



City of Fredericksburg

CITY COUNCIL REGULAR MEETING AGENDA TUESDAY, NOVEMBER 15, 2022 ~ 9:00 A.M. LAW ENFORCEMENT CENTER 1601 E. MAIN STREET FREDERICKSBURG, TEXAS 78624

Jeryl Hoover, Mayor
Tony Klein, Councilmember
Bobby Watson, Councilmember/Pro Tem

Sharon Joseph, Councilmember
Emily Kirchner, Councilmember
Clinton Bailey, City Manager

The City of Fredericksburg City Council will meet in a special session on Tuesday, November 15, 2022 at 9:00 a.m. Link to City of Fredericksburg YouTube Channel (Fredericksburg, Texas USA - YouTube <https://www.youtube.com/c/FredericksburgTexasUSA>).

The City Council welcomes citizen participation and comments at all City Council Meetings on Agenda Items.

Comment Card for Written or Verbal Comments - submitted by 4:00 p.m. the day before the meeting.

- i. Complete the Comment Card online at www.fbgtx.org;
- ii. Make sure to check the appropriate box (verbal or written);
- iii. Only one (1) agenda item per Comment Card.

Sign up in person between 8:30 a.m. and 9:00 a.m. at the meeting location.

- i. Only one (1) agenda item per Comment Card;
- ii. Speakers will be limited to 3 minutes to speak. **Please Note:** The Mayor can reduce the number of minutes for any speaker during Public Comment on a single agenda item depending on the number of people who sign up for it.
- iii. Any citizen with handouts should provide them to the City Secretary before speaking. If you wish the City Council to receive your handouts for the meeting, please provide ten (10) copies; if not, the City Council will receive your handouts the following day.

1. CALL TO ORDER

2. INVOCATION

(Alan Littman, Gillespie County resident)

3. PLEDGE OF ALLEGIANCE

4. CEREMONIAL MATTERS/PROCLAMATIONS/EMPLOYEE RECOGNITION

5. COUNCIL COMMENTS (551.0415)

6. CONSENT

THE FOLLOWING ITEMS MAY BE ACTED UPON IN A SINGLE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THESE ITEMS WILL BE HELD UNLESS PULLED AT THE REQUEST OF A MEMBER OF THE CITY COUNCIL.

- A. Consider approval of City Council Minutes for the November 1, 2022 Special Meeting:
(Shelley Goodwin, City Secretary)
(Agenda Packet Pages 5 - 10)

- B.** Consider approval of the following purchases allocated in the Fiscal Year 2023 Budget:
- i. Purchase vehicles for the Police Department \$304,025 for seven patrol vehicles and \$51,840 for one unmarked car (Derek Seelig, Lieutenant Patrol Division)
(Agenda Packet Pages 11 - 16)
 - ii. Water/Sewer Main Replacement Project Construction Contract another year to JM Pipeline, LLC in the amount not to exceed \$600,000 (Kris Kneese, Interim Public Works Director)
(Agenda Packet Pages 17 - 18)
 - iii. Purchase of equipment for Vegetation Management \$164,698 for a Bucket Trucks and for Street Department \$79,388.80 for a Side Delivery Broom and \$126,033 for an Asphalt Patch Truck (Kris Kneese, Interim Public Works Director)
(Agenda Packet Pages 19 - 24)
 - iv. NEOGOV software for the Human Resources Department in the amount of \$95,080 (Tammie Loth, Human Resources Director)
(Agenda Packet Pages 25 - 28)
- C.** Consider the approval of amendment to the Gillespie County Health Board Cooperative Agreement by amending the number of board members to the Gillespie County Health Board (Kelli Olfers, Gillespie County Health Department Director)
(Agenda Packet Page 29 - 52)
- D.** Consider approval of the confirmation of following Advisory Board appointments:
- i. Gillespie County Health Board appointments of Amy Montgomery and Hollie Reno to a one-year term (expiring December 2023), reappointing Wanda Detmar and Cathy Lindig for two-year terms (expiring December 2024), and Brett Beyer for a three-year term (expiring December 2025) (Kelli Olfers, Gillespie County Health Department Director)
(Agenda Packet Page 53 - 54)
 - ii. Gillespie County Economic Development Commission reappointments of Julie Kuhlken and Stephen Harris to serve terms expiring December 2024 (Tim Lehmberg, Economic Development Corporation Director)
(Agenda Packet Page 55 - 58)

