.4.1 and N.4.2 (Sewer Rates - Commercial 3: Meter size 6") as reflected in ATTACHMENT B, also incorporated herein.

City of Overton

ORDINANCE NO. 2017-01-19B

SECTION 2: That this Ordinance shall be and is hereby declared to be cumulative of all other Ordinances of the City of Overton, and this Ordinance shall not operate to repeal or affect the Code of Ordinances of the City of Overton or any Ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such Code of Ordinances are hereby repealed. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby, repealed to the extent of such conflict.

SECTION 3: Should any provision of the Ordinance be held invalid or unconstitutional the remainder of such Ordinance shall not be deemed to affect the validity of any other provision of said Ordinance.

SECTION 4: The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this Ordinance as an alternative method of publication provided by law.

SECTION 5: This Ordinance shall take effect April 1, 2017 conditioned upon full execution of the Settlement Agreement contained in ATTACHMENT A between the City of Overton and MTC regarding PUC DOCKET #46436 (PETITION OF MANAGEMENT & TRAINING CORPORATION FOR REVIEW OF THE DECISION BY THE CITY OF OVERTON TO CHANGE RETAIL WATER AND SEWER RATES - BILLY MOORE CORRECTIONAL CENTER).

PRESENTED ON FIRST READING ON THE 19th DAY OF JANUARY, 2017

PRESENTED ON SECOND READING AND APPROVED ON THIS THE 16th DAY OF MARCH, 2017 BY A VOTE OF 3 AYES, 0 NAYS 0 ABSTENTIONS, AT A REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS.

CITY OF OVERTON

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

ATTEST:

Rachel Gafford
Rachel Gafford, City Secretary



City of Overton

ORDINANCE NO. 2017-01-19B

EXHIBIT A

**RETAIL WATER AND WASTEWATER SERVICES AGREEMENT
BETWEEN THE CITY OF OVERTON
AND MANAGEMENT & TRAINING CORPORATION**

APPROVED AS TO FORM AND LEGALITY:


Blake Thompson, City Attorney

THIS RETAIL WATER AND WASTEWATER SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the City of Overton, Texas ("Overton"), a Texas home rule city, and Management & Training Corporation ("MTC"), a Delaware corporation licensed to do business in Texas, effective April 1, 2017, (the "Effective Date"). Overton or MTC may each be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

1. Overton owns, operates and maintains water supply wells and a water distribution and delivery system consisting of water storage facilities, water transmission and distribution facilities and related appurtenances to serve the needs of its customers;
2. Overton also owns, operates and maintains a wastewater collection, treatment and disposal system;
3. MTC is a retail customer of Overton pursuant to a contract entered into between MTC and the Texas Department of Criminal Justice wherein MTC manages the Billy Moore Correctional Center (the "Prison" or the "MTC Customer"), which management includes but is not limited to operating and maintaining the Prison's water and wastewater systems;
4. On July 14, 2016, Overton adopted Ordinance No. 2016-05-19B, wherein Overton increased its water and wastewater rates to MTC;
5. MTC duly filed a petition with the Public Utility Commission of Texas (the "Commission") protesting Overton's rate change and requesting the Commission review the newly adopted rates (the "Appeal"); and
6. Overton and MTC now desire to resolve and settle the outstanding issues related to the appropriate rates Overton may charge MTC for water and wastewater services and enter into this Agreement to evidence these agreed terms.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Overton and MTC agree as follows:

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**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions of Terms. As used in this Agreement, except as otherwise provided herein, the following terms have the meanings ascribed in this section.

"Agreement" means this "Retail Water and Wastewater Services Agreement Between the City of Overton and Management & Training Corporation."

"Overton" means the City of Overton, Texas, a Texas general law city.

"Overton's Water System" means all water treatment, transmission and distribution facilities, lines, mains, reservoirs, pump stations, residential, commercial and industrial connections and any other parts or components that comprise the public water system of Overton, together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof.

