

**REGULAR MEETING OF CITY COUNCIL
DECEMBER 4, 2012 – 1:30 P.M.**

PRESENT: Robert Vinyard Mayor Pro-Tem
Brandy Callahan Council Member
Marvin Dickson Council Member
Charles Gillingham Council Member

ABSENT: Jeff Brain Mayor

STAFF: Eddie Edwards City Manager
Danny Richards E.O.C. Director
Stella E. Sauls City Secretary
Scott Radach Director, Finance Department
Bob Watson Fire Chief
Kenneth Petr Director, Planning and Zoning
Jimmy Adams Chief, Police Department
Bruce Roberts Captain, Police Department
Mac Fields Sergeant, Police Department

VISITORS: Chase Paris Kel Schoenhals
Todd Wood Jason Pender
Pat Rendon Shawn Burleson
Jesse Shuffield Brian Earls
Dan Redd Lynnette Collens
Chloe Burleson Tanya Clements
Carrie Burleson Mary Grace Bridges
Cally Burleson Adam Diamond
Brad Carpenter

NEWS MEDIA: Michelle Berry

QUESTIONS AND COMMENTS FROM CITIZENS: Citizens who have indicated their desire to speak to the City Council will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter is on the agenda, City Council members are prevented from acting on the subject and may respond only with statements of factual information or existing city policy; however, City Council members may request city staff to place the subject matter on a future agenda. Citizens are limited to three (3) minutes for their presentation to the City Council.

Chief of Police Jimmy Adams introduced the newest member of the police department to the Council. Eros is the new drug dog issued to the Borger Police Department and will be trained and taken care of by Sgt. Mac Fields.

Fire Chief Bob Watson thanked the Council for allowing the Fire Department to implement their fire mitigation plan.

MINUTES APPROVED: Following review of the minutes of the regular meeting of November 20, 2012, motion was made by Council Member Dickson, seconded by Council Member Gillingham, to approve the minutes as submitted. The motion carried by the following:

Ayes: All members present voted aye.
Nays: None.

PAYMENT OF EXPENDITURES APPROVED: The expenditures for the last half of November were submitted for the consideration of the Council. Following discussion, motion was made by Council Member Gillingham, seconded by Council Member Callahan, to approve payment of the expenditures for the last half of November as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

THANK YOU FROM THE NATIONAL PARK SERVICE: Todd Wood of the National Park Service presented a slideshow of damage done during Hurricane Sandy and thanked the City of Borger for allowing six (6) of the City of Borger firefighters to participate in the cleanup effort, and publicly acknowledged the firefighters who volunteered.

BORGER ECONOMIC DEVELOPMENT CORPORATION ANNUAL REPORT RECEIVED: Executive Director Dan Redd presented to the Council the Annual Report and Strategic Plan for the Borger Economic Development Corporation. Following discussion, motion was made by Council Member Callahan, seconded by Council Member Dickson, to receive the Borger Economic Development Corporation Annual Report. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

JANUARY 1, 2013 CITY COUNCIL MEETING CANCELED: City Manager Eddie Edwards explained to the Council that the first regular meeting of January would fall on a 1st which is a holiday and offered them the opportunity to reschedule or cancel the meeting. Following discussion, motion was made by Council Member Callahan, seconded by Council Member Dickson, to cancel the meeting of January 1, 2013 and resume regularly scheduled meetings on January 15, 2013. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

RESOLUTION R-018-12 SUPPORTING THE PROPOSED EXPANSION OF AGRIUM'S BORGER FERTILIZER OPERATIONS APPROVED: City Manager Eddie Edwards introduced Mary Grace Bridges, Plant Manager of Agrium. Mrs. Bridges explained this would be a \$550 to \$600 million dollar project and would need additional electricity, natural gas, and water. Following discussion, motion was made by Council Member Dickson, seconded by Council Member's Gillingham and Callahan, to approve Resolution R-018-12, supporting the proposed expansion of Agrium's Borger Fertilizer Operations Plant. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Resolution R-018-12 reads as follows:

RESOLUTION NO R-018-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, SUPPORTING THE PROPOSED EXPANSION OF AGRIUM'S BORGER FERTILIZER OPERATIONS, PROVIDING FOR AN ECONOMIC INCENTIVE, PROVIDING FOR DEBT FUNDING OF PUBLIC INFRASTRUCTURE, AND AUTHORIZING THE CITY MANAGER TO ACT ON THE CITY'S BEHALF IN MATTERS RELATED TO THE CITY'S PARTICIPATION IN THE PROPOSED EXPANSION

Whereas, Agrium Inc. is a major supplier of agricultural products and services in both North and South America, and has owned and operated its Borger Fertilizer Operations Plant since the 1960's ; and,

Whereas, one of Agrium's stated strategies is to grow and expand the Company through incremental expansion of existing facilities. Agrium has evaluated expansion opportunities at all of its North American nitrogen locations including a possible expansion of its Borger Fertilizer Operations Plant (Plant) in Borger, Texas; and,

Whereas, if approved by Agrium's Board of Directors, an expansion of the Borger Plant would increase employment at the plant by 40 percent, result in a new urea plant that increases the current urea production by over 500 percent, upgrade existing ammonia production by approximately 30 percent, as well as incorporate numerous equipment upgrades from an environmental, health and safety basis.; and,

Whereas, since the Plant's opening in the 1960's, the City of Borger (City) has provided water to the Plant, and the proposed expansion would increase the water requirements to a level that will require new water infrastructure in order to meet the projected daily capacity; and,

Whereas, the City recognizes that Agrium is a vital part of the industrial base of the City and the community, believes that it is in the best interest of the citizens of the City and the community as a whole to encourage and support the proposed expansion of the Plant, and is fully supportive of the proposed expansion and its long term economic benefits to the City and the community.

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

That, the City hereby pledges an economic incentive of \$5,000,000 (Local Participation) to be used as the Local Participation component to other economic incentive programs that may be available to fund the construction of the City's water infrastructure that would be necessary to provide water to the expanded Plant.

That, the City, in the absence of upfront capital or economic incentives, would be willing to issue debt in an amount necessary to fund the construction of the required water infrastructure; and less any Local Participation, enter into negotiations to seek reimbursement of the proportioned annual debt service through a negotiated water rate agreement with Agrium based on the company's water usage.

That, the City Manager or his/her designee is authorized to act on the City's behalf in the following:

- participation with Agrium or make independent application for available economic incentive grants or programs; and,
- entrance into a reimbursement agreement with Agrium for preliminary evaluation of the City's water rights which may include hydrology studies, engineering, and/or test holes to determine the projected yield and/or design of the proposed well field, pipeline, and related infrastructure; and,
- evaluation and recommendation of funding alternatives, in the absence of upfront capital or economic incentives.

PASSED, APPROVED, AND ADOPTED, on this the 4th day of December, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

RESOLUTION R-019-12 AND RESOLUTION R-020-12 APPROVED: City Manager Eddie Edwards discussed the issuance of certificates of obligation for the improvement of several city facilities and other city projects previously discussed by the Council. Following discussion, motion was made by Council Member Callahan, seconded by Council Member Gillingham, to approve Resolution R-019-12 authorizing publication of notice of intension to issue certificates of obligation not to exceed \$3,000.000. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Resolution R-019-12 reads as follows:

RESOLUTION NO R-019-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION

WHEREAS, the City Council of the City of Borger, Texas, has determined that certificates of obligation should be issued under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271 (the "Act"), for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) street improvements, including drainage, curbs, gutters, traffic signalization, railroad crossings, utility line relocations, and the acquisition of land and rights-of-way therefore; (b) park and recreation improvements, (c) constructing, renovating, improving and equipping public safety facilities (police and fire), (d) constructing, renovating, improvement and equipping the vehicle service center, (e) drainage improvements, including the acquisition of land and rights-of-way therefore, and (f) constructing and improving municipal parking facilities, and (ii) professional services rendered in connection therewith; and,

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in accordance with the provisions of the Act.