7. ORDINANCES, RESOLUTIONS, AND PUBLIC HEARINGS

- A.** Consider the following actions related to Texas Water Development Board (TWDB) Flood Infrastructure Funding for the N. Llano Storm Sewer Project: (Garret Bonn, Interim City Engineer)
- i. Presentation
 - ii. Consider approving Resolution 2022-24R approving a Grant Agreement in the amount of \$390,529 and an Escrow Agreement relating thereto; authorizing the Mayor and/or the City Manager, or their designees, to execute any and all documents related thereto; and other matters in connection therewith (page 96)
 - iii. Consideration and approval of Ordinance 2022-37 by the City Council of the City of Fredericksburg, Texas, authorizing the issuance of “City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Series 2022”; providing for the first payment of the principal of and interest on the bonds by a first and prior lien on and pledge of the Pledged Revenues of the City's Drainage Utility System; providing for an effective date (122)
(Agenda Packet Pages 59 - 178)

- B. Consider approving the following acquisitions and lease purchase financing of public equipment, and authorizing the execution and delivery of documents required in connection therewith: (Laura Hollenbeak, Finance Director)
 - i. Presentation
 - ii. Resolution 2022-22R Fire/EMS Radio System Equipment
 - iii. Resolution 2022-23R Equipment Purchases for various Divisions within Public Works and the Fire/EMS Department(Agenda Packet Pages 179 - 210)

8. OTHER ACTION ITEMS AND UPDATES

- A. Consider, discuss, and take possible action on 2023 Employee Holiday Schedule (Shelley Goodwin, City Secretary)
(Agenda Packet Pages 211 - 214)
- B. Consider approval to award a bid to Tuscany Pavers, LLC. for \$7.25 a square foot (not to exceed \$250,000) for the replacement of pavers at Marktplatz (Andrea Schmidt, Parks and Recreation Department Director)
(Agenda Packet Pages 215 - 218)
- C. Consider, discuss, and take possible action on the soccer fields located adjacent to Oakcrest Park and the possible plans moving forward (Andrea Schmidt, Parks and Recreation Department Director)
(Agenda Packet Pages 219 - 224)

9. CITY MANAGER'S REPORT

- A. Town Hall Update
- B. City Manager Coffee Update
- C. Water Department Update

10. ITEMS FOR FUTURE AGENDA

(Agenda Packet Page 225)

11. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Section 551.072 (Real Estate).

- A. Consider and discuss the purchase, exchange, lease, or value of real property, located in the vicinity of the intersection of East Main Street at Heritage Hills Drive, in the City of Fredericksburg, Texas [551.072]; and
- B. Consider and discuss the purchase, exchange, lease, or value of real property, located in the vicinity of Lady Bird Johnson Municipal Park [551.072].

12. BUSINESS ITEM

The City Council will reconvene into Regular Session upon the conclusion of the Executive Session. The City Council may take action on any item posted in Executive Session, as necessary.

13. ADJOURN

CERTIFICATION

This is to certify that I, Shelley Goodwin, posted this Agenda at 4:45 p.m. on November 9, 2022, on the bulletin board of the City of Fredericksburg City Hall, 126 W. Main St., Fredericksburg, Texas.



Shelley Goodwin, TRMC/CMC
City Secretary



City of Fredericksburg

CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, NOVEMBER 1, 2022 ~ 9:00 A.M.

LAW ENFORCEMENT CENTER

1601 E. MAIN STREET

FREDERICKSBURG, TEXAS 78624

Members Present:

Mayor Jeryl Hoover
Mayor Pro-Tem Bobby Watson
Councilmember Emily Kirchner
Councilmember Tony Klein
Councilmember Sharon Joseph

Members Absent:

None

City Staff Present:

Clinton Bailey, City Manager
Daniel Jones, City Attorney
Brian Vorauer, Police Chief
Lynn Bizzell, Fire Chief
Eric Whiting, Director of Information Technology
Garret Bonn, Interim City Engineer
Kris Kneese, Interim Director of Public Works and Utilities
Joe Mirsky, Civil Hearing Officer
Andrea Schmidt, Parks & Recreation Director
Derek Seelig, Police Lieutenant
Braxton Roemer, Police Lieutenant
Justin Calhoun, Emergency Management Coordinator
Anna Hudson, Historic Preservation Officer/ Interim Director of Development Services
Ray Ortegon, Code Enforcement Officer
Ted Boyer, Code Enforcement Officer
Shelby Collier, Associate Planner
Leslie Embrey, Administrative Assistant
Shelley Goodwin, City Secretary

1. CALL TO ORDER

Mayor Hoover called the Special Meeting of the Fredericksburg City Council to order at 9:00 a.m. on Tuesday, November 1, 2022. He announced a quorum had been met.