"Overton's Wastewater System" means all of Overton's collection and holding facilities, lift stations, a wastewater treatment plant, facilities to convey the treated effluent to the point of discharge or place of use or other disposal including any and all meters, valves, telemetry equipment and ancillary facilities necessary or desirable to collect domestic wastewater generated by Overton's customers, to store and treat that wastewater, and to store, convey and discharge or use or otherwise dispose of such treated effluent.

"Overton's Systems" means "Overton's Water System" and "Overton's Wastewater System" collectively.

"Cost of Service" means the cost to provide water or wastewater service as described in Section 13.043(j) of the Texas Water Code, as it may be amended from time to time.

"MTC" means Management & Training Corporation, a Delaware corporation licensed to do business in Texas.

"MTC Customer" means the Billy Moore Correctional Center pursuant to the contract entered into between MTC and the Texas Department of Criminal Justice (the "Contract").

"Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition of insufficiency of service or of facilities resulting in social distress. The term includes Force Majeure and acts of third parties which cause Overton's Systems to be unable to provide the water services or wastewater services agreed to be provided herein.

"Force Majeure" means acts of God, acts of the public enemy, orders of any kind of any governmental entity or any civil or military authority, acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties, epidemics, landslides, lightning, earthquakes, fires, hurricanes, blue northers, floods, washouts, droughts, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

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**ARTICLE II
PROVISION OF WATER AND WASTEWATER SERVICE**

Section 2.01. Quantity. Subject to the terms and conditions set forth herein, Overton agrees to provide retail water and wastewater service to MTC in amounts sufficient for MTC to continue normal operations of the Prison, which shall include but is not limited to the provision of adequate water and wastewater services.

Section 2.02. Nondiscrimination. Water and wastewater service provided to MTC by Overton will be nondiscriminatory and consistent with Overton's policies, rules and regulations as amended from time to time and the law.

Section 2.03. Delivery Points. Water delivered by Overton will be delivered at the master meter owned by Overton located at the Prison, 8500 FM 3053 N, Overton, TX, 75684.

Section 2.04. Quality of Water Delivered to MTC Customer; Information Between Parties. The water delivered by Overton hereunder will be potable water of a quality conforming to the requirements of all applicable federal or state laws, rules, regulations or orders, including requirements of the Texas Commission on Environmental Quality, or its successors, for human consumption and other domestic use.

**ARTICLE III
CHARGES, BILLING AND FINANCIAL MATTERS**

Section 3.01. Water Service. Overton will provide water service to MTC as a Class 3 commercial retail customer of Overton on the same general terms and conditions as other Class 3 commercial retail customers of Overton, except as provided below.

a. For a period of three (3) years, beginning on the Effective Date, Overton and MTC agree that the monthly charge for water service shall be based on the amount of water used by the Prison as measured by the six-inch meter set for measuring such use, during each of the twelve (12) billing cycles in a particular year, and shall be at the following rates:

Base Rate: \$7,518.00 per month for the first 1,000,000 gallons
Volume Rate: \$4.52 per month for each 1,000 gallons over the base amount

Commencing on the third (3rd) anniversary date of this Agreement, Overton may adjust its water rates for MTC in accordance with Overton's Cost of Service to MTC using the standard American Water Works Association rate making principles, but such adjustment shall not exceed a five percent (5%) increase per year.

Section 3.02. Wastewater Service. Overton will provide wastewater collection and treatment service to MTC as a Class 3 commercial retail customer of Overton on the same general terms and conditions as other Class 3 commercial retail customers of Overton.

a. For a period of three (3) years, beginning on the Effective Date, Overton and MTC agree that the monthly charge for wastewater service shall be based on the amount of water used

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by the Prison as measured by the six-inch meter set for measuring such use, during each of the twelve (12) billing cycles in a particular year, and shall be at the following rates:

Base Rate: \$8,318.00 per month for the first 1,000,000 gallons
Volume Rate: \$4.48 per month for each 1,000 gallons over the base amount

Commencing on the third (3rd) anniversary date of this Agreement, Overton may adjust its wastewater rates for MTC in accordance with Overton's Cost of Service to MTC using the standard American Water Works Association rate making principles, specifically including by way of example and not by limitation the cost of operating and maintain the wastewater lift station serving the Prison. Additionally, the City's wastewater rate adjustment for MTC shall not exceed a five percent (5%) increase per year.

**ARTICLE IV
ADEQUACY OF FACILITIES**

Section 4.01. Overton's Systems to be Self-Sufficient. Overton's Systems will be comprised of facilities that are considered reasonable and necessary by Overton to provide water and wastewater services to MTC. If Overton is unable to provide water and wastewater services to MTC, any payments due under Article III above will be prorated or abated, as appropriate to the level of service.

**ARTICLE V
SETTLEMENT OF PENDING RATE CASE**

Section 5.01. Dismissal of CCN Litigation. Upon execution of this Agreement, MTC shall petition for dismissal of or withdraw its petition to the PUC concerning its pending rate case at the Texas Public Utility Commission.

**ARTICLE VI
TERM; DEFAULT; REMEDIES; INDEMNIFICATION; INSURANCE**

Section 6.01. Term; Extensions. This Agreement will be executed by the authorized representatives of Overton and MTC and will continue in effect until January 1, 2023, unless earlier terminated in accordance with the provisions hereof.

Section 6.02. Termination.

a. Without prejudice to any provisions hereof setting forth terms for automatic expiration or expiration in the event of a default, this Agreement may also be terminated by mutual agreement of the parties. Notwithstanding the foregoing, if the Texas Department of Criminal Justice terminates the Contract or the funding for the Contract, MTC may terminate this Agreement immediately, upon written notice, without penalty.

b. In the event that proceedings in bankruptcy, whether voluntary or involuntary are filed by MTC, Overton may take any measure it deems necessary to protect the interests of Overton including, without limitation, the termination of this Agreement on thirty (30) days written notice to MTC.

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Section 6.03. Default.

a. In the event either party defaults in the payment of any amounts due the other party under this Agreement or in the performance of any material obligation under this Agreement, the non-defaulting party shall have the right, after providing notice and an opportunity to cure, to pursue one or all of the following remedies: (i) to terminate this Agreement in full without thereby incurring any liability whatsoever; (ii) to recover from the defaulting party any outstanding costs and/or expenses incurred by the non-defaulting party that would otherwise be due under this Agreement; (iii) to pursue all other legal or equitable remedies; and (iv) to recover from the defaulting party all expenses incurred in pursuing its legal rights hereunder, including reasonable attorneys' fees. Notwithstanding anything herein to the contrary, prior to the non-defaulting party exercising any of the remedies identified in this Section 6.03, the non-defaulting party agrees that it will give the defaulting party written notice of any default and the defaulting party shall have ten (10) days, with respect to a monetary default, and thirty (30) days with respect to a non-monetary default, to cure such default before the non-defaulting party shall have the right to exercise remedies hereunder.

Section 6.04. Waiver of Sovereign Immunity; Chapter 271, TEXAS LOC. GOV'T CODE. To the extent authorized by Sections 271.152 and 271.153 of the Local Government Code, and only to the extent limited by the provisions of this Section 6.04, Overton hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable as described herein with respect to its performance, and/or failure to fully and timely perform each and every one of its obligations under this Agreement.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

Section 7.01. Records. Overton and MTC each agree to preserve, for a period of at least five (5) years from the termination of this Agreement, all books, records, test data, charts and other records pertaining to this Agreement. Overton and MTC will each, respectively, have the right at all reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 7.02. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance will ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected thereby, provided, however, in such event the parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

Section 7.03. Entire Agreement; Modifications. This Agreement constitutes the sole agreement between the parties hereto relating to the rights herein granted and the obligations herein assumed and supersedes any and all prior understandings, negotiations, representations or agreements, whether oral or written. This Agreement will be subject to change or modification only with the mutual written consent of Overton and MTC.

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Section 7.04. Addresses and Notices. Unless otherwise notified in writing by the other, the attention addresses, addresses, telephone numbers, facsimile numbers and e-mail addresses of Overton and MTC are as follows:

Overton: City of Overton
Attn: City Manager
P.O. Drawer D
Overton, Texas 75684

MTC: Senior Vice President – Corrections
500 North Marketplace Drive
Centerville, Utah 84014

Section 7.05. Assignability; Successors Rights. This Agreement may not be assigned by either party to any other entity without the express written consent of the other party, which consent will not be unreasonably withheld or delayed. This Agreement and the terms and provisions hereof will be binding upon and inure to the benefit of the respective successors, assigns and legal representatives of the parties hereto.