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

SECTION 1: THAT, the City Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation in a principal amount not to exceed \$3,000,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) street improvements, including drainage, curbs, gutters, traffic signalization, railroad crossings, utility line relocations, and the acquisition of land and rights-of-way therefore; (b) park and recreation improvements, (c) constructing, renovating, improving and equipping public safety facilities (police and fire), (d) constructing, renovating, improvement and equipping the vehicle service center, (e) drainage improvements, including the acquisition of land and rights-of-way therefore, and (f) constructing and improving municipal parking facilities, and (ii) professional services rendered in connection therewith; and shall be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of Exhibit A hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2: THAT, the City Secretary shall cause the aforesaid notice to be published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least thirty-one (31) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3: THAT, It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

SECTION 4: THAT, This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED, APPROVED, AND ADOPTED, on this the 4th day of December, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

City Manager Eddie Edwards explained that Resolution R-020-12 would preserve the City's right and intent to reimburse the FY 2012-2013 operating budget for any expenses pursuant to these capital projects from future bond proceeds. Following discussion, motion was made by Council Member Gillingham, seconded by Council Member Dickson, to approve Resolution R-

020-12 declaring the expectation to reimburse expenditures with proceeds from future debt. The motion carried by to the following vote:

Ayes: All members present voted aye.

Nays: None.

Resolution R-020-12 reads as follows:

RESOLUTION NO R-020-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT

WHEREAS, the City of Borger, Texas (the “Issuer”) intends to issue debt for the construction of public works, to wit: (a) street improvements, including drainage, curbs, gutters, traffic signalization, railroad crossings, utility line relocations, and the acquisition of land and rights-of-way therefore; (b) park and recreation improvements, (c) constructing, renovating, improving and equipping public safety facilities (police and fire), (d) constructing, renovating, improvement and equipping the vehicle service center, (e) drainage improvements, including the acquisition of land and rights-of-way therefore, and (f) constructing and improving municipal parking facilities (collectively, the “Projects”) and further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and,

WHEREAS, under Treas. Reg. § 1.150-2 (the “Regulation”), to fund such reimbursement with proceeds of tax-exempt obligations, the Issuer must declare its expectation to make such reimbursement; and,

WHEREAS, the Issuer desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations.

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

THAT, the Issuer reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the Issuer, and that this resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is \$3,000,000.

PASSED, APPROVED, AND ADOPTED, on this the 4th day of December, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov’t Code, §551.001, et.seq. at which meeting a quorum was present and voting.

RESOLUTION R-021-12 SUSPENDING SPS’ PROPOSED EFFECTIVE DATE FOR ITS RATE INCREASE BY 90 DAYS APPROVED: City Manager Eddie Edwards explained that the City has the original jurisdiction over rates within the City limits and pursuant to State Law the City has 35 days to respond to SPS’ filing. Following discussion, motion was made by

Council Member Gillingham, seconded by Council Member Dickson, to approve Resolution R-021-12 which suspends SPS' proposed effective date for its rate increase by 90 days. The following motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

Resolution R-021-12 reads as follows:

RESOLUTION NO R-021-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, SUSPENDING THE EFFECTIVE DATE FOR NINETY DAYS IN CONNECTION WITH THE RATE INCREASE FILING OF SOUTHWESTERN PUBLIC SERVICE COMPANY MADE ON OR ABOUT NOVEMBER 15, 2012; AUTHORIZING THE CITY TO JOIN WITH OTHER CITIES IN THE ALLIANCE OF XCEL MUNICIPALITIES ("AXM") TO DIRECT THE ACTIVITIES OF LAWYERS AND CONSULTANTS; AUTHORIZING THE HIRING OF ATTORNEYS AND CONSULTANTS; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE

WHEREAS, Southwestern Public Service Company ("SPS") SPS filed a Statement of Intent with the City of Borger, Texas ("City") to increase its base-rate revenue requirement for its Texas retail service area by approximately \$90 million and to reconcile its fuel cost for the period January 1, 2010 through June 30, 2012; and,

WHEREAS, the City is a regulatory authority under the Public Utility Regulatory Act ("PURA") and under Chapter 33, §33.001 et seq. of PURA has exclusive original jurisdiction over SPS' rates, operations, and services within the municipality; and,

WHEREAS, in order to maximize the efficient use of resources and expertise in reviewing, analyzing and investigating SPS' rate request and its changes in tariffs it is prudent to coordinate the City's efforts with a coalition of similarly situated municipalities; and,

WHEREAS, the City, in matters regarding applications by SPS to change rates, has in the past joined with other local regulatory authorities to form the Alliance of Xcel Municipalities ("AXM") and hereby continues its participation in AXM; and,

WHEREAS, the rate request and fuel reconciliation of SPS, which was filed on or about November 15, 2012, consists of a voluminous amount information including SPS' rate-filing package, pre-filed direct testimony,

exhibits, schedules, and work papers; and,

WHEREAS, SPS proposed December 20, 2012 as the effective date for its requested increase in rates, which is the 35th day after the date SPS submitted its application; and,

WHEREAS, it is not possible for the City to complete its review of SPS' filing within 35 days; and,

WHEREAS, the City will need an adequate amount of time to review and evaluate SPS' rate application to enable the City to adopt a final decision as a local regulatory authority with regard to SPS' requested rate increase.

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

Section 1. The findings set out in the preamble are in all things hereby approved.

Section 2. SPS's proposed effective date of December 20, 2012 for its filing of November 15, 2012, is hereby suspended for an additional ninety (90) days, or at least until March 20, 2013.

Section 3. The statutory suspension period will be extended automatically day for day should SPS extend its proposed effective date, and may be further extended if SPS does not provide timely, meaningful, and proper public notice of its request to increase rates, or if its rate-filing package is materially deficient.

Section 4. The City continues its participation with other cities in a coalition of cities known as the Alliance of Xcel Municipalities ("AXM") with the understanding that the Steering Committee of AXM is to provide direction and guidance to Special Counsel representing said cities.

Section 5. The City employs Herrera & Boyle, PLLC as Special Counsel to represent the City with regard to the requested increase in rates by SPS and related proceedings before local and state regulatory authorities and any court of law and authorizes Special Counsel to employ such rate experts as may be necessary for review and evaluation of SPS' rate application.

Section 6. The City, in coordination with the Steering Committee, shall review the invoices of the lawyers and rate experts for reasonableness before submitting the invoices to SPS for reimbursement.

Section 7. SPS shall reimburse the City on a monthly basis, through AXM's coordinating city, the City of

Amarillo, Texas, for the reasonable costs of attorneys and consultants and expenses related thereto, upon the presentation of invoices reviewed by the City of Amarillo.

Section 8. The City Secretary or other appropriate city official shall notify SPS of this Resolution by sending a copy of the Resolution to James M. Bagley, Manager, Regulatory Administration Xcel Energy Services Inc., P.O. Box 1261, Amarillo, Texas 79105, and AXM shall be notified by sending a copy of this resolution to Mr. Marcus Norris, City Attorney, City of Amarillo, Texas by fax to 806-378-3018.

Section 9. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 10. This Resolution shall become effective from and after its passage.

PASSED, APPROVED, AND ADOPTED, on this the 4th day of December, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

INTERLOCAL AGREEMENT BETWEEN HUTCHINSON COUNTY AND THE CITY OF BORGER APPROVED: Public Works Director Ted Dodd stated that he has been in discussion with the County about skill sets each entity possess that would be beneficial to one another. This Interlocal Agreement is a culmination of these meetings. Following discussion, motion was made by Council Member Gillingham, seconded by Council Member Dickson, to approve the Interlocal Agreement with Hutchinson County for the demolition of substandard buildings outside the city limits of Borger and have staff review the costs of such demolitions and make adjustments as necessary. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

MEETING ADJOURNED: There being no further business, motion was made by Council Member Gillingham, seconded by Council Member Callahan to adjourn. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

Mayor

ATTEST:

City Secretary