



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NOS. 14 & 15

MEETING DATE: July 6, 2021

AGENDA PLACEMENT:

- Ceremonial
- Consent
- Individual
- Closed Session

CAPTION:

Discussion of and action on a Resolution of the City Council of the City of Johnson City approving and authorizing (i) the execution and delivery of *Notice of Cessation of the City of the City of Johnson City's Use of Property as a Recycling Facility and of Closure of the Facility and of Termination of Lease Agreements between the City of Johnson City and the North Blanco County Emergency Medical Service*, and (ii) execution of the *Agreement of Amendment to and Termination of Lease Agreements* between the City and the North Blanco County Emergency Medical Service. (Staff)

Discussion of and action on a Resolution of the City Council of the City of Johnson City approving the *Memorandum of Understanding between the City and the North Blanco County Emergency Service District No. 1* regarding the FY 2021-22 Community Development Block Grant. (Staff)

STRATEGIC WORK PLAN:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Not Applicable | <input type="checkbox"/> Goal 5: Improve Fire Safety |
| <input type="checkbox"/> Goal 1: Increase Housing Diversity | <input type="checkbox"/> Goal 6: Improve Streets |
| <input type="checkbox"/> Goal 2: Expand Quality Lodging | <input type="checkbox"/> Goal 7: Increase Publicity & Promotion of the Community |
| <input type="checkbox"/> Goal 3: Improve Code Enforcement | <input type="checkbox"/> Goal 8: Increase Economic Development Activities |
| <input type="checkbox"/> Goal 4: Improve Streetscaping & Signage | |

EXECUTIVE SUMMARY:

On November 10, 2020, the City Council requested a copy of and discussion on the CAPCOG Interlocal Contract for Solid Waste Equipment and Services related to the City of Johnson City Recycling Center.

The City Council received said information on December 8, 2020. Discussion included closing the Recycling Center until the facility completely depreciates; halting commercial onsite cardboard collection and leaving the Center open for drop off only; or reducing the Center's hours of operation. Discussion also included how closing the facility would affect the existing lease between the City and the Emergency Services District No. 1 (ESD). Councilmembers Babb, Coleman, Young, and Guthrie voiced their support for either closing or shortening the hours of the Recycling Center.

The City Council discussed the Recycling Center and existing and proposed lease agreements between the City and the ESD again on March 2, 2021. The proposed lease deletes key provisions contained within the current lease and requires additional items. Council discussed the current lease's validity and whether the City was obligated to enter into a new lease. One option discussed was to move the Center to a new location. Renegotiating the proposed lease terms was also discussed. The item was tabled.

City Staff sought additional guidance from CAPCOG and TCEQ following the March 2, 2021 City Council meeting. On April 29, 2021, CAPCOG advised that TCEQ was 1) willing to use the City's depreciation methodology and 2) reduce the amount owed from approximately \$51,000 to \$28,621.88. If the City Council desires to close the Recycling Facility, the City would be required to issue a check for the abovementioned amount to CAPCOG/TCEQ. The City would then notify the ESD of its intentions to terminate the current lease agreement.

On May 4, 2021, City Council inquired if the ESD would purchase the building and if the contract was negotiable. In addition, Council considered keeping the Recycling Center open on a limited basis and reassigning current personnel. Councilmember Coleman made a motion to table the item after it was agreed that City representatives would meet with the ESD Board of Directors on the matter. Councilmember Dildine seconded the action. The item was tabled.

On May 13, 2021, Mayor Stell, Councilmen Coleman and Young, and City Staff met with ESD President O'Bannon and Board Member Kirk McElhinney. Collectively, the City agreed to present to City Council for its consideration and approval:

- a) A Resolution authorizing the closure of the City Recycling Center facility by September 30, 2021. As proposed, the facility would close by the end of the current fiscal year, and, in the interim, City Staff would be able to liquidate existing personal property (bailer, trailers, etc.), notify current commercial cardboard recycling customers of the closure, and include within the FYE 2022 budget a payoff amount for CAPCOG.

- b) A Resolution of the City Council of the City of Johnson City approving a Memorandum of Understanding between the City and the North Blanco Co. Emergency Services District No. 1 (ESD) regarding lease agreements.
- c) A Resolution of the City Council of the City of Johnson City approving and authorizing the execution of the First Amendment to the Lease Agreements between the City and the ESD.