Section 7.06. Dispute Resolution.

a. Except as provided in Section 7.06(b) below, in the event a dispute shall arise with respect to this Agreement and/or the performance by the Parties hereto of their respective obligations hereunder and such dispute results in the filing of an action in court for interpretation or enforcement, then the prevailing party in such action shall be entitled, in addition to all other relief, equitable or legal, to which it may be entitled, to an award of its reasonable attorneys' fees and costs of court. As a precondition to the filing of any action in court, the Parties shall attempt to settle the dispute(s) through good faith negotiations for a period of sixty (60) days. If the good faith negotiations do not resolve the dispute(s), then the Parties shall conduct nonbinding mediation and appoint a mutually acceptable mediator fifteen (15) days from the date the negotiations fail. Each Party shall bear one-half of the cost of the mediator and its own legal expenses.

b. Notwithstanding the foregoing, if the dispute(s) involves a change or revision to Overton's Class 3 commercial customer water and/or wastewater rates, the Parties agree that MTC and/or the Prison shall have the right to appeal the rates as the only affected customer in its class pursuant to Section 13.043(c) of the Texas Water Code.

Section 7.07. Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary, neither party will unreasonably withhold or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, it being agreed and understood that each party will act in good faith and will at all times deal fairly with the other party.

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Section 7.08. Interpretation.

a. This Agreement and all the terms and provisions hereof will be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Agreement.

b. This Agreement will not be construed as an agreement of fiduciary relationship, of partnership, of joint venture, of an equity position, or of any other form of business arrangement other than as an agreement for provision of water services. Services provided are not exclusive to MTC and may be provided to others at the sole discretion of Overton consistent with the terms of this Agreement.

c. This Agreement has been authored jointly by the parties hereto, and neither this Agreement as a whole nor any term or provision hereof will be construed as having been authored by or at the sole direction of either party.

Section 7.09. Titles and Headings. The title of this Agreement, titles and headings of articles and sections hereof have been inserted for convenience of reference only and are not to be considered a part hereof and will not in any way modify or restrict any of the terms or provisions hereof and will never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 7.10. Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts will collectively constitute a single instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 7.11. Governing Law; Venue. The terms and provisions hereof will be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Rusk County, Texas will be the place of venue for suit hereon.

Section 7.12. Authority of Parties Executing Agreement. By their execution hereof each of the undersigned parties represents and warrants to the other party to this document that he or she has the authority to execute the document in the capacity shown on this document.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which will be deemed to be an original and of equal force and effect this 16th day of March, 2017.



CITY OF OVERTON
 BY: [Signature]
 CR Evans Jr.
 Mayor

MANAGEMENT & TRAINING CORPORATION

BY: [Signature]

ATTEST:
[Signature]

ATTACHMENT B- ORDINANCE NO. 2017-01-19B
 APPENDIX A
 CITY OF OVERTON - SCHEDULE OF FEES
 ORD. NO. 2014-07-29B As Amended March

SECTION	ACTIVITY	FEE, RATE OR CHARGE	ORD. NO.
K	WATER RATE		
K-1	COMMERCIAL 3/4 METER SIZE 2" (Inside or Outside City)	Change Effective from 06/01/2016	Amending Ordinance 2017-01-19B
K-1.1	Base Rate - Consumption in billing period of < 1,000.000 gallons	\$10,333.00	
K-1.3	Volume Rate per 1,000 gallons of consumption in billing period in excess of 1,000.000 gallons	\$4.51 per 1,000 gallons	
N	SEWER RATE		
N-1	COMMERCIAL 3/4 METER SIZE 2" (Change Effective from 06/01/2016	Amending Ordinance 2017-01-19B
N-1.1	Base Rate - Consumption in billing period of < 1,000.000 gallons	\$11,622.00	
N-1.3	Volume Rate - per 1,000 gallons of consumption in billing period in excess of 1,000.000 gallons	\$4.19 per 1,000 gallons	