2. INVOCATION

George Studor, City resident, provided the Invocation.

3. PLEDGE OF ALLEGIANCE

Mayor Hoover led the Pledge of Allegiance.

4. CEREMONIAL MATTERS/PROCLAMATIONS/EMPLOYEE RECOGNITION

Clinton Bailey, City Manager, announced Broc Schulz has accomplished his lineman certification which over 8,000 hours.

5. COUNCIL COMMENTS

Councilmember Kirchner stated she attended the following local events:

- Pioneer Memorial Library Sale
- Fredericksburg Food and Wine Fest
- The first Neighborhood Town Hall Meeting held in Area 2
- The City/Volunteer Fire Department Halloween Open House

Mayor Hoover stated he had received several compliments regarding the City's purchase of Turner Hall and the donations that will benefit the 16 non-profit agencies.

Councilmember Joseph announced that Brady Closson has officially started at the Convention and Visitor Bureau.

6. ACTION ITEMS AND UPDATES

A. Consider approval of City Council October 18, 2022, Regular Meeting Minutes

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Klein, to approve Consent Agenda item 6 A. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

B. Consider, discuss, and take possible action on Short-Term Rental (STR) uses, code violations, and enforcement matters, and consider possible initiation of a text amendment to the City's Zoning Ordinance related to same

Mayor Hoover announced that the City Council would move to Agenda Item #8 A.

Mayor Hoover thanked the 90 people who contacted him regarding STRs. He stated that gathering information and evidence is very important. He noted that there is more to STRs than the violations; there is also the impact that is caused to the housing cost and market. He pledged to find a resolution to the STR concerns and feels the best way to handle these concerns is to create a Task Force, which would be composed of individuals from all sides of the issue. He also feels that the urgent issues need to be addressed now, such as habitual code violators.

The City Council agreed to form a task force to address the STR issues. They also agreed that they need more STR permits and code enforcement data.

Mayor Hoover stated the City Council received written comments from the following people:

- Jeffery Morin
- Ashley Bolger
- Robert Johnson
- Dr. Borchert
- Keith Ketchum
- Cindy Spaeth

Jeffery Morin, City resident, spoke regarding information he received through Public Information Act.

Susan Tilley, City resident, spoke regarding her concerns with regulations in R2 zoning as related to STR.

Donn Wagner chose not to speak.

Randy Briley, City resident, spoke regarding STR and Code Enforcement. He also spoke regarding the task force.

Mike Mahoney, City resident, spoke regarding the issues within the Ordinance and the need to educate the renters on the rules and regulations.

Tammy Pack chose not to speak.

Charlie Morin spoke regarding the potential of regulations in R2 and the harm it will cause him and his family.

Leslie Spraggins, City resident, spoke regarding the benefits of a Task Force and the issues with Granicus.

Matt Durette, Cozi Vacation Rental, stated he feels a Task Force is much needed and volunteered to serve on the Task Force.

Nick Zuiker spoke about the software issues and the potential impact stronger STR regulations can have on people.

Bill Snyder, City resident, spoke regarding occupancy rates allowed in STRs.

Kelly DiCuffa, City resident, spoke regarding Task Force and the City's need for a long-term vision.

Moises Sanchez, Cozi Vacation Rental, spoke regarding lawn care and going above and beyond. He also spoke regarding the benefits many receive from the STRs.

Jerry Sample chose not to speak.

Gary Schwede spoke regarding his STR in R1 zoning and the potential issues with not allowing permits to be transferred.

Leonard Bentsch, City resident, spoke regarding out-of-town or state STR owners and the occupancy limits. He also noted that property owners who live here full-time also have rights.

Mickie Cunningham inquired about the STR and violation data and where to find it on the website.

Anita Ortiz Lubke chose not to speak.

Motion: A motion was made by Councilmember Klein, seconded by Councilmember Watson, to approve the creation and appointment of a task force. **Friendly Amendment:** A motion was made by Councilmember Joseph to bring back the results of the task force by 90 days from November 1, 2022. Councilmember Klein and Councilmember Watson both accepted the Friendly Amendment. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

C. Consider, discuss, and take action regarding the development of parking management strategies to address parking issues on and in the vicinity of Main Street

Clinton Bailey, City Manager, provided the history of the parking issues and the downtown parking study. He reviewed the situation in Estes Park, Colorado, and their success in managing their parking issues. He feels it would be good to coordinate a meeting with all the stakeholders and look at this issue. He also stated he does not think there is a need for a new study, but we might look at other solutions to address the downtown parking.

George Studor, City resident, spoke regarding parking in conjunction with traffic flow. He feels that TxDOT should be involved to address the vehicles sticking out and the need for better signage.

Jim Jarreau, City resident, stated that after reading the recent parking study, he believes it was written to create the need for a garage. Most the parking issues or other improvements can be addressed during the comprehensive plan process.

Mayor Hoover reviewed a parking proposal that a City resident, Eric Hammersen, provided him.

The City Council discussed the following:

- Working with TxDOT to eliminate the additional island (curb) on Main Street
- Restriping Main Street
- Possibility of an additional trolley
- Manage surface parking
- Main Street Merchant Group

7. CITY MANAGER'S REPORT

A. Town Hall Meetings

Clinton Bailey, City Manager, reviewed the discussion topics of the first Town Hall Meeting held in Area 2 on October 27, 2022. He stated he felt it was very successful, and everyone who attended appreciated the City coming to them.

B. Development Services Director

Clinton Bailey, City Manager, thanked Garret Bonn for all his work as the Interim City Development Services Director. He announced that Anna Hudson will now be the Interim for six months, and hopefully, she can move into the director position.

C. Agenda Management Update

Shelley Goodwin, City Secretary, stated that Agenda Management is moving quickly. She noted there had been several meetings, and this week there will be a review of the development of our program so far. She reviewed the timeline of the software rollout and noted that the City is three agendas away from being paperless.

8. ITEMS FOR FUTURE AGENDA

Clinton Bailey, City Manager, reviewed the Future Agenda spreadsheet.

9. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Sections – 551.071 (Consultation with Attorney), 551.074 (Personnel Matters) and 551.072 (Real Estate).

- A. Consider and discuss the appointment, evaluation, reassignment, and/or duties of a public officer or employee, specifically the City Attorney [Sec. 551.074];**

- B. Consider and discuss the purchase, exchange, lease, or value of real property, located in the vicinity of the intersection of East Main Street at Heritage Hills Drive, in the City of Fredericksburg, Texas [551.072];**
- C. Consider and discuss The State of Texas, *ex rel.* Association Against Fredericksburg Annexations vs. City of Fredericksburg, Texas, pending in the 216th District Court [551.071(1)]; and**
- D. Receive and discuss legal advice concerning applicable Texas and Federal case law related to municipal regulation of short-term rentals [551.071(2)].**

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Klein, to go out of the Special Meeting and into the Executive Session on item 9. B. at 9:08 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Joseph, to go out of the Executive Session and into the Special Meeting at 9:30 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

The City Council then moved back to Agenda Item 6. B.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kirchner, to go out of the Special Meeting and into the Executive Session at 10:35 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Klein, seconded by Councilmember Kirchner, to go out of the Executive Session and into the Special Meeting at 1:11 p.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

10. BUSINESS ITEM

The City Council did not take any action have the Executive Session.

11. ADJOURN

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Klein, to adjourn the Tuesday, November 1, 2022, City Council Special Meeting at 1:11 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Jeryl Hoover
Mayor

Shelley Goodwin, TRMC/CMC
City Secretary



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Police

TO: Mayor and Council

FROM: Derek Seelig

MEETING DATE: 11/15/2022

CATEGORY: Consent

CAPTION: Consider approval of purchases allocated in the Fiscal Year 2023 Budget - vehicles for the Police Department \$304,025 for seven patrol vehicles and \$51,840 for one unmarked car

PRESENTATION: Derek Seelig, Patrol Lieutenant

SUMMARY:

The police department fleet consists of 43 vehicles. This fiscal year we need to replace 7 units and purchase 1 new units at the following cost:

7 marked patrol vehicles @ \$43,375 = \$304,025

1 unmarked @ \$51,840 = \$51,840

Total Cost of \$355,865

BACKGROUND:

The price of marked patrol vehicles increased from an estimated cost of \$38,500 to \$43,375 and the price of unmarked vehicles increased from an estimated cost of \$44,346 to \$51,840, for a total of \$407,705. The reason that the price for vehicles is over the budget estimate of \$358,193 is because at the time we had tell them what we wanted to order, the dealerships did not have pricing. We knew that the price would be higher this year than last, but did not know how much. For budget purposes we did our best to estimate the price increase, however, the price increase was much higher than expected. This is as a result of supply and demand, and supply chain issues that the auto industry is still facing. 1 new unmarked vehicle was canceled to bring the total cost back down within budget.

FUNDING SOURCE: 01-22-5240
Budget

FINANCIAL IMPACT: FY2023

STAFF RECOMMENDATION: It is recommended that the council approve the Police Department's request to purchase 7 marked patrol units and 1 unmarked unit at a total cost of \$355,865.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Government

ATTACHMENTS: Price Quotes

Derek Seelig, Chief of Police
APPROVAL/REVIEW: Derek Seelig, Patrol Lieutenant

DEPARTMENT NAME: Police Department

CREATED: 11/4/2022

FINANCE NAME: *Saura Holcomb*

REVIEWED: *11/9/2022*

CITY ATTORNEY NAME: *[Signature]*

APPROVED: *11/9/2022*

CITY MANAGER NAME: *[Signature]*

APPROVED: *11/9/22*

QUOTE# 00BB (CIVILIAN)

CONTRACT PRICING WORKSHEET

End User: FREDERICKSBURG POLICE DEPARTMENT	Contractor: CALDWELL COUNTRY
Contact Name: CHIEF BRIAN VORAUER LT. DEREK SEELIG	CALDWELL COUNTRY
Email: BVORAUER@FBGTX.ORG DSEELIG@FBGTX.ORG	Prepared By: Chris Collins Averyt Knapp
Phone #: 830-997-7585	Email: chris@caldwellcountry.com aknapp@caldwellcountry.com
Fax #:	Phone #: 979-200-8149 979-567-6116
Location City: FREDERICKSBURG, TX	Fax #: 979-567-0853
Date Prepared: NOVEMBER 1, 2022	Address: P. O. Box 27, Caldwell, TX 77836
Contract Number: BUY BOARD #601-19	Tax ID # 87-3266036
Product Description: 2023 CHEVROLET TAHOE CC10706	

A Base Price & Options:	\$51,440
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B Fleet Quote Option:

Code	Description	Cost	Code	Description	Cost
	4X2-LS PACKAGE, 5.3L-V8, 6-SPD AUTOMATIC, LOCKING REAR AXLE DIFFERENTIAL, 18" X 8.5" ALUMINUM WHEELS, CLOTH BUCKETS W/OEM CONSOLE, CLOTH CENTER & REAR FOLD DOWN BENCH, CARPET FLOOR W/MATS, AIR CONDITION FRONT AND REAR, AMFM-STEREO MYLINK W/BLEETOOTH, TILT, CRUISE, POWER WINDOWS, POWER LOCKS, POWER MIRRORS, KEYLESS ENTRY W/REMOTE START, DEEP TINT GLASS, RUNNING BOARDS, TRAILER TOW HITCH, REAR VISION CAMERA, FOUR REMOTES & FOUR KEYS ALL IN ONE	INCL			
	GM WARRANTY 5YR/100,000 MILES POWERTRAIN @ N/C	INCL		CALDWELL COUNTRY PO BOX 27 CALDWELL, TEXAS 77836	
	PRICES VALID FOR 30 DAYS BUT SUBJECT TO CHANGE DUE TO SUPPLY CHAIN CHALLENGES			REVERIFY PRICING BEFORE ISSUING PURCHASE ORDER. COMMODITY SURCHARGES MAY APPLY AFTER PO ISSUED	
Subtotal B					INCL

C Unpublished Options					
Code	Description	Cost	Code	Description	Cost
Subtotal C					
D Other Price Adjustments (Installation, Delivery, Etc...)					
Subtotal D					INCL
E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D)					\$51,440
Quantity Ordered					1
Subtotal E					\$51,440
F Non-Equipment Charges (Trade-In, Warranty, Etc...)					
BUY BOARD					\$400
G. Color of Vehicle: SILVER SAGE, MIDNIGHT BLUE					
H. Total Purchase Price (E+F)					\$51,840
Estimated Delivery Date:				Q1-Q2 2023 APPX	

QUOTE# 00AA (PATROL)

CONTRACT PRICING WORKSHEET

End User: FREDERICKSBURG POLICE DEPARTMENT	Contractor: CALDWELL COUNTRY
Contact Name: CHIEF BRIAN VORAUER LT. DEREK SEELIG	CALDWELL COUNTRY
Email: BVORAUER@FBGTX.ORG DSEELIG@FBGTX.ORG	Prepared By: Chris Collins Averyt Knapp
Phone #: 830-997-7585	Email: chris@caldwellcountry.com aknapp@caldwellcountry.com
Fax #:	Phone #: 979-200-8149 979-567-6116
Location City: FREDERICKSBURG, TX	Fax #: 979-567-0853
Date Prepared: OCTOBER 7, 2022	Address: P. O. Box 27, Caldwell, TX 77836
Contract Number: BUY BOARD #601-19	Tax ID # 87-3266036
Product Description: 2023 CHEVROLET TAHOE PPV CC10706	

A Base Price & Options:	\$43,375
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B Fleet Quote Option:

Code	Description	Cost	Code	Description	Cost
	LH LED SPOTLIGHT, PPV, 5.3L-V8, 10-SPD AUTOMATIC, LOCKING REAR AXLE DIFFERENTIAL, DUAL BATTERIES, CLOTH BUCKET, CENTER SECTION DELETE, VINYL REAR BENCH, FULL RUBBER FLOOR, AIR CONDITION FRONT AND REAR, AMFM- STEREO W/BLUETOOTH, TILT, CRUISE, POWER WINDOWS, POWER LOCKS, POWER MIRRORS, KEYLESS ENTRY, DEEP TINT GLASS, RUNNING BOARDS, TRAILER TOW HITCH, REAR VISION CAMERA, FLASHER SYSTEM HEADLAMP AND TAILLAMP DRL COMPATIBLE W/CONTROL WIRE, SURVEILLANCE MODE INTERIOR LIGHTING, CALIBRATION TAILLAMP FLASHER RED/WHITE, CALIBRATION TAILLAMP FLASHER RED/RED, FOUR REMOTES & FOUR KEYS ALL IN ONE	INCL			
	GM WARRANTY 5YR/100,000 MILES POWERTRAIN @ N/C	INCL		CALDWELL COUNTRY PO BOX 27 CALDWELL, TEXAS 77836	
	PRICES VALID FOR 30 DAYS BUT SUBJECT TO			REVERIFY PRICING BEFORE ISSUING PURCHASE ORDER.	

	CHANGE DUE TO SUPPLY CHAIN CHALLENGES			COMMODITY SURCHARGES MAY APPLY AFTER PO ISSUED	
Subtotal B					INCL
C Unpublished Options					
Code	Description	Cost	Code	Description	Cost
Subtotal C					
D Other Price Adjustments (Installation, Delivery, Etc...)					
Subtotal D					INCL
E Unit Cost Before Fee & Non-Equipment Charges(A+B+C+D)					\$43,375
Quantity Ordered					7
Subtotal E					\$303,625
F Non-Equipment Charges (Trade-In, Warranty, Etc...)					
BUY BOARD					\$400
G. Color of Vehicle: WHITE					
H. Total Purchase Price (E+F)					\$304,025
Estimated Delivery Date:					Q1-Q2 2023 APPX



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Public Works – Water Department

TO: Mayor and City Council

FROM: Kris Kneese, Interim Director of Public Works and Utilities

MEETING DATE: November 15, 2022

CATEGORY: Consent

CAPTION: Consider approval of a purchase allocated in the Fiscal Year 2023 Budget - Water/Sewer Main Replacement Project Construction Contract another year to JM Pipeline, LLC in the amount not to exceed \$600,000.

PRESENTATION: Kris Kneese, Interim Director of Public Works and Utilities

SUMMARY:

Extend the Water and Sanitary Sewer Main Replacement Project construction contract to JM Pipeline, LLC for FY2023 in an amount not to exceed \$600,000.

BACKGROUND:

The City's utility system includes undersized and aging water and sanitary sewer infrastructure throughout town. This infrastructure includes 2-inch water mains and 4 inch sanitary sewer mains, which are undersized to provide fire protection (water) and in many cases the source for leaks (water) and sewer blockages.

To address the undersized and aging water and sanitary sewer infrastructure, City Staff created a project and developed a set of project bid documents last year. The bid documents were set up similar to the annual sidewalk contract, where the bid is based on unit price to construct a specific detail, with many different details bid. With this type of contract, City Staff can select an area of town, usually a couple of blocks, issue a work order to the contractor, which is based on the unit bid amount for the specific detail, and strategically start replacing water and sanitary sewer mains around town.

The order in which the mains will be replaced will be based on a number of factors including:

- Fire flow, fire hydrant spacing, and/or water pipe network connections
- The street paving project

- Areas with known water leaks
- Areas with known sewer issues, including broken clay piping, