

**AGENDA – WORKSHOP OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, TO BE HELD ON MONDAY, JANUARY 30, 2012, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS.**

**I. CALL TO ORDER**

**II. PURPOSE OF THE WORKSHOP:**

- 1. COUNCIL INPUT AND DISCUSSION:** REGARDING THE EV PROJECT CHARGING STATIONS. *Mr. Jon Branson, Assistant City Manager.*
- 2. COUNCIL INPUT AND DISCUSSION:** REGARDING THE POSSIBLE ANNEXATION OF AREA 4. *Ms. Lata Krishnarao, Planning Director.*
- 3. COUNCIL INPUT AND DISCUSSION:** REGARDING THE STATE FRANCHISE FEE – PUBLIC, EDUCATIONAL AND GOVERNMENT FACILITIES. *Mr. Jon Branson, Assistant City Manager.*

**III. ADJOURNMENT**

This site is accessible to disabled individuals. For special assistance, please call Young Lorfing at 281-652-1840 prior to the meeting so that appropriate arrangements can be made.

# Workshop Item No. 1

1. **COUNCIL INPUT AND DISCUSSION:** REGARDING THE EV PROJECT CHARGING STATIONS. Mr. Jon Branson, *Assistant City Manager*.

**AGENDA REQUEST  
BUSINESS OF THE CITY COUNCIL  
CITY OF PEARLAND, TEXAS**

<b>AGENDA OF:</b>	January 30, 2012	<b>ITEM NO.:</b>	Workshop Item No. 1
<b>DATE SUBMITTED:</b>	January 24, 2012	<b>DEPT. OF ORIGIN:</b>	Administration
<b>PREPARED BY:</b>	Jon R. Branson	<b>PRESENTOR:</b>	Jon R. Branson
<b>REVIEWED BY:</b>	Bill Eisen	<b>REVIEW DATE:</b>	1/25/12
<b>SUBJECT: EV Project</b>			
<b>EXHIBITS: Draft License Agreement with ECOtality; Picture of Charging Station Picture</b>			
<b>FUNDING:</b>	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input checked="" type="checkbox"/> Cash
	<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P – To Be Sold
		<input type="checkbox"/> L/P – Sold	
<b>EXPENDITURE REQUIRED:</b> \$1,680		<b>AMOUNT BUDGETED:</b> \$0	
<b>AMOUNT AVAILABLE:</b> \$1,680		<b>PROJECT NO.:</b> NA	
<b>ACCOUNT NO.:</b> City Manager's Contingency Fund			
<b>ADDITIONAL APPROPRIATION REQUIRED:</b> NA			
<b>ACCOUNT NO.:</b>			
<b>PROJECT NO.:</b>			
<b>To be completed by Department:</b>			
<input checked="" type="checkbox"/> Finance	<input type="checkbox"/> Legal	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution

**EXECUTIVE SUMMARY**

ECOtality is the project manager for the EV Project, the largest deployment of electric vehicles and charge infrastructure in history. The public-private initiative, which began in October 2009, is funded with a \$114.8 million grant from the U.S. Department of Energy through the American Recovery and Reinvestment Act (ARRA). The EV Project includes sixteen (16) major metropolitan areas in six (6) states, and will result in the installation of approximately 15,000 electric vehicle charging stations in those states by June 2012.

Should City Council decide to move forward with the EV Project, the project would see a minimum of seven vehicle charging stations installed at seven different locations throughout the City. It is anticipated that the charging stations would be located at the following City facilities:

Centennial Park  
 Pearland City Hall  
 Pearland Public Safety Building  
 Pearland Recreation Center and Natatorium

Tom Reid Library  
 University of Houston Pearland Campus  
 Westside Events Center

The overriding purpose of the EV Project is to accelerate the development and production of electric vehicles (“EVs”) in order to provide for convenient re-charging of EVs in locations remote from the drivers’ homes. The Department of Energy is promoting this program to encourage the development and use of EVs via the construction of a charging infrastructure in several major metropolitan areas.

It is anticipated there will be no initial cost to install the electrical charging stations at the seven (7) aforementioned City facilities. ECOtality will do a survey of the proposed sites to determine the feasibility of installing the charging stations at each location. A few of the key factors that have been considered to determine possible sites for the Charging Stations are as follows:

- Must be at a City owned facility
- Available to the general public
- Available many hours of each day
- Available most or all days of the week and of the year
- Locations where customers routinely and frequently visit, and spend anywhere from fifteen (15) or more minutes during a typical visit

The initial cost of the electricity to supply power to the charging stations will be the responsibility of the City. If fully utilized on a regular basis, it is anticipated the monthly cost to pay for the electricity would be approximately \$20 per month per station which equates to \$140 per month or \$1,680 annually for all seven (7) locations.

## **BACKGROUND**

The public-private initiative which began in October 2009, is funded with a \$114.8 million grant from the U.S. Department of Energy through the American Recovery and Reinvestment Act (ARRA). The EV Project includes 16 cities and major metropolitan areas in six states, and will result in the installation of approximately 15,000 charging stations in those states by June 2012.

## **SCOPE OF CONTRACT**

During the term of the Agreement ECOtality would have reasonable access to the Licensed Premises for the limited purpose of installing, maintaining, using, operating repairing, and removing the EVSE (Electrical Vehicle Supply Equipment stations or charging stations for the term of the agreement.

## **BID AND AWARD**

NA

## **SCHEDULE**

Survey sites immediately upon execution of the Agreement and install the charging stations on or before June 1, 2012.

## **POLICY/GOAL CONSIDERATION**

Inline with Council Goal and Resolution 2009-98 declaring Pearland a “Green City”.

## **CURRENT AND FUTURE FUNDING /FINANCIAL IMPACTS**

Anticipate annual electrical cost to be approximately \$2,000.

**O&M IMPACT INFORMATION**

Fiscal Year	2012	2013	2014
	\$1,680	\$1,848	\$2,032

**RECOMMENDED ACTION**

Conduct Workshop

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made effective as of \_\_\_\_\_, 2011, between \_\_\_\_\_ a \_\_\_\_\_ municipal corporation (the "Licensor"), and Electric Transportation Engineering Corporation, dba ECOTality North America, an Arizona corporation, and its successors and assigns ("Licensee") (collectively the "Parties").

### RECITALS:

- A. The Licensor is the fee owner of certain real properties more particularly described on the attached Exhibit A (collectively "Licensor's Properties"), specific portions of which will be licensed to Licensee pursuant to this Agreement which licensed portions are described and depicted on the attached Exhibit B (collectively the "Licensed Premises").
- B. Licensee is the owner of the EVSE and Software (collectively the "EVSE").
- C. The United States Department of Energy ("DOE") has provided funding through the American Recovery and Reinvestment Act ("ARRA") to accelerate the development and production of electric vehicles ("EVs") in order to reduce petroleum consumption in the United States.
- D. For the use of EVs to expand, drivers of EVs will require access to sufficient publicly available Electric Vehicle Supply Equipment ("EVSE") stations to provide for convenient re-charging of EVs in locations remote from the drivers' homes.
- E. To encourage the development and use of EVs the DOE supports the development of a large publicly available EV charging infrastructure in several cities in the United States, through a program known as the "EV Project," which will provide EVSE units at publicly available locations in the United States.
- F. Pursuant to the EV Project, Licensee has received a grant from DOE (the "DOE Grant") to install EVSEs and to collect data relating to public use of the EVSEs. The data collected from publicly available EVSE and EV Project participants will be analyzed to determine vehicle use and charging patterns in a variety of topographies and climate conditions, to evaluate the effectiveness of the charge infrastructure deployed under the EV Project, and to support the future deployment of EV infrastructure in other regions.
- G. Licensor has a long-standing commitment to resource conservation and has been an active participant in energy conservation, energy efficiency and environmental preservation and is committed to protecting the environment and providing a sustainable future for its residents.
- H. Licensor is interested in the outcome of the studies and other efforts being undertaken by Licensee as part of the DOE Grant, including the extent to which EVSEs on the Licensed Premises would affect energy use by Licensor and the use of EVs by members of the public.
- I. Licensee desires to obtain from Licensor certain limited rights over, under and across Licensor's Property for the purpose of installing, maintaining, operating and removing the EVSE to facilitate Licensee's implementation of the DOE Grant.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. *The License.* Licensor hereby grants to Licensee a revocable license to use and occupy the Licensed Premises (the “License”), on the terms and conditions stated in this Agreement, to install, maintain, and operate the EVSE for the purpose of implementing the DOE Grant.
  - 1.1. *Limited, Nonexclusive Rights.* The License is a revocable, nonexclusive, and non-possessory authorization for Licensee to enter upon and use the Licensed Premises solely for the purposes described in § 1.3 on the terms and conditions stated herein. The License in no way restricts Licensor’s use or conveyance of the Licensed Premises, any interest therein, or any improvements thereon, or Licensor’s use of the Licensed Premises in any manner not inconsistent with the License. The License is not intended to create or convey an interest in real property, and it shall not be recorded without Licensor’s prior written permission.
  - 1.2. *Rights of Others.* Nothing in this License shall be construed as Licensor’s representation, warranty, approval, or consent regarding rights in the Licensed Premises held by other parties, and Licensee shall be responsible for ascertaining the rights of all third parties in the Licensed Premises and obtaining their consent to the activities described in this License. Licensee agrees to obtain, at its sole expense, such other licenses, permits, consents and agreements as may be required to address the rights of others by other appropriate agreements, easements, privileges or other rights, whether recorded or unrecorded, and shall make its own arrangements with holders of such prior rights.
  - 1.3. *Scope of License; Permitted Uses.* During the term of this Agreement Licensee shall have reasonable access to the Licensed Premises for the limited purpose of installing, maintaining, using, operating, repairing, and removing the EVSE. Licensee shall not use the EVSE located on the Licensed Premises for any purpose other than the provision of EV charging and the collection of data relating to the use of the EVSE.
  - 1.4. *Condition of Premises.* Licensee agrees to accept the Licensed Premises “As Is,” without warranty of any kind, express or implied. Licensee acknowledges that Licensor is not obligated to construct or install any improvements or facilities of any kind on the Licensed Premises. Licensee shall use commercially reasonable efforts to maintain the Licensed Premises and any EVSE installed on the Licensed Premises in a condition satisfactory to the Licensor. Licensee shall, within 10 days of receipt of notice from Licensor, remove from the EVSE, and from any areas that are inaccessible to Licensor, graffiti and/or other unsightly, dangerous or offensive conditions, and Licensee shall not cause or permit any generation or placement of hazardous waste on the Licensed Premises. During the term of this Agreement Licensor and Licensee shall cooperate to implement appropriate procedures to assure that the Licensed Premises are maintained in a condition that is satisfactory to both Licensor and Licensee.
  - 1.5. *Condition of Licensee’s EVSE.* During the term of this Agreement, Licensee shall maintain the EVSE in a reasonable, safe and operable condition at all times when the EVSE is installed on Licensor’s Property. Licensor shall have no right or responsibility to repair, maintain, or operate the EVSE. Licensor will cooperate with Licensee to implement appropriate, mutually agreed upon measures to assure that the EVSE is maintained in operable condition and that if

the EVSE is damaged or becomes inoperable that Licensee is promptly notified. Licensee shall repair or replace, at Licensee's option and sole expense, the EVSE or parts or components thereof as Licensee deems necessary and appropriate to allow for the maintenance of the EVSE in an operable condition. Licensee shall not be responsible for the condition of the EVSE after the expiration or termination of this Agreement.

- 1.6. *Environmental Hazards.* Licensee shall not use, store, or permit to be used or stored, on the Licensed Premises, gasoline or other petroleum products, hazardous or toxic substances including, but not limited to, flammable materials, herbicides, pesticides, fungicides, algacides. Licensee shall not produce, locate, transport, store, treat, discharge, dispose, or release on or under the Licensed Premises, any substance regulated under any local, state or federal environmental protection law or regulation.
- 1.7. *Waste, Nuisance.* Licensee shall not commit or allow to be committed any waste or impairment of the Licensed Premises, and covenants that it shall not permit or allow, on or about the Licensor's Properties, any acts which may be deemed, in Licensor's sole discretion, a nuisance.
- 1.8. *Compliance with Laws.* In the exercise of any privilege granted by this License, Licensee shall comply with all applicable State, municipal and local laws, and the rules, orders, regulations and other legal requirements, including laws and regulations relating to occupational safety and health and environmental protection, and all orders, writs, judgments, injunctions, decrees or awards of any court or governmental authority with jurisdiction over Licensee or the Licensed Premises. Licensee must obtain promptly and maintain in effect throughout the term of the License all licenses, permits, authorizations, registrations, rights and franchises necessary to conduct the actions required or permitted by the License. Furthermore, Licensee shall not encourage or permit any use in or upon the Licensed Premises, or any part thereof, in violation of any applicable laws, statutes, rules or regulations of any federal, state or local authority.
- 1.9. *Compliance with Licensor Requirements.* Any use of the Licensed Premises pursuant to this License, and any construction, maintenance, repair, or other work performed thereon by the Licensee, including the installation and removal of EVSE's or any other equipment, shall be accomplished in a manner satisfactory to the Licensor.
- 1.10. *Structures.* Licensee may not place or construct upon, over or under the Licensed Premises any installation or structure of any kind or character, except as specifically authorized herein or in writing signed by Licensor.
- 1.11. *Alterations; Damage; Restoration.* No alterations may be made by Licensee to the Licensed Premises without first obtaining the prior written consent of Licensor and, if applicable, any other person or entity having an interest in or right to use or occupy the Licensed Premises. Licensee shall bear the costs and expenses, up to a maximum of \$2,250 per pedestal EVSE or \$1,500 per wall mount EVSE, associated with performing any such alterations, including, without limitation, costs of construction and any increased operating costs resulting from such alterations. Except as may be otherwise provided in this Agreement, Licensee shall not alter, destroy, displace or damage the Licensed Premises or any neighboring property in the exercise of the privileges granted by this Agreement without the prior written consent of Licensor and any other affected

landowner, and the express agreement of Licensee promptly to replace, return, repair and restore any such property to a condition satisfactory to Licensor and any other affected landowner upon demand, and at Licensee's sole cost and expense.

1.12. *Operation and use of EVSE.* Licensee shall confine activities on the Licensed Premises strictly to those authorized herein, and shall not impair the appearance of the Licensed Premises, obstruct access thereto, interfere with the transaction of Licensor's business and the convenience of the public, or jeopardize the safety of persons or property..

1.13. *Equipment/Access Revenue.*

Licensor acknowledges that Licensee is providing the initial EVSE to the site as part of a no-cost pilot program and Licensee intends to collect revenues from the EVSE.

1.14. *Expense.* Except as provided in § 1.11, any cost, expense or liability connected with or in any manner incident to the granting, exercise, enjoyment, or relinquishment of this License shall be assumed and paid or discharged by the Licensee. Such costs shall include, but shall not be limited to, costs to install or remove the EVSE, costs to install electricity or other power supplies to serve and operate the EVSE, and costs to keep the EVSE free of graffiti and debris.

1.15. *Assignment.* Licensee shall not assign this License nor sub-license all or any portion of the Licensee's rights hereunder; any purported assignment or sub-license by Licensee shall be void. This License shall not confer on or convey to Licensee any possessory interest in the Licensed Premises, any right to exclusive possession or occupancy of the Licensed Premises, or any right of quiet enjoyment. The privileges granted to Licensee by this License Agreement are personal to Licensee and shall not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express and written consent of Licensor.

1.16. *Responsibility for Others.* Licensee shall be responsible for the conduct and discipline of its employees, contractors, subcontractors, invitees, licensees, and other persons entering upon or using the Licensed Premises pursuant to this License Agreement.

1.17. *Subordination.* This Agreement shall be subject to and subordinate to any encumbrances and any other prior rights and matters of record now or hereafter affecting Licensor's interest in Licensed Premises.

2. *Term of License.* The License and rights granted by this Agreement shall become effective as of \_\_\_\_\_, 2011 (the "Commencement Date") and unless otherwise agreed in a writing signed by both Parties shall automatically expire and terminate at the end of the EV project, currently scheduled on April 30, 2013 ("Expiration Date").

3. *Consideration for License.* As consideration for the License and the use of electricity used for the charging of EVs using EVSEs located on the Licensed Premises, Licensee agrees to pay the sum of \$1.00 upon execution of this Agreement. In addition, Licensee shall provide Licensor reports and other information relating to the License and the use of the EVSEs, including data collected from or relating to the use of EVSE's on the Licensed Premises, provided, however, that Licensee shall not be required to, and will not provide to Licensor, any information that is proprietary or confidential.

4. *Surrender; Removal of the EVSE.* Upon the expiration of this Agreement, or the termination of this License Agreement, Licensee shall vacate the Licensed Premises and surrender possession of the Licensed Properties to Licensor.
  - 4.1. *Licensor's Option to Retain the EVSE upon Expiration of the Term.* Upon the expiration of the License Agreement, Licensor, in its sole and absolute discretion, may elect to retain the EVSE. Licensor shall notify Licensee in writing delivered to Licensee not less than thirty (30) days prior to the expiration of this Agreement, whether Licensor desires to retain the EVSE on some or all of the Licensed Premises. If Licensor fails to deliver such written notice within such thirty (30) day period, Licensor shall be deemed to have elected to retain the EVSE at the Licensed Premises. If Licensor elects to retain the EVSE installed at some or all of the Licensed Premises, Licensor shall become entitled to acquire from Licensee all rights, title, and interest in and to such EVSE at no additional cost, and Licensee agrees to execute and deliver to Licensor such documents as Licensor may reasonably request to evidence the transfer of title.
  - 4.2. *Removal of the EVSE by Licensee upon Expiration of the Term or Termination for Cause.* If Licensor elects not to retain the EVSE at the Properties or Licensor terminates this Agreement with cause, Licensee shall remove (at Licensee's sole cost and expense) any or all of the EVSE, and shall restore the Licensed Premises to a safe and reasonable condition, as more specifically described in § 4.4 below. Should the Licensor elect to continue ECOTality Blink Network and EVSE support, following the Term or earlier termination thereof, such additional services shall be subject to a new written agreement to be entered into between the Parties.
  - 4.3. *Removal of the EVSE by Licensor.* If Licensor timely notifies Licensee of Licensor's election to have Licensee remove the EVSE from the Licensed Premises, Licensee shall, within 45 days following receipt of notice from Licensor, remove the EVSE and restore the condition of Licensed Premises as provided in § 4.4 below.
  - 4.4. *Restoration.* Upon expiration or termination of the License and removal of the EVSE, Licensee shall, at Licensee's sole expense and to Licensor's satisfaction, restore the affected portions of the Licensed Premises (surface and subsurface) to a safe condition, with the electricity to the Charger installation locations capped, the breakers turned off, and the Charger anchor/mounting bolts cut flush and removed.
5. *Termination.*
  - 5.1. *Without Cause.* This Agreement may be terminated by Licensee in writing to the Licensor, without cause, at any time and for any reason, including the termination of the EV Project or a reduction in EV Project funding, whereupon the Parties shall be fully released from their respective duties, rights, obligations and liabilities under this Agreement except as provided below.
  - 5.2. *With Cause.* This Agreement may be terminated in writing by either party for cause if either party violates any term of this Agreement and fails to cure the same within ten (10) days of receiving written notice of such default. Upon such

termination of this Agreement for cause, as its sole and exclusive remedy, Licensee shall have the right, but not the obligation, to disable or remove (at its sole cost and expense) any or all of the EVSE installed at the Location and terminate services to Licensor's. In the event that Licensee does not elect to remove the EVSE within thirty (30) days following such termination, the EVSE shall be deemed abandoned by Licensee and Licensor shall possess all rights, title and interest in and to the same.

6. *Use of the EVSE by Licensor.*

6.1. *Software License.* During the term of this Agreement, Licensee grants to the Licensor a non-exclusive and non-transferable license, to use Licensee's software in the form in which it is embedded in the EVSE on the delivery date for use in conjunction with other parts of the EVSE on the condition that the EVSE shall be used for its intended purpose only. Nothing contained in this Section shall be construed as an assignment or transfer of any copyright, design right or other intellectual property rights in such software, all of which rights are owned by the Licensee.

6.2. *Limitation of Licensee's Liability.* Licensee makes no warranty or representation, expressed, implied, oral or statutory, to the Licensor or any third party, with respect to the Software or the EVSE, including, without limitation, any warranty, condition or representation: (a) of merchantability, fitness for a particular purpose, satisfactory quality, or arising from a course of dealing, usage, or trade practice; (b) that the products will be free from infringement or violation of any rights, including intellectual property rights of third parties; or (c) that the operation of any software supplied will be uninterrupted or error free.

7. *Indemnification.* Licensee shall indemnify, defend, save and hold harmless the Licensor and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Licensee or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Licensee's occupancy and use of the Licensed Premises. It is the specific intention of the Parties that the Licensor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Licensor, be indemnified by Licensee from and against any and all claims. It is agreed that Licensee shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Licensed Premises, the Licensee agrees to waive all rights of subrogation against the Licensor, its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Licensed Premises.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY CLAIMS FOR DAMAGES BY EITHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ACTUAL RECOVERIES UNDER SUCH PARTY'S INSURANCE POLICIES.

8. *Insurance Requirements.* Licensee shall procure and maintain for the duration of the License, insurance against claims for injury to persons or damage to property which may arise from or in connection with the License. The insurance requirements herein are minimum requirements for the License and in no way limit the indemnity covenants

contained in this Agreement. Licensor in no way warrants that the minimum limits contained herein are sufficient to protect the Licensee from liabilities that might arise out of the License. Licensee is free to purchase such additional insurance as Licensee determines necessary.

8.1. *Minimum Scope and Limits of Insurance:* Licensee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

8.1.1. *Commercial General Liability – Occurrence Form*

Policy shall include bodily injury, property damage and broad form contractual liability coverage

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000
• Fire Damage (Damage to Rented Premises) *	\$100,000

The policy shall be endorsed to include the following additional insured language: "The Licensor shall be named as an additional insured with respect to liability arising out of the use and/or occupancy of the property subject to this License."

8.1.2. *Additional Insurance Requirements.* The policies shall include, or be endorsed to include, the following provisions:

- a. On insurance policies where the Licensor is named as an additional insured, the Licensor shall be an additional insured to the full limits of liability purchased by the Licensee even if those limits of liability are in excess of those required by this Agreement.
- b. The Licensee's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

8.1.3. *Notice of Cancellation.* If an insurance policy required hereunder is suspended, voided or cancelled for any reason, the Licensee shall provide Licensor with notice of the change(s), within 2 business days following the change(s) to the insurance policy.

8.1.4. *Acceptability of Insurers.* Insurance shall be placed with insurers duly licensed or authorized to do business in the state of Texas and with an “A.M. Best” rating of not less than B+ VI. The Licensor in no way warrants that the above-required minimum insurer rating is sufficient to protect the Licensee from potential insurer insolvency.

8.1.5. *Verification of Coverage.* Licensee shall furnish the Licensor with certificates of insurance (ACORD form or equivalent approved by the Licensor) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the Licensor prior to commencement of the License Agreement. Each insurance policy required by this Agreement shall be in

effect at or prior to commencement of this License and remain in effect for the duration of the License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal shall be deemed a material breach of of this Agreement.

9. *Notices.* All notices or other communications required or permitted to be provided pursuant to this License shall be in writing and may be hand delivered, sent by United States Mail, postage prepaid, or delivered by a courier service. Any notice shall be deemed to have been provided when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Mail. Notices shall be addressed as follows:

To Licensor:

Attn:

To Licensee:

Electric Transportation Engineering Corporation,  
dba ECOTality North America  
Attn: Legal Department  
430 South 2nd Avenue  
Phoenix, AZ 85003-2418

10. *Interpretation.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When a reference is made to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated.
11. *Entire Agreement.* This Agreement and the exhibits and schedules referenced or attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement is not intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.
12. *Severability.* If any terms or other provision of this Agreement or the schedules or exhibits hereto shall be determined by a court, administrative agency or arbitrator to be invalid, illegal or unenforceable, such invalidity or unenforceability shall not render the entire Agreement invalid. Rather, this Agreement shall be construed as if not containing the particular invalid, illegal or unenforceable provision, and all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent permitted under applicable law.

13. *Information.* Subject to applicable law and privileges, each Party hereto covenants with and agrees to provide to the other Party all information regarding itself and transactions under this Agreement that the other Party reasonably believes is required to comply with all applicable federal, state, county and local laws, ordinances, regulations and codes.
14. *Further Agreements.* The Parties shall execute or cause their applicable affiliates to execute such additional agreements between the Parties and/or their respective affiliates as may be reasonably necessary to effectuate the intent of this Agreement.
15. *Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be amended at any time by mutual consent of Licensor and Licensee, evidenced by an instrument in writing signed on behalf of each of the Parties.
16. *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the Parties hereto.
17. *Failure to Act Not Waiver; Remedies Cumulative.* No failure or delay on the part of either Party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.
18. *Authority.* Each of the Parties represent to the other Party that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this License Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement and (d) this Agreement is legal, valid and a binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.
19. *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including any creditor of any Person. No such third party shall obtain any right under any provision of this Agreement or shall by reason of any such provision make any claim in respect to any liability (or otherwise) against either Party hereto. Notwithstanding the foregoing, it is understood that the Licensee's rights hereunder shall inure to the benefit of Licensee's affiliates and their officers, directors and employees.
20. *Default; Remedies.* The actual or prospective failure of either party to satisfy any material obligation under this Agreement, and the breach of any material representation or warranty stated in this agreement, shall be an event of default. If a party's default continues without cure for thirty (30) days after delivery of a written notice of default in the manner provided in Section 9, the other party shall be entitled to terminate this Agreement for cause, and to all other remedies available at law or in equity, including damages and specific performance. The rights and remedies set forth in this agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or

subsequently exist in law or equity or by statute or otherwise. Failure or delay by the Licensor to exercise any right, power or privilege will not be deemed a waiver thereof.

21. *Attorney's Fees.* If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted to enforce any rights under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.
22. *Confidentiality and Data Security.* Personal identifying information, financial account information, or restricted Licensor information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Licensee must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted Licensor information, regardless of its format, is no longer necessary, the information must be redacted through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by the Licensee in connection with this Agreement is believed to have been compromised, Licensee shall notify the Licensor immediately. Licensee agrees to reimburse Licensor for any costs incurred by the Licensor to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Licensee agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Licensee. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of Licensee under this Section shall survive the termination of this Agreement.

23. *Data Collection for DOE Grant Purposes.* During the Term of this Agreement Licensor shall allow Licensee reasonable access to the EVSE, the Licensed Premises, and existing sources of electrical energy as reasonably necessary to enable Licensee to collect and transmit data regarding public use of the EVSE as may be required by the DOE Grant.
24. *Miscellaneous.* Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. Except as expressly provided herein to the contrary, when a Party is required to perform under this Agreement, it shall do so at its sole cost and expense without right of reimbursement from the other Party. Whenever one Party's consent or approval is required to be given as a condition to the other Party's right to take any action pursuant to this Agreement, unless another standard is expressly set forth, such consent or approval shall not be unreasonably withheld, conditioned or delayed.
25. *Counterparts.* This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

IN AGREEMENT, each of the Parties hereto has caused this Agreement to be duly executed as of the day and year first set forth above.

LICENSOR:

\_\_\_\_\_, a municipal corporation

By: \_\_\_\_\_

Name

Title

LICENSEE:

ELECTRIC TRANSPORTATION  
ENGINEERING CORPORATION

By: \_\_\_\_\_

Greg P. Fioriti

Sr. Vice President On Road Division

**EXHIBIT A: Description of Licensor’s Properties**

NOTE: This Exhibit A may be amended from time to time to add or delete properties

Location No.	Property Address	Assessor’s Parcel No.
--------------	------------------	-----------------------

## **EXHIBIT B: Description and/or Depiction of Licensed Premises**

### **Location No. 1**

[insert metes and bounds or other narrative description, size, etc.]

See diagram attached as Exhibit B-1.

### **Location No. 2**

[insert metes and bounds or other narrative description, size, etc.]

See diagram attached as Exhibit B-2.

## Charging Station



# Workshop Item No. 2

2. **COUNCIL INPUT AND DISCUSSION:** REGARDING POSSIBLE ANNEXATION OF AREA 4. *Ms Lata Krishnarao, Planning Director.*

**AGENDA REQUEST  
BUSINESS OF THE CITY COUNCIL  
CITY OF PEARLAND, TEXAS**

<b>AGENDA OF:</b> January 30, 2012	<b>ITEM NO.:</b> Workshop Item No. 2
<b>DATE SUBMITTED:</b> January 16, 2012	<b>DEPT. OF ORIGIN:</b> Planning
<b>PREPARED BY:</b> Evan DuVall	<b>PRESENTOR:</b> Evan DuVall
<b>REVIEWED BY:</b> Mike Hodge	<b>REVIEW DATE:</b> January 24, 2012
<b>SUBJECT:</b> Possible Annexation of Area 4	
<b>EXHIBITS:</b> 1. Map of Area County Road Project; 2. Previous Packet from 11/21/2011 Workshop	
<b>EXPENDITURE REQUIRED:</b> N/A <b>AMOUNT AVAILABLE:</b> N/A <b>ACCOUNT NO.:</b> N/A	<b>AMOUNT BUDGETED:</b> N/A <b>PROJECT NO.:</b> N/A
<b>ADDITIONAL APPROPRIATION REQUIRED:</b> N/A <b>ACCOUNT NO.:</b> N/A <b>PROJECT NO.:</b> N/A	
<b>To be completed by Department:</b> <input type="checkbox"/> Finance <input type="checkbox"/> Legal <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution	

**EXECUTIVE SUMMARY**

A City Council Workshop was conducted on November 21, 2011 regarding the Possible Annexation of Area 4. This workshop will address the questions from the previous council workshop.

**Road Maintenance and Cost:**

Brazoria County has been actively working on improving County Road 48 to a four lane road (two lanes in each direction) from SH 6 to Broadway Street. This project has passed the right-of-way acquisition phase and is in the final design phase. The portion of County Road 48 within Area 4 is not currently funded and Brazoria County is applying for funding. Brazoria County is estimating the cost of the road construction from County Road 894 to Broadway Street is \$8.3 million to complete. It is expected if a TxDOT grant or other funding source is achieved a local match from the city would be required. At this time Brazoria County has no capital improvement plans for County Road 59. If annexed into the City of Pearland, the maintenance of the road and roadside ditches will be maintained by the City.

The City of Pearland has an estimate for a full depth rehab on County 48 at \$155,616 and County Road 59 at \$409,224. A full depth rehab would include striping roads, replacing signs (as needed) and swabbing ditches. After the roadway is rehabbed or reconstructed the maintenance of Magnolia Road (County Road 59) and Kingsley Road (Count Road 48) will require a minimal cost to the city.

The reconstruction costs for these roads will follow the Capital Improvement Program, similar to other roads in the City of Pearland. The Capital Improvement Program is planned in five or more year increments. Unless modified, the roads within Area 4 will not be in the plan for the first five years after annexation.

#### **Revenue and Annexation Area 4:**

If the City of Pearland decides to annex this area, this area will generate approximately \$47,374 in taxes per year, which will increase as the land becomes more valuable. At its yearly rate, after 5 years the Annexation Area 4 would generate approximately \$236,870. This value is derived from expecting this area to stay relatively stagnant for the next five years, ignoring any future infrastructure improvements or development. If the infrastructure improvements are scheduled after five years, this tax revenue will help offset construction costs.

#### **Staff Time:**

The City of Pearland staff has spent a substantial amount of time preparing for and answering questions from the public during the annexation process. Previously, the possible Annexation of Area 5 resulted in a total of 285 employee hours worked, including 135 hours at meetings, or after normally schedule work hours. This time has been allocated in several ways including answering questions from area residents, meetings, and analysis.

#### **Extension of Sewer and Water:**

There is currently no scheduled extension of sewer services in this area and the extension of water service is planned in 2017 or 2018. According to the 2025 Water Model, future water extensions (20" & 30" lines) are planned to be constructed in 2017 or 2018 when a planned Surface Water Plant is built. These 20" and 30" lines are already planned along County Road 48 (Kingsley Road) and are planned to be built regardless of the outcome of the Possible Annexation of Area 4. In the interim it is possible to have water service from existing water lines on Broadway and Southern Trails Drive. According to the 2025 Water Model, County Road 59 is planned to have 16" and 12" lines to service this area, sometime in the future.

#### **Modifying Area 4 Boundaries:**

If council wishes the boundaries of Annexation Area 4 can be modified with a few caveats. Any modification of the boundaries of this annexation area will require a revised boundary survey. Even if the City Council does not change the boundaries of Area 4, due to the voluntary annexation of Area 3, a new survey will be required. Any changes will have to meet the requirements for the Texas State Statutes regarding Annexation.

**State Statutes Requirements:**

1. Location: Within the City's Extra-territorial Jurisdiction
2. Contiguity: May only annex an area adjacent to current city limits, unless a development agreement exists.
3. Number: 100 or fewer tracts with residential dwellings.
4. Width Requirement: At least 1,000 feet wide at any point or contiguous on two sides.

**Annexation of Area 4 by Rosharon:**

Several steps must occur to allow another City to annex Area 4. The first step would be to remove a portion of land from the City of Pearland's Extraterritorial Jurisdiction. The City of Pearland is only able to reduce the Extraterritorial Jurisdiction by written consent of the City Council by resolution or ordinance (Texas State Statute Sect. 42.023). Afterwards another city must extend their Extraterritorial Jurisdiction to incorporate the area and then proceed with annexation procedures.

As per the legal department, an area that is completely surrounded by the limits of one city (like the hole of a donut) cannot be given to another city, since that area is not contiguous to the limits of the latter. Therefore the City of Pearland would not be able to remove an area within the City of Pearland's Extra-Territorial Jurisdiction, unless the 100-foot Annexation Strip is moved in a northerly direction, thereby redefining the Extra-Territorial Jurisdiction. This change would result in the subject area and all areas to the south to be removed from City of Pearland's Extra-Territorial Jurisdiction.

The City Council has the authority to reduce the City of Pearland's Extraterritorial Jurisdiction, but this action would not be advised. The location of Annexation Area 4, being just below Southern Trails and Shadow Creek Ranch, makes this area an important piece to the city. Additionally, the relinquishment of this area's Extraterritorial Jurisdiction would relinquish all current and future powers the City of Pearland maintains in this area.

**Annexing of Roads within Area 4:**

The City Council asked if it was required to annex the roads within an Annexation Area 4. The State Statute does not require the City of Pearland to include the roads within an annexation area. Removing the road would require a substantial reconfiguration of the boundaries in order to satisfy the 1,000 foot minimum width requirement of the State Statutes.

**STAFF RECOMMENDATION**

Provide direction to staff regarding the Possible Annexation of Area 4.



**Exhibit 2: Previous Packet from 11/21/2011 Workshop**

Previous Possible Annexation Area 4 Packet

**AGENDA REQUEST  
BUSINESS OF THE CITY COUNCIL  
CITY OF PEARLAND, TEXAS**

<b>AGENDA OF:</b> November 21, 2011	<b>ITEM NO.:</b>
<b>DATE SUBMITTED:</b> November 9, 2011	<b>DEPT. OF ORIGIN:</b> Planning
<b>PREPARED BY:</b> Evan Duvall	<b>PRESENTOR:</b> Evan DuVall
<b>REVIEWED BY:</b> Mike Hodge	<b>REVIEW DATE:</b> November 11, 2011
<b>SUBJECT:</b> Possible Annexation of Area 4	
<b>EXHIBITS:</b> 1. Vicinity Map; 2. Aerial Map; 3. Area 4 Quadrants; 4. Possible Annexation Schedule; 5. August 2010 Public Hearing Comments;	
<b>EXPENDITURE REQUIRED:</b> N/A	<b>AMOUNT BUDGETED:</b> N/A
<b>AMOUNT AVAILABLE:</b> N/A	<b>PROJECT NO.:</b> N/A
<b>ACCOUNT NO.:</b> N/A	
<b>ADDITIONAL APPROPRIATION REQUIRED:</b> N/A	
<b>ACCOUNT NO.:</b> N/A	
<b>PROJECT NO.:</b> N/A	
<b>To be completed by Department:</b>	
<input type="checkbox"/> Finance	<input type="checkbox"/> Legal
<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution

**EXECUTIVE SUMMARY**

The planning department was directed to examine the possible annexation of Area 4. The goal of this workshop is to decide whether the City of Pearland will go forward with the proposed annexation area. Annexation Area 4 is generally located at County Road 48 and County Road 59 and is approximately 271 acres of land within the City's Extraterritorial Jurisdiction (See Exhibit 1 and 2). This area encompasses a variety of land uses including a church, businesses and a variety of housing types (See Exhibit 3).

Within the possible Annexation Area 4 there is a variety of land uses. The estimated population within Annexation Area 4 is 148 people, which live in a combination of single-family and mobile homes. According the Brazoria County Appraisal District, there are

approximately 30 single-family residences and 22 mobile homes. The other land uses within this area include businesses, agriculture, farms and a cemetery.

The Annexation Area 4 has a total assessed valuation of \$7,452,951, but approximately \$6,915,022 of this valuation is taxable due to the City of Pearland's tax exemptions. At the city's tax rate of .6851 per \$100 in value, the City of Pearland would receive an estimated \$47,374.80 each year in taxes.

The possible annexation of Area 4 will follow the guidelines as outlined during the annexation of Area 5. This will include an open house, individualized letters and one-on-one meetings with city staff. The tentative schedule for Annexation Area 4 has public hearings on May 28 and June 11, 2012 and the adoption of Annexation Area 4 on July 16, 2012 (See Exhibit 4).

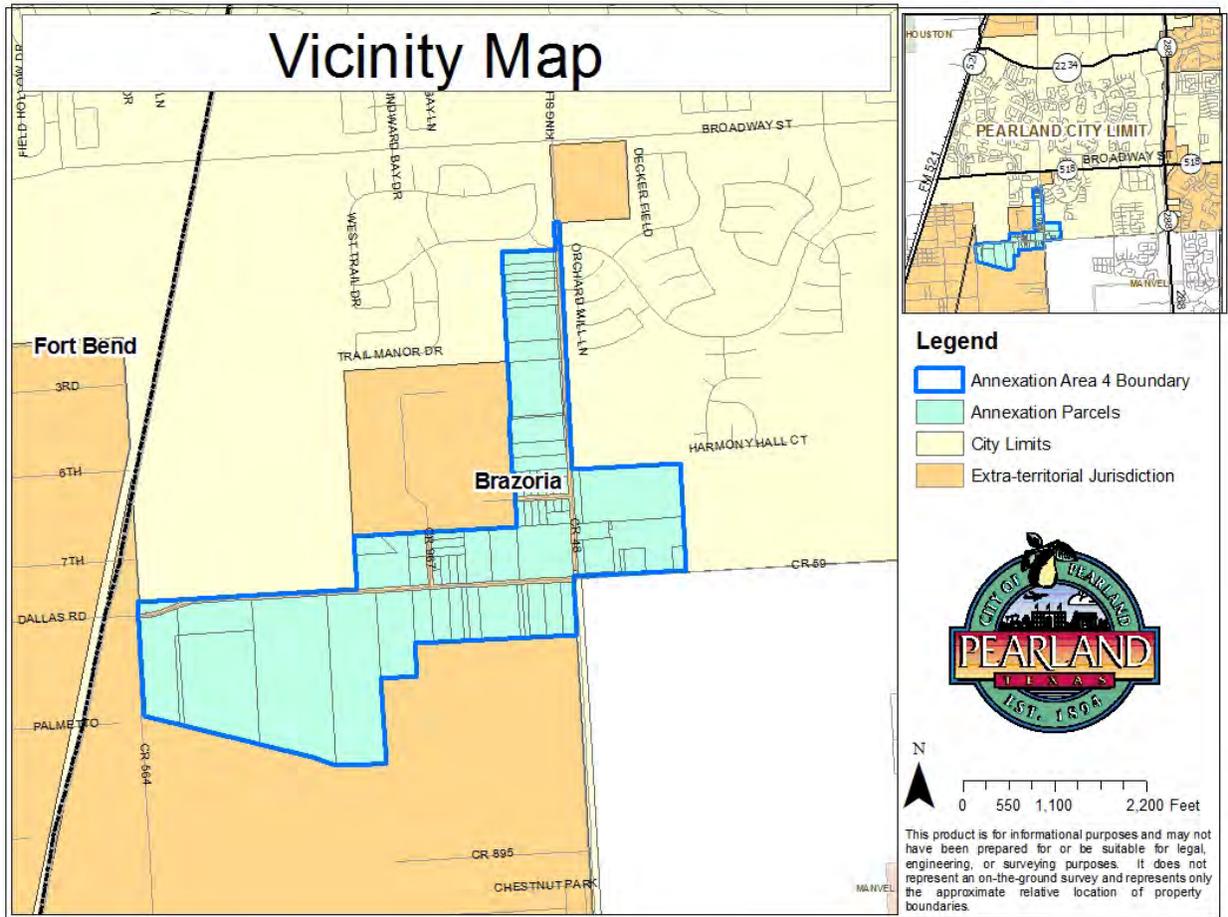
The annexation of Area 4 was previously considered by City Council in August 2010, but was not completed. The speaker comments during the public hearings are included as Exhibit 5 and the previous council packet has been included as Exhibit 6. If the City Council decides to continue with the annexation of Area 4, staff will update this information.

In the previous annexation hearings, Area's 3 and 4 were combined. This request would be only for Annexation Area 4. Annexation Area 3 is currently in the process of a voluntary annexation, if approved on February 27, 2012, will become part of the City of Pearland.

### **STAFF RECOMMENDATION**

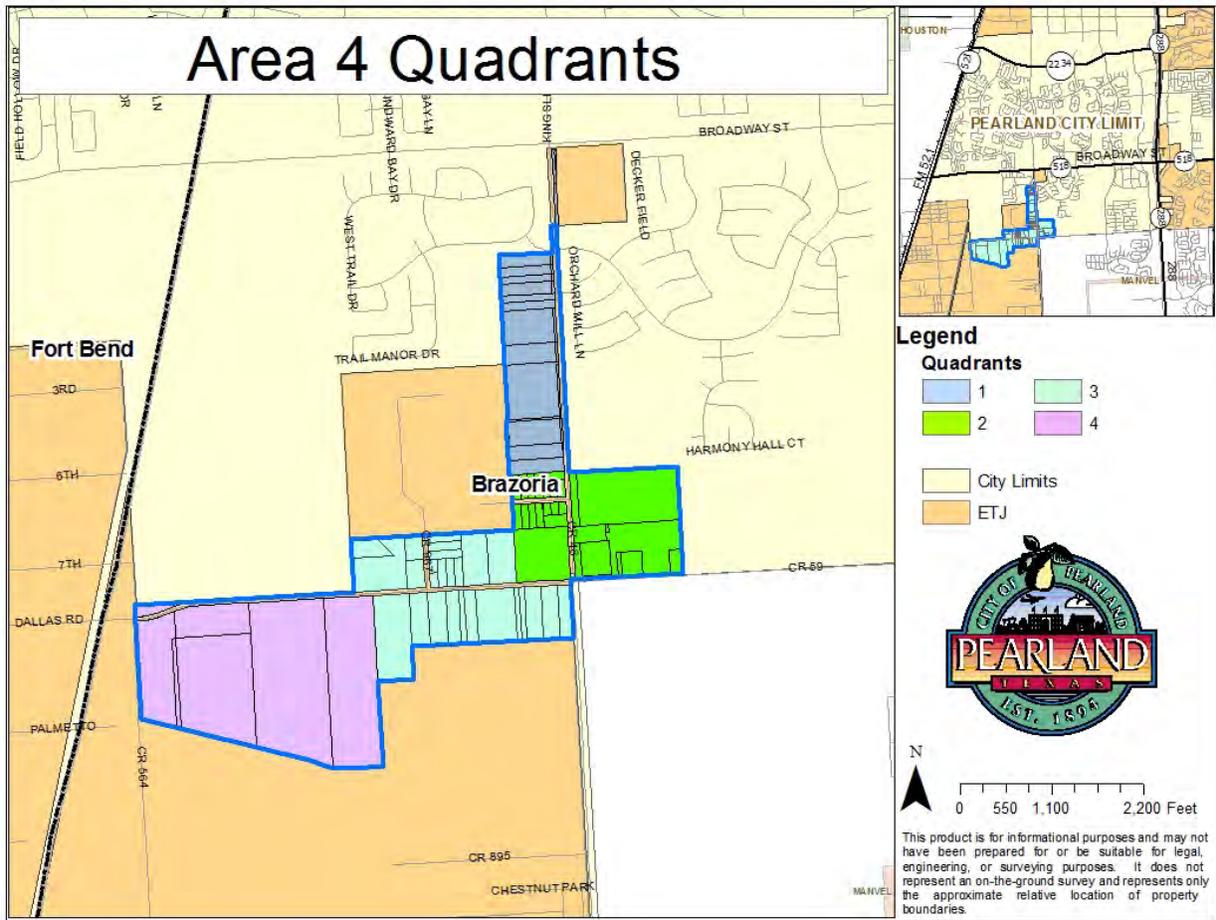
Consider the annexation of Area 4.

# Exhibit 1: Vicinity Map





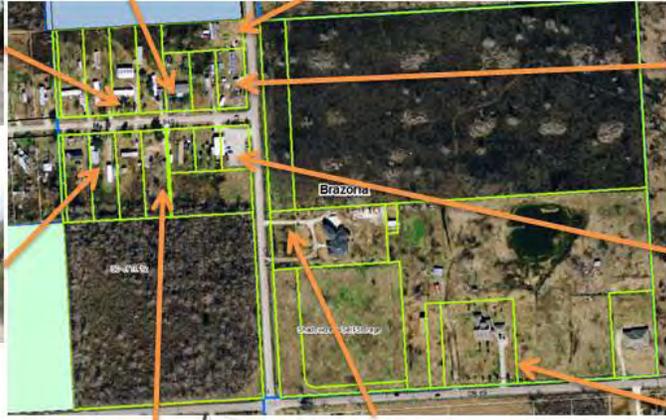
# Exhibit 3: Area 4 Quadrants



# Area 4: Quadrant 1



# Area 4: Quadrant 2



# Area 4: Quadrant 3



## Area 4: Quadrant 4



## Exhibit 4: Possible Annexation Schedule

<u>Action</u>	<u>Target Date</u>	<u>Statutory Requirement</u>	<u>Actual</u>
Survey of Annexation Area	Wednesday, February 29, 2012	N/A	N/A
Mail Individual Letters for Open House and one-on-one Meetings	Thursday, March 1, 2012	N/A	N/A
One-on-One Meetings with staff	March through April, 2012	N/A	N/A
Conduct an Open House	Thursday, March, 22 2012	N/A	N/A
Council Direction to Prepare Service Plan	Monday, April 23, 2012	Prior to Advertisement of 1st hearing	N/A
Notify Justice Dept.	Monday, April 30, 2012	90 Days before adoption	77 Days
Notify property owners, utilities, schools, service providers, and railroads of Annexation Public Hearings	Tuesday, April 24, 2012	Prior to 30 days before the first Public Hearing	34 Days
Send legal's to the newspaper	Thursday, May 3, 2012	N/A	N/A
Advertise Annexation First Public Hearing and post to web site	Wednesday, May 9, 2012	11-20 Days Prior to First Public Hearing	19 Days
Send agenda request and report to Young for Annexation	Thursday, May 18, 2012	10 Days prior to Public Hearing	11 Days

Annexation First Public Hearing	Monday, May 28, 2012	21-40 Days Before the First Reading of the Ordinance	35 Days
Advertise 2 <sup>nd</sup> Annexation Public Hearing	Wednesday, May 23, 2012	11-20 Days Prior to Second Public Hearing	19 Days
Annexation 2 <sup>nd</sup> Public Hearing	<b>Monday, June 11, 2012 (2 weeks after the first hearing)</b>	21-40 Days Before the First Reading of the Ordinance	21 Days
First Reading of the Annexation Ordinance	Monday, July 2, 2012	Within 90 days after the first Public Hearing of the ordinance	35 Days
Second Reading and <b>Adoption</b> of the Annexation Ordinance	<b>Monday, July 16, 2012</b>	Within 90 days after the first Public Hearing of the ordinance	49 Days
Notify Justice Department Post annexation list	Monday, July 30, 2012	Within 90 Days of adoption	14 Days
Commence Zoning Process – Joint Public Hearing	Monday, August 20, 2012	N/A	N/A

## **Exhibit 5: August 2010 Public Hearing Comments**

### Brief Summary of Speaker Comments:

#### **Water and Sewer Related:**

1. The City of Pearland is not running water and sewer lines while improving the roads, this seems wasteful.
2. Against the Annexation of Area 3 & 4 due to water and sewer not being extended into the area.
3. Have septic tank and well water, and I am concerned that there would be forced to connect to city water and sewer. Oppose the annexation.
4. Concerned with the future cost of connection to city water and sewer. Suggest that we offer grant programs for connecting, similar to the City of Austin.

#### **Zoning Related:**

1. Currently developing his property as commercial and is concerned with the City's plan to zoning his property residential.
2. The property was purchased 20 years ago for commercial uses and afraid the annexation will not allow for that purpose.
3. Plan on building a home and business on the property and afraid that this will not happen if in the annexed into the City of Pearland.

#### **City Services and Restrictions Related:**

1. Already a portion of his property is located in the 100-foot strip, does not receive any city services and against annexation.
2. City services are a great thing, but sometimes not so good.

#### **County Services Related:**

1. Happy with no restrictions in the county, therefore opposed to the annexation.
2. Request to hold off annexation as people they have talked to are against it.
3. I am a neighbor of Annexation Areas 3 & 4 and like the country living and do not see any benefits due to services currently offered by the county.
4. Have flood insurance in the county we take care of our own needs, appreciate Pearland but did not ask to be located in the Extraterritorial Jurisdiction. Can we be taken out of the ETJ.
5. Perfectly happy with county services, therefore against annexation.

#### **Economy Related:**

1. Foreclosure is really bad in the annexation area and feels that now is not the time to over extend city boundaries.

# Workshop Item No. 3

3. **COUNCIL INPUT AND DISCUSSION:** REGARDING THE STATE FRANCHISE FEE – PUBLIC, EDUCATIONAL AND GOVERNMENT FACILITIES. *Mr. Jon Branson, Assistant City Manager.*

**AGENDA REQUEST  
BUSINESS OF THE CITY COUNCIL  
CITY OF PEARLAND, TEXAS**

<b>AGENDA OF:</b>	January 30, 2012	<b>ITEM NO.:</b>	Workshop Item No. 3
<b>DATE SUBMITTED:</b>	January 25, 2012	<b>DEPT. OF ORIGIN:</b>	Administration
<b>PREPARED BY:</b>	Jon R. Branson	<b>PRESENTOR:</b>	Jon R. Branson
<b>REVIEWED BY:</b>	Bill Eisen	<b>REVIEW</b>	1/26/12
<b>SUBJECT: State Franchise Fee – Public, Educational and Government Facilities</b>			
<b>EXHIBITS: Comcast-Franchise Termination Notice; Comcast-State Issue Certificate of Franchise; Capital Equipment for PEG Channel</b>			
<b>FUNDING:</b>	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input checked="" type="checkbox"/> Cash
	<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P – Sold
			<input type="checkbox"/> L/P – To Be Sold
<b>EXPENDITURE REQUIRED: \$</b>		<b>AMOUNT BUDGETED: \$</b>	
<b>AMOUNT AVAILABLE: \$</b>		<b>PROJECT NO.:</b>	NA
<b>ACCOUNT NO.:</b>	010		
<b>ADDITIONAL APPROPRIATION REQUIRED:</b>	NA		
<b>ACCOUNT NO.:</b>			
<b>PROJECT NO.:</b>			
<b>To be completed by Department:</b>			
<b>Finance</b>	<b>Legal</b>	<b>Ordinance</b>	<b>Resolution</b>

**EXECUTIVE SUMMARY**

In accordance with SB 2087 as approved by the 82<sup>nd</sup> Texas Legislature, effective September 1, 2011, Comcast is allowed to transition our municipal franchise to a State-Issued Certificate of Franchise Authority. What this means to the City of Pearland are three (3) possible changes.

1. The City will continue to receive Franchise fees, although the percentage paid and the revenues on which the fees are paid may be different than in the municipal franchise. At a minimum, we will continue to see the 5% Franchise fees that we have received previously.
2. The City may receive an additional 1% of Gross Revenues, labeled as “State Franchise Fee” on customer bills, to fund capital expenditures associated with Public, Educational and Government programming.
3. Currently at each of our City facilities we are receiving complimentary cable service to those buildings. In accordance with this Bill, Comcast is entitled to deduct the actual incremental costs of such service

from our franchise fee payment. At this time, the service will continue to be complimentary however, Comcast does reserve the right to begin deducting these costs from their franchise fees in the future as they deem appropriate.

At this time the City essentially has two options to consider. The first option is approve a Resolution similar to the "Sample Resolution" provided in the packet. Should City Council approve the Resolution and forward it to Comcast, the additional 1% to fund capital expenditures for the City's Public Education and Government channel will not be charged to Comcast subscribers within the City Limits of Pearland.

The second option for the City to consider is to take no action regarding the "State Franchise Fee". Should City Council elect this option, on or around April 1, 2012, the City will receive its regular quarterly Franchise fees estimated to be approximately \$121,000 and receive its first "State Franchise Fee" estimated to be approximately \$24,000. A note on the subscriber's bill corresponding with this new fee would read 1% "State Franchise Fee".

Should City Council elect to take no action regarding the "State Franchise Fee" and start receiving the funds in April, the funds can only be utilized for capital expenditures associated with Public, Educational and Government programming. Items such as photographic cameras, movie cameras, monitors, computers, computer programs, television screens and/or construction or reconstruction of an office space to provide public education would be allowed. Any funds received from the "State Franchise Fee" must be accounted for separately and cannot be comingled with other funds and cannot be utilized for anything other than capital expenditures for the City's Public Education and Government (PEG) channel.

It is anticipated that if we were to receive the "State Franchise Fee" funds, we would utilize them to purchase equipment to enhance our capabilities to program the City View (PEG) channel. Some City's have used the funds to purchase cameras, television monitors and recording devices to televise their Council meetings on their (PEG) channel.

## **BACKGROUND**

Effective September 1, 2011, pursuant to SB 1087 approved by the 82<sup>nd</sup> Texas Legislature, Comcast is allowed to transition its unexpired franchises in municipalities with a population of less than 215,000 to a State Issued Certificate of Franchise Authority ("SICFA"). Comcast of Houston, LLC, d/b/a Comcast has elected to terminate its unexpired franchises, including its current agreement with the City of Pearland and will seek a SICFA for each area served under those terminated municipal franchises.

The statute requires that Comcast provide written notice to the Public Utility Commission of Texas ("PUC") and each affected municipality before January 1, 2012 (please note letter from Comcast to the City dated December 7, 2012). Comcast has filed with the PUC its application for a SICFA to provide cable service in our community and has notified us that it wishes to terminate its existing municipal franchise with our community (please note letter from Comcast dated October 24, 2011).

## **SCOPE OF CONTRACT**

NA

## **BID AND AWARD**

NA

## **SCHEDULE**

NA

## **POLICY/GOAL CONSIDERATION**

NA

## **CURRENT AND FUTURE FUNDING /FINANCIAL IMPACTS**

The estimated annual revenues that we would receive from the “State Franchise Fees” that can be utilized for capital expenditures associated with Public, Educational and Government programming is approximately \$96,000. The City has the option to stop receiving the funds at anytime by simply passing a resolution stating such intent. The City also has the right to elect to receive these funds at anytime in the future if the City chooses not to exercise the option to receive these funds at this time.

## **O&M IMPACT INFORMATION**

None

## **RECOMMENDED ACTION**

Conduct Workshop



Comcast Cable  
8500 West Tidwell Rd  
Houston, TX 77040

October 24, 2011

City of Pearland  
City Manager, Bill Eisen  
3519 Liberty Drive  
Pearland, TX 77581

RE: Cable Service Franchise Termination Notice

Dear Bill:

Effective September 1, 2011, pursuant to SB 1087 approved by the 82<sup>nd</sup> Texas Legislature, Comcast is allowed to transition all of its unexpired franchises in municipalities with a population of less than 215,000 to a State Issued Certificate of Franchise Authority ("SICFA"). Comcast of Houston, LLC, d/b/a Comcast has elected to terminate its unexpired franchises, including its current agreement with your community, and will seek a SICFA for each area served under those terminated municipal franchises.

The statute requires that Comcast provide written notice to the Public Utility Commission of Texas ("PUC") and each affected municipality before January 1, 2012. Comcast soon will file with the PUC its application for a SICFA to provide cable service to your community. I am sending you this letter to provide you with notice that Comcast has elected to terminate its current municipal franchise with your community.

We expect that our application to the PUC will be filed on or about November 7, 2011, and that it will be approved within 17 days from the date of filing. We will be sending additional correspondence in the near future in order to explain how we believe this transition to a SICFA may impact your community.

Comcast takes pride in providing exciting products and unparalleled choices to customers across America and in your community with our state-of-the-art video, high-speed Internet, phone and online services. We are committed to providing Comcast customers with a consistently superior customer experience.



Comcast Cable  
8590 West Tidwell Rd  
Houston, TX 77040

Comcast appreciates its relationship with you and the opportunity to be a cable service provider in your community. If you have any questions about the SICFA application, the termination of the municipal franchise agreement, or the transition process, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Craig D'Agostini".

Craig D'Agostini  
Senior Director of Government Affairs  
Comcast (Houston)

1-1 By: Carona S.B. No. 1087  
1-2 (In the Senate - Filed March 2, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 4, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 1; April 4, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1087 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to state-issued certificates of franchise authority to  
1-11 provide cable service and video service.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-13 SECTION 1. Subsection (a), Section 66.003, Utilities Code,  
1-14 is amended to read as follows:

1-15 (a) An entity or person seeking to provide cable service or  
1-16 video service in this state [~~after September 1, 2005,~~] shall file an  
1-17 application for a state-issued certificate of franchise authority  
1-18 with the commission as required by this section. An entity  
1-19 providing cable service or video service under a franchise  
1-20 agreement with a municipality is not subject to this subsection  
1-21 with respect to such municipality until the franchise agreement is  
1-22 terminated under Section 66.004 or until the franchise agreement  
1-23 expires [~~, except as provided by Section 66.004~~].

1-24 SECTION 2. Section 66.004, Utilities Code, is amended by  
1-25 amending Subsections (a), (c), and (f) and adding Subsection (b-1)  
1-26 to read as follows:

1-27 (a) A cable service provider or a video service provider  
1-28 that currently has or had previously received a franchise to  
1-29 provide cable service or video service with respect to a  
1-30 municipality may [~~such municipalities is not eligible to~~] seek a  
1-31 state-issued certificate of franchise authority to provide service  
1-32 to the municipality under this section [~~chapter as to those~~  
1-33 municipalities until the expiration date of the existing franchise  
1-34 agreement, except as provided by Subsections (b) and (c)].

1-35 (b-1) Beginning September 1, 2011, a cable service provider  
1-36 or video service provider that was not allowed to or did not  
1-37 terminate a municipal franchise under Subsection (b) may elect to  
1-38 terminate all unexpired municipal franchises and seek a  
1-39 state-issued certificate of franchise authority for each area  
1-40 served under a terminated municipal franchise by providing written  
1-41 notice to the commission and each affected municipality before  
1-42 January 1, 2012. A municipal franchise is terminated on the date  
1-43 the commission issues a state-issued certificate of franchise  
1-44 authority to the provider for the area served under that terminated  
1-45 franchise.

1-46 (c) A cable service provider [~~that serves fewer than 40~~  
1-47 percent of the total cable customers in a municipal franchise area  
1-48 and] that elects under Subsection (b) or (b-1) to terminate an  
1-49 existing municipal franchise is responsible for remitting to the  
1-50 affected municipality before the 91st day after the date the  
1-51 municipal franchise is terminated any accrued but unpaid franchise  
1-52 fees due under the terminated franchise. If the cable service  
1-53 provider has credit remaining from prepaid franchise fees, the  
1-54 provider may deduct the amount of the remaining credit from any  
1-55 future fees or taxes it must pay to the municipality, either  
1-56 directly or through the comptroller.

1-57 (f) Except as provided in this chapter, nothing in this  
1-58 chapter is intended to abrogate, nullify, or adversely affect in  
1-59 any way the contractual rights, duties, and obligations existing  
1-60 and incurred by a cable service provider or a video service provider  
1-61 before the date a franchise expires or the date a provider  
1-62 terminates a franchise under Subsection (b-1), as applicable,  
1-63 [~~enactment of this chapter,~~] and owed or owing to any private

2-1 person, firm, partnership, corporation, or other entity including  
 2-2 without limitation those obligations measured by and related to the  
 2-3 gross revenue hereafter received by the holder of a state-issued  
 2-4 certificate of franchise authority for services provided in the  
 2-5 geographic area to which such prior franchise or permit applies.  
 2-6 All liens, security interests, royalties, and other contracts,  
 2-7 rights, and interests in effect on September 1, 2005, or the date a  
 2-8 franchise is terminated under Subsection (b-1) shall continue in  
 2-9 full force and effect, without the necessity for renewal,  
 2-10 extension, or continuance, and shall be paid and performed by the  
 2-11 holder of a state-issued certificate of franchise authority, and  
 2-12 shall apply as though the revenue generated by the holder of a  
 2-13 state-issued certificate of franchise authority continued to be  
 2-14 generated pursuant to the permit or franchise issued by the prior  
 2-15 local franchising authority or municipality within the geographic  
 2-16 area to which the prior permit or franchise applies. It shall be a  
 2-17 condition to the issuance and continuance of a state-issued  
 2-18 certificate of franchise authority that the private contractual  
 2-19 rights and obligations herein described continue to be honored,  
 2-20 paid, or performed to the same extent as though the cable service  
 2-21 provider continued to operate under its prior franchise or permit,  
 2-22 for the duration of such state-issued certificate of franchise  
 2-23 authority and any renewals or extensions thereof, and that the  
 2-24 applicant so agrees. Any person, firm, partnership, corporation,  
 2-25 or other entity holding or claiming rights herein reserved may  
 2-26 enforce same by an action brought in a court of competent  
 2-27 jurisdiction.

2-28 SECTION 3. Subsections (a) and (b), Section 66.005,  
 2-29 Utilities Code, are amended to read as follows:

2-30 (a) The holder of a state-issued certificate of franchise  
 2-31 authority shall pay each municipality in which it provides cable  
 2-32 service or video service a franchise fee of five percent based upon  
 2-33 the definition of gross revenues as set forth in this chapter. That  
 2-34 same franchise fee structure shall apply to any unincorporated  
 2-35 areas that are annexed by a municipality after the effective date of  
 2-36 the state-issued certificate of franchise authority. The franchise  
 2-37 fee paid by the holder of a state-issued certificate of franchise  
 2-38 authority shall not be deemed a state or local tax.

2-39 (b) The franchise fee payable under this section is to be  
 2-40 paid quarterly, within 45 days after the end of the quarter for the  
 2-41 preceding calendar quarter. Each payment shall be accompanied by a  
 2-42 summary explaining the basis for the calculation of the fee. A  
 2-43 municipality may review the business records of the cable service  
 2-44 provider or video service provider to the extent necessary to  
 2-45 ensure compensation in accordance with Subsection (a), provided  
 2-46 that the municipality may only review records that relate to the  
 2-47 48-month period preceding the date of the last franchise fee  
 2-48 payment. Each party shall bear the party's own costs of the  
 2-49 examination. A municipality may, in the event of a dispute  
 2-50 concerning compensation under this section, bring an action in a  
 2-51 court of competent jurisdiction.

2-52 SECTION 4. Section 66.006, Utilities Code, is amended to  
 2-53 read as follows:

2-54 Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.  
 2-55 (a) Until the expiration or termination of the incumbent cable  
 2-56 service provider's agreement, the holder of a state-issued  
 2-57 certificate of franchise authority shall pay a municipality in  
 2-58 which it is offering cable service or video service the same cash  
 2-59 payments on a per subscriber basis as required by the incumbent  
 2-60 cable service provider's franchise agreement. All cable service  
 2-61 providers and all video service providers shall report quarterly to  
 2-62 the municipality the total number of subscribers served within the  
 2-63 municipality. The amount paid by the holder of a state-issued  
 2-64 certificate of franchise authority shall be calculated quarterly by  
 2-65 the municipality by multiplying the amount of cash payment under  
 2-66 the incumbent cable service provider's franchise agreement by a  
 2-67 number derived by dividing the number of subscribers served by a  
 2-68 video service provider or cable service provider by the total  
 2-69 number of video or cable service subscribers in the municipality.

3-1 Such pro rata payments are to be paid quarterly to the municipality  
 3-2 within 45 days after the end of the quarter for the preceding  
 3-3 calendar quarter.

3-4 (b) On the expiration or termination of the incumbent cable  
 3-5 service provider's agreement, the holder of a state-issued  
 3-6 certificate of franchise authority shall pay a municipality in  
 3-7 which it is offering cable service or video service one percent of  
 3-8 the provider's gross revenues, as defined by this chapter, or at the  
 3-9 municipality's election, the per subscriber fee that was paid to  
 3-10 the municipality under the expired or terminated incumbent cable  
 3-11 service provider's agreement, in lieu of in-kind compensation and  
 3-12 grants. Payments under this subsection shall be paid in the same  
 3-13 manner as outlined in Section 66.005(b).

3-14 (c) All fees paid to municipalities under this section are  
 3-15 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and  
 3-16 may be used by the municipality as allowed by federal law.

3-17 (c-1) The holder of a state-issued certificate of franchise  
 3-18 authority shall include with a fee paid to a municipality under this  
 3-19 section a statement identifying the fee.

3-20 (c-2) If a municipality uses fees paid to the municipality  
 3-21 under this section for a purpose described by 47 U.S.C. Section  
 3-22 542(g)(2)(C), the fees[, further, these payments] are not  
 3-23 chargeable as a credit against the franchise fee payments  
 3-24 authorized under this chapter. If the municipality uses the fees  
 3-25 for another purpose, the fees are chargeable as a credit against the  
 3-26 franchise fee payments authorized under this chapter.

3-27 (c-3) A municipality that receives fees under this section:  
 3-28 (1) shall maintain revenue from the fees in a separate  
 3-29 account established for that purpose;

3-30 (2) may not commingle revenue from the fees with any  
 3-31 other money;

3-32 (3) shall maintain a record of each deposit to and  
 3-33 disbursement from the separate account, including a record of the  
 3-34 payee and purpose of each disbursement; and

3-35 (4) not later than January 31 of each year, shall  
 3-36 provide to each certificate holder that pays a fee to the  
 3-37 municipality under this section a detailed accounting of the  
 3-38 deposits to and disbursements from the separate account made in the  
 3-39 preceding calendar year.

3-40 (d) Cable services to community public buildings, such as  
 3-41 municipal buildings and public schools, [The following services]  
 3-42 shall continue to be provided by the cable provider that was  
 3-43 furnishing services pursuant to its municipal cable franchise  
 3-44 [until January 1, 2008, or] until the expiration or termination  
 3-45 [term] of the franchise; and [was to expire, whichever is later, and  
 3-46 thereafter as provided in Subdivisions (1) and (2) below.

3-47 [(1)] institutional network capacity, however defined  
 3-48 or referred to in the municipal cable franchise but generally  
 3-49 referring to a private line data network capacity for use by the  
 3-50 municipality for noncommercial purposes, shall continue to be  
 3-51 provided at the same capacity by the cable provider that was  
 3-52 furnishing services pursuant to its municipal cable franchise until  
 3-53 the date of expiration or termination of the franchise, whichever  
 3-54 is later, for municipalities with a population greater than one  
 3-55 million as of January 1, 2012 [as was provided to the municipality  
 3-56 prior to the date of the termination, provided that the  
 3-57 municipality will compensate the provider for the actual  
 3-58 incremental cost of the capacity; and

3-59 [(2)] cable services to community public buildings,  
 3-60 such as municipal buildings and public schools, shall continue to  
 3-61 be provided to the same extent provided immediately prior to the  
 3-62 date of the termination]. On [Beginning on January 1, 2008, or] the  
 3-63 expiration or termination of the franchise agreement, [whichever is  
 3-64 later,] a provider that provides the cable services as described by  
 3-65 this section may deduct from the franchise fee to be paid to the  
 3-66 municipality an amount equal to the actual incremental cost of the  
 3-67 cable services if the municipality requires the cable services  
 3-68 after that date. Such cable service generally refers to the  
 3-69 existing cable drop connections to such facilities and the tier of

4-1 cable service provided pursuant to the franchise at the time of the  
4-2 expiration or termination.

4-3 SECTION 5. Subsections (c) and (h), Section 66.009,  
4-4 Utilities Code, are amended to read as follows:

4-5 (c) If a municipality did not have the minimum number of PEG  
4-6 access channels as of September 1, 2005, as set out in Subdivisions  
4-7 (1) and (2) based on its population as of that date, the cable  
4-8 service provider or video service provider shall furnish:

4-9 (1) up to three PEG channels for a municipality with a  
4-10 population of at least 50,000; and

4-11 (2) up to two PEG channels for a municipality with a  
4-12 population of less than 50,000.

4-13 (h) Where technically feasible, the holder of a  
4-14 state-issued certificate of franchise authority that is not an  
4-15 incumbent cable service provider and an incumbent cable service  
4-16 provider, including an incumbent cable service provider that holds  
4-17 a state-issued certificate of franchise authority issued under  
4-18 Section 66.004(b-1), shall use reasonable efforts to interconnect  
4-19 their cable or video systems for the purpose of providing PEG  
4-20 programming. Interconnection may be accomplished by direct cable,  
4-21 microwave link, satellite, or other reasonable method of  
4-22 connection. The holder [~~holders~~] of a state-issued certificate of  
4-23 franchise authority and the incumbent cable service provider  
4-24 [~~providers~~] shall negotiate in good faith, and the incumbent cable  
4-25 service provider [~~providers~~] may not withhold interconnection of  
4-26 PEG channels.

4-27 SECTION 6. (a) A municipality that received fees described  
4-28 by Subsection (c), Section 66.006, Utilities Code, as amended by  
4-29 this Act, before September 1, 2011, shall, on September 1, 2011,  
4-30 transfer any fees that have not been disbursed to a separate account  
4-31 as required by Subsection (c-3), Section 66.006, Utilities Code, as  
4-32 added by this Act.

4-33 (b) The change in law made by this Act in adding  
4-34 Subdivisions (3) and (4), Subsection (c-3), Section 66.006,  
4-35 Utilities Code, applies only to transfers, deposits, and  
4-36 disbursements made on or after the effective date of this Act. A  
4-37 transfer, deposit, or disbursement made before the effective date  
4-38 of this Act is governed by the law in effect on the date the  
4-39 transfer, deposit, or disbursement was made, and the former law is  
4-40 continued in effect for that purpose.

4-41 SECTION 7. This Act takes effect only if House Bill No. 259  
4-42 or House Bill No. 3675 or similar legislation by the 82nd  
4-43 Legislature, Regular Session, 2011, is enacted and becomes law that  
4-44 imposes an assessment on providers of subscription video services  
4-45 and allows subscription video service providers to claim a credit  
4-46 against the assessment for fees paid to municipalities pursuant to  
4-47 a municipal franchise or state-issued certificate of franchise  
4-48 authority and provides that at least 25 percent of the revenue  
4-49 generated by the state assessment on providers of subscription  
4-50 video services be distributed to municipalities and counties. If  
4-51 legislation described by this section is not enacted by the 82nd  
4-52 Legislature, Regular Session, 2011, or does not become law, this  
4-53 Act has no effect.

4-54 SECTION 8. Except as provided by Section 7 of this Act, this  
4-55 Act takes effect October 1, 2011.

4-56

\* \* \* \* \*



Comcast Cable  
8590 W Tidwell  
Houston, TX 77040

December 7, 2011

City of Pearland  
City Manager, Bill Eisen  
3519 Liberty Drive  
Pearland, TX 77581

RE: State-Issued Certificate of Franchise Authority

Dear Bill:

This letter is a follow up to our official notice pursuant to the Public Utility Regulatory Act (PURA) that Comcast of Houston, LLC, d/b/a Comcast, has filed with the Texas Public Utility Commission its Application for a State-Issued Certificate of Franchise Authority (SICFA) to provide cable service to your community. Effective September 1, 2011, pursuant to SB 1087 approved by the 82<sup>nd</sup> Texas Legislature, Comcast is allowed to transition your municipal franchise to a SICFA. The Application was filed on or about November 11, 2011.

As a courtesy, we'd like to let you know that the transition to a SICFA could impact the City in three primary ways. This letter does not constitute legal advice; it merely communicates the major issues surrounding the transition.

1. The City will continue to receive Franchise Fees, although the percentage paid and the revenues on which the fees are paid may be different (usually higher) than in the municipal franchise.
2. The City may receive an additional 1% of Gross Revenues, labeled a "State Franchise Fee" on customer bills, to fund capital expenditures associated with Public, Educational and Government programming.
3. If your municipality requests the continued provision of complimentary services to City buildings, we are entitled to deduct the actual incremental cost of such service from your franchise fee payment. However, we will continue to provide courtesy video services at no charge. We do reserve the right to begin deducting these costs from our franchise fees in the future.

#### **1. FRANCHISE FEES**

Upon the effective date of the SICFA, franchise fee payments will be made quarterly. In many cases, a City's franchise fee payments increase under a SICFA. Under PURA a City receives 5% of gross revenues, defined broadly and encompassing the franchise fee itself along with non-subscriber revenues such as home shopping and local advertising.

#### **2. STATE FEE for PEG CAPITAL**

The Act provides that, to fund capital expenditures associated with Public, Educational and Government ("PEG") facilities, municipalities have the authority to elect to receive 1% of cable service revenues or the per-subscriber fee that was paid to the City, if any, under our agreement.



Comcast Cable  
8590 W Tidwell  
Houston, TX 77040

Comcast is not currently paying compensation, grants or a per-subscriber fee under our locally issued franchise, so the City may want to consider whether capital funds are required for its PEG channel. If the City does not operate its own PEG channel, capital funds for PEG facilities would appear to be unnecessary.

The City may elect to waive the collection of the 1% PEG capital fee from its constituents. For your convenience, we have enclosed a sample letter from an authorized City official and a sample council resolution. The form of waiver is at the City's discretion, so long as it is in writing. Should the City's PEG capital facility needs change at some point in the future, the City may rescind this waiver and establish the collection and remittance of the fee at that time.

*PLEASE NOTE:* SB 1087 amends PURA to impose accountability requirements on cities regarding the 1% fee. Specifically, cities must maintain revenue from the fees in a separate account established for that purpose; may not commingle revenue from the fees with any other money; shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and may not spend revenue from the fees except directly from the separate account.

Under state law, all holders of SICFAs for service in your community are subject to the same fees, so the decision to waive or collect the 1% fee is applicable to all certificate holders providing services in your City.

### **3. COMPLIMENTARY VIDEO SERVICES**

The Act establishes the rules regarding complimentary services. Pursuant to the Act, we are entitled to deduct the actual incremental cost of such service from your franchise fee payment. However, at this time, we will continue to provide courtesy video services in accordance with our expired/terminated local franchise agreement. We do reserve the right to deduct these costs from the franchise fee in the future.

Feel free to contact me at 713-335-3218 with any question or concerns regarding this correspondence. Thank you for the opportunity to be a part of the future in our community.

Sincerely,

Craig D'Agostini  
Senior Director of Government Affairs

Enclosures: Sample 1% Fee forms of waiver



Comcast Cable  
8590 W Tidwell  
Houston, TX 77040

**SAMPLE LETTER**

ATTN: All Holders of a State Issued Certificate of Franchising Authority

We understand that Section 66.005 of the Public Utility and Regulatory Act requires the holder of a certificate of franchise authority to pay a franchise fee of five percent of gross revenues. We also understand that Section 66.006(b) of the Public Utility and Regulatory Act provides that, to fund capital expenses associated with Public, Educational and Governmental facilities, and in lieu of in-kind contributions and grants, a municipality may elect to receive one percent of a cable service provider's gross revenues or the per subscriber fee that was paid to it under the incumbent cable service provider's agreement.

Knowing that the holder of a state-issued certificate is entitled to recover any fee imposed by the state and paid to the municipality from the cable service provider's customers, and wishing not to further burden its citizens with the additional fee authorized by Section 66.006(b) of the Public Utility and Regulatory Act, the City of [REDACTED] wishes not to receive the fee authorized under Section 66.006(b) of the Public Utility and Regulatory Act.



Comcast Cable  
8590 W Tidwell  
Houston, TX 77040

**SAMPLE RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF [REDACTED], ELECTING NOT TO REQUIRE THE REMITTANCE OF A PEG FEE BY HOLDERS OF A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY.**

WHEREAS, Section 66.005 of the Public Utility and Regulatory Act requires the holder of a certificate of franchise authority to pay a franchise fee of five percent of gross revenues; and

WHEREAS, Section 66.006(b) of the Public Utility and Regulatory Act provides that, to fund capital expenses associated with Public, Educational and Governmental facilities, and in lieu of in-kind contributions and grants, a municipality may elect to receive one percent of a cable service provider’s gross revenues or the per subscriber fee that was paid to it under the incumbent cable service provider’s agreement; and

WHEREAS, the holder of a state-issued certificate is entitled to recover any fee imposed by the state and paid to the municipality from the cable service provider’s customers; and

WHEREAS, the City does not wish to further burden its citizens with the additional fee authorized by Section 66.006(b) of the Public Utility and Regulatory Act;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF [REDACTED], TEXAS:

1. The holder of a state-issued certificate of franchise authority shall not remit a percentage or per subscriber fee to the City under Section 66.006(b) of the Public Utility and Regulatory Act.
2. The City Manager shall send a certified copy of this Resolution to the Company.
3. This Resolution takes effect immediately upon its adoption.

ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

CITY OF

By: \_\_\_\_\_

ATTEST:  
\_\_\_\_\_

**Capital Equipment for City PEG Channel**

Item	Suggested Type/Brand	Estimated Price
Video Camera (2)	Sony Interchangeable Lens HD Camcorder (NEX-VG20H)	\$2,200/each
Still Camera	Sony a77 DSLR Camera and Lens (SLT-A77VQ)	\$2,000
Memory Card	Various	\$50 - \$100
Mic (Wireless) (2)	Sony Wireless Lavalier Mic (UWPV/4244)	\$575/each
Handheld Mic (2)	Sony Omni Directional Dynamic Vocal Mic (F-V100)	\$10/each
Tripod (small)	Sony Tripod (VCT-80AV)	\$180
Tripod (heavy duty)	Sony Remote Control Tripod (VCT-PG11RMB)	\$1,300
Extra Lens	Sony 16-50mm f/2.8 Standard Zoom Lens (SAL-1650)	\$700
Extra Lens	Sony 70-200mm f/2.8 Telephoto Zoom Lens (SAL-70200G)	\$2,000
Editing Software	Adobe Production Premiere Pro CS 5.5	\$715
Video Monitors Council Chambers (4)	Sony Bravia 55" Crystal LED Display	\$2900/each
DVR Video Recorder	THECUS NVR 42	\$1,300
Tilt/Pan/Zoom Cameras Council Chambers (2)	Sony EV1 HD	\$4,200/each
Total		\$33,865 Estimate