Subparagraphs b and c above provide notice of lease termination effective September 30, 2021 and provide for the following lease amendments prior to termination:

ARTICLE 8. SOONER TERMINATION

Lessee, at Lessee's option, may terminate this Lease by written notice to Lessor at least thirty (30) days in advance of the termination date in the event it ceases the use of the leased property in connection with recycling. This agreement is null and void thirty (30) days after the Lessee terminates its recycling operation. Accordingly, all rights, duties, performance, and obligations by and/or owed to the other Party shall cease, and each Party shall be released and discharged from and against any all actions of any nature whatsoever now and in the future arising out of the Lease Agreement, including any activities undertaken pursuant to the Agreement.

Article 10. SURRENDER OF PREMISES

Removal of Property

10.01. Lessee shall, at its own cost and expense prior to September 30, 2021, remove all personal property from the premises, including, but not limited to, machinery, equipment, and supplies. Both parties agree that all buildings, structures, and/or flatwork existing on the premises as of September 30, 2021 will be left as-is, and the Lessee shall not be obligated to remove any buildings, structures, and/or flatwork.

On June 1, 2021, the City Council reviewed revised agreements received from the ESD on the Recycling Center matter. The Council voiced concerns over removing equipment by September 30th. Moreover, there was also hesitation over the wording requiring the City to return the property to its pre-lease state.

With regard to the ESD grant reimbursement, Council directed City staff to address Section 8 of the MoU and add an interlocal agreement.

FINANCIAL:

\$28,621.88 budgeted in Fiscal Year Ending 2022. Existing on-site personal property would be sold through auction.

ATTACHMENTS:

- A Resolution of the City Council of the City of Johnson City approving and authorizing (i) the execution and delivery of *Notice of Cessation of the City of the City of Johnson City's Use of Property as a Recycling Facility and of Closure of the Facility and of Termination of Lease Agreements between the City of Johnson City and the North Blanco County Emergency Medical Service*, and (ii) execution of the *Agreement of Amendment to and Termination of Lease Agreements* between the City and the North Blanco County Emergency Medical Service.
- A Resolution of the City Council of the City of Johnson City approving the *Memorandum of Understanding between the City and the North Blanco County Emergency Service District No. 1* regarding the FY 2021-22 Community Development Block Grant. (Staff)

SUGGESTED ACTION:

Motion to approve a Resolution of the City Council of the City of Johnson City approving and authorizing (i) the execution and delivery of *Notice of Cessation of the City of the City of Johnson City's Use of Property as a Recycling Facility and of Closure of the Facility and of Termination of Lease Agreements between the City of Johnson City and the North Blanco County Emergency Medical Service*, and (ii) execution of the *Agreement of Amendment to and Termination of Lease Agreements* between the City and the North Blanco County Emergency Medical Service; and a Resolution of the City Council of the City of Johnson City approving the *Memorandum of Understanding between the City and the North Blanco County Emergency Service District No. 1* regarding the FY 2021-22 Community Development Block Grant.

PREPARED BY: City Staff

DATE SUBMITTED: July 2, 2021

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSON CITY APPROVING AND AUTHORIZING (i) EXECUTION AND DELIVERY OF NOTICE OF CESSATION OF THE CITY OF JOHNSON CITY’S USE OF PROPERTY AS A RECYCLING FACILITY AND OF CLOSURE OF THE FACILITY AND OF TERMINATION OF LEASE AGREEMENTS BETWEEN THE CITY OF JOHNSON CITY AND THE NORTH BLANCO COUNTY EMERGENCY MEDICAL SERVICE, AND (ii) EXECUTION OF THE AGREEMENT OF AMENDMENT TO AND TERMINATION OF LEASE AGREEMENTS BETWEEN THE CITY AND THE NORTH BLANCO COUNTY EMERGENCY MEDICAL SERVICE

Recitals

Whereas, on September 8, 1993 and February 1, 2005, the City of Johnson City (“City”) entered into two Lease Agreements with the North Blanco County Emergency Medical Service (“EMS”) (“Lease Agreements”), for two parcels of land owned by the EMS (“Property”) for use as a recycling center by the City (“Center”); and,

Whereas, on October 20, 2020 the EMS conveyed to North Blanco County Emergency Services District No.1, a political subdivision of the state of Texas organized under the *Texas Health and Safety Code*, Title 9, Subtitle B, Chapter 775, (“ESD”), by General Warranty Deed, all of its right, title and interest to the 4.28 acre tract of land of which the Property is a part; and,

Whereas, each Lease Agreement provides that the City has the sole right to terminate the Lease Agreements upon cessation of its use of the Property as a recycling center and the City so desires (i) to cease recycling, (ii) to close the Center, and (iii) to terminate the Lease Agreements; and,

Whereas, although the City has the sole right to terminate the Lease Agreements, the City and the ESD wish to mutually terminate the Lease Agreements, subject, however, to amendment of Article 8, Sooner Termination, and Article 10, Surrender of the Premises, to be provided in an Agreement of Amendment to and Termination and Lease Agreements to be executed by the City and the ESD,

Now, therefore, be it resolved by the City Council of the City of Johnson City that:

Section 1. The foregoing recitals are adopted as facts and incorporated fully herein.

Section 2. The City Council approves the *Notice of Cessation of the City of Johnson City’s Use of Property as a Recycling Facility and of Closure of the Facility and of Termination of Lease Agreements Between the City of Johnson City and the North Blanco County Emergency Medical Service* (“Notice”), substantially in the form of “Exhibit A” attached hereto, and incorporated fully herein for all intents and purposes.

Section 3. The City Council approves the *Agreement of Amendment to and Termination of Lease Agreements* (“Agreement of Amendment and Termination”), substantially in the form of “Exhibit B” attached hereto, and incorporated fully herein for all intents and purposes.

Section 3. The City Council authorizes the Mayor to execute the *Notice* and the *Agreement of Amendment and Termination* on behalf of the City; to deliver the executed documents to the ESD for execution; and, after execution by the City and the ESD, to file the *Agreement of Amendment and Termination* with the County Clerk of Blanco County.

Section 4. The City Council further authorizes the City Staff to take all necessary action for the closure of the Center, including dismantling and sale of the equipment, and resolution of outstanding contractual provisions with the Capital Area Council of Governments from which the City received a Solid Waste management Grant for facility costs for the Center.

Section 5. This Resolution shall be effective immediately upon adoption by the City Council.

PASSED AND APPROVED by the City Council of the City of Johnson City, Texas on the 6th day of July, 2021.

APPROVED:

Rhonda Stell
Mayor

ATTEST:

Rick Schroder
Chief Administrative Officer / City Secretary

NOTICE OF CESSATION OF THE CITY OF JOHNSON CITY'S USE OF PROPERTY AS A RECYCLING FACILITY AND OF CLOSURE OF THE FACILITY AND OF TERMINATION OF LEASE AGREEMENTS BETWEEN THE CITY OF JOHNSON CITY AND THE NORTH BLANCO COUNTY EMERGENCY MEDICAL SERVICE

This Notice of Cessation of the City's Use of Property as a Recycling Facility and Closure of the Facility and Termination of the Leases, dated September 8, 1993 and February 1, 2005, between the City Council of the City of Johnson City ("City") and the North Blanco County Emergency Medical Service ("EMS"), is given pursuant to the provisions of the Leases ("Notice").

Recitals

Whereas, the Leases were for two parcels of land, owned by the EMS, for use as a recycling center by the City ("Center"); and

Whereas, on October 20, 2020 the EMS conveyed to North Blanco County Emergency Services District No.1, a political subdivision of the state of Texas organized under the *Texas Health and Safety Code*, Title 9, Subtitle B, Chapter 775, ("ESD"), by General Warranty Deed, all of its right, title and interest to the 4.28 acre tract of land of which the property subject to the Leases is a part; and

Whereas, the termination date of each Lease is August 31, 2092; and

Whereas, the Leases provide that the City has the sole right to terminate the Leases upon cessation of its use as a recycling center and the City so desires (i) to cease recycling, (i) to close the Center, and (iii) to terminate the Leases; and

Whereas, on July 6, 2021, the City Council approved a Resolution authorizing the Mayor to deliver, pursuant to the provisions of the Leases, this Notice.

NOW, THEREFORE,

Section 1. The foregoing recitals are adopted as facts and incorporated fully herein.

Section 2. The City, pursuant to the provisions of the Leases, hereby gives notice (i) of cessation of its use of the Center as a recycling center and to cease recycling and to close the Center, and (ii) to terminate the Leases as of the date September 30, 2021.

IN WITNESS WHEREOF, the City has duly executed this Notice as of the 6th day of July, 2021.

Rhonda Stell
Mayor

ATTEST:

Rick Schroder
Chief Administrative Officer / City Secretary

**AGREEMENT OF AMENDMENT TO AND
TERMINATION OF LEASE AGREEMENTS**

This Agreement of Amendment to and Termination of Lease Agreements (“Amendment and Termination Agreement”), made and entered into as of July 6, 2021 (“Effective Date”), is by and between the City of Johnson City (“City”) and North Blanco County Emergency Services District No. 1, (collectively, “the Parties”).

Recitals

Whereas, on September 8, 1993 and February 1, 2005, the City entered into two Lease Agreements with the North Blanco County Emergency Medical Service (“EMS”) (“Lease Agreements”), for two parcels of land owned by the EMS (“Property”), for use as a recycling center (“Center”); and,

Whereas, on October 20, 2020, the EMS conveyed to North Blanco County Emergency Services District No.1, a political subdivision of the state of Texas organized under the *Texas Health and Safety Code*, Title 9, Subtitle B, Chapter 775, (“ESD”), by General Warranty Deed, all of its right, title and interest to the 4.28 acre tract of land of which the Property is a part; and,

Whereas, each Lease Agreement provides that the City has the sole right to terminate the Lease Agreements upon cessation of its use of the Property as a recycling center and the City so desires (i) to cease recycling, (ii) to close the Center and (iii) to terminate the Lease Agreements; and,

Whereas, on July 6, 2021, the City gave the ESD *Notice of Cessation of the City of Johnson City’s Use of Property as a Recycling Facility and of Closure of the Facility and of Termination of Lease Agreements Between the City of Johnson City and the North Blanco County Emergency Medical Service*; and,

Whereas, although the City has the sole right to terminate the Lease Agreements, the Parties wish to mutually terminate the Lease Agreements, subject, however, to amendment of Article 8, Sooner Termination, and Article 10, Surrender of Premises, as provided in this Amendment and Termination Agreement,

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, and for other good and valuable consideration, the Parties hereby agree as follows.

1. **Recitals.** The foregoing Recitals are incorporated herein for all purposes.
2. **Article 8. Sooner Termination.** Article 8 of each Lease Agreement is hereby amended by the addition of the following sentence thereto:

“Upon any termination of the Lease pursuant to this Article 8 or of a termination by the mutual consent of Lessor and Lessee, all rights, duties, performance, and

obligations of Lessor to Lessee and of Lessee to Lessor shall cease, and thereafter (a) Lessee shall be released and discharged from and against any and all actions of any nature whatsoever arising out of the Lease after termination of the Lease, and (b) Lessor shall be released and discharged from and against any and all actions of any nature whatsoever arising out of the Lease prior to termination of the Lease.”

3. **Article 10. Surrender of the Premises.** Section 10.01. Removal of Property, of each Lease Agreement is hereby amended by the deletion thereof and the substitution therefor of the following paragraph:

“Lessee shall, at its own cost and expense prior to September 30, 2021, remove all personal property from the premises, including, but not limited to, machinery equipment, and supplies. Lessor and Lessee agree that all buildings, structures, and/or flatwork existing on the premises as of September 30, 2021 will be left as is, and Lessee shall not be obligated to remove any buildings, structures, and/or flatwork.”

4. **Effect of Amendment and Termination.** Except as specifically provided in this Amendment and Termination Agreement, the terms of each Lease Agreement shall continue to govern the rights and obligations of the Parties, and all terms of each Lease Agreement remain in full force and effect. In the event of conflict or inconsistency between this Amendment and Termination Agreement and the Lease Agreements, this Amendment and Termination Agreement will control and modify the Lease Agreements.

5. **Termination of Lease Agreements.** Pursuant to a Resolution of the City Council of Johnson City dated July 6, 2021 each Lease Agreement, as amended by this Amendment and Termination Agreement, is hereby terminated as of the Effective Date.

6. **Filing of Termination and Amendment.** The City agrees to file this Amendment and Termination Agreement in the Official Public Records of Blanco County within five (5) days after the Effective Date.

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Signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Amendment and Termination Agreement as of the Effective Date.

Rhonda Stell
Mayor
City of Johnson City, Texas

Date: _____

Attest:

Rick Schroder, City Secretary

Date: _____

David O'Bannon
President
North Blanco County
Emergency Services District No.1

Date: _____