FEES herein and conditions stipulated in ATTACHMENT A - RESOLUTION NO. 2017-01-1A

ATTACHEMENT 3 FIRE HYDRANT STUDY RESULTS

City of Overton Summary Results of Fire Hydrant Audit - 2017

Fun Facts

Total Number of Fire Hydrants	135
Average Age of Fire Hydrants	50 Years
Oldest Fire Hydrant in Service (1931)	86 Years Rusk @ Overton

Condition Survey

	<u>Num.</u>	<u>%</u>
Hydrants in Good Operating Condition	50	37%
Hydrants in Poor Operating Condition	34	25%
Hydrants inoperable	49	38%
Hydrants needing to be re-set	2	1%
Total	135	100%

Needed Repairs to be Contracted

Leaking Hydrants	9
Valves or connections too hard to operate	19
Top Job- Remove top, adjust or replace valves	38
Total	66

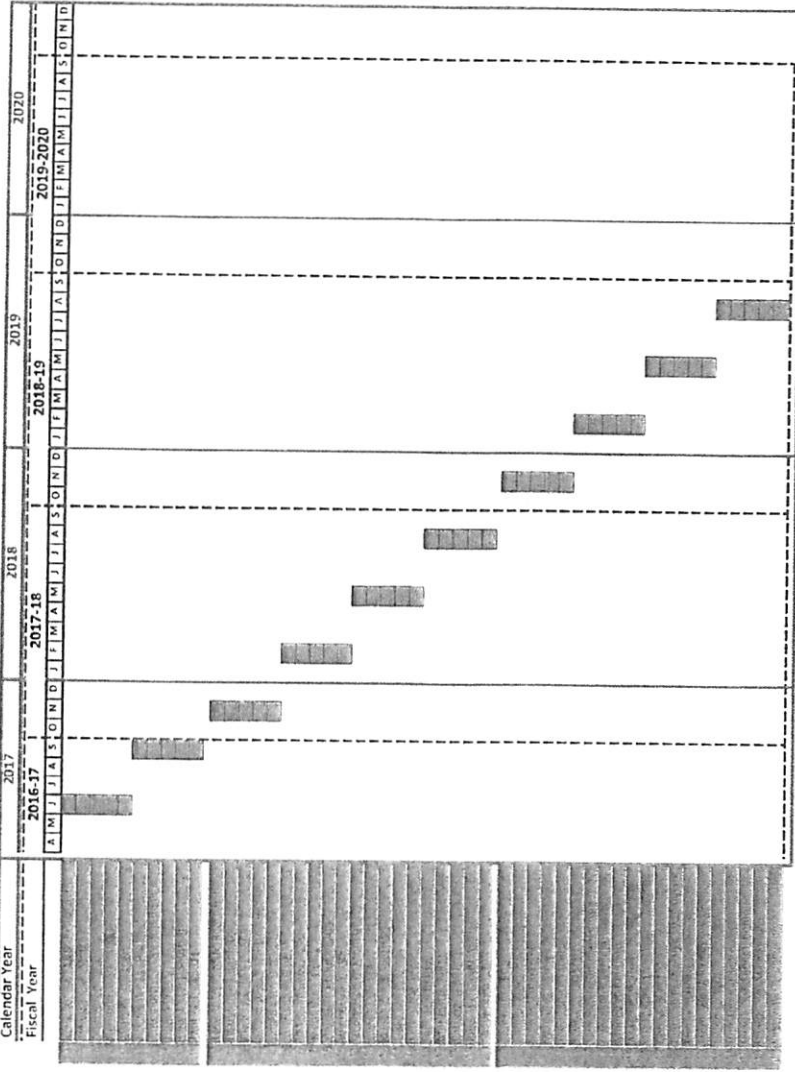
Criteria for prioritizing repair/replace schedule:

1. Location - Service Coverage
2. Condition
 - a. No Water at Hydrant
 - b. Stuck valves or caps
 - c. Leaking
3. Top Job - Low flow rates

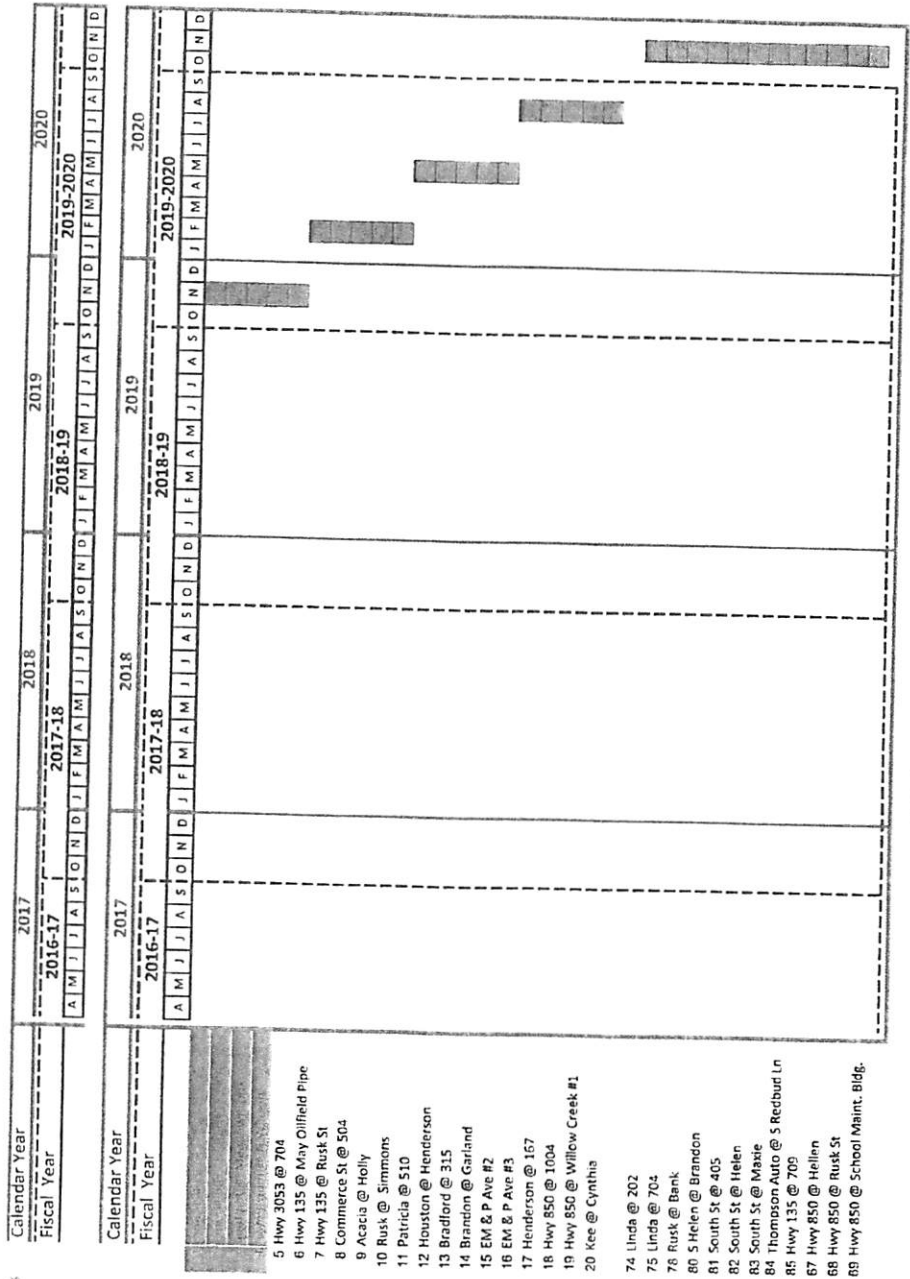
Repairs by City Forces

Extensions - Resets	14
No Water at Hydrant	3
Other	3
	20

SCHEDULE FOR Fire Hydrant Upgrades



M192 City Imp/Chy of Overton Fire Hydrant Audit 2017



M182 Cap Impl/City of Overton Fire Hydrant Audit 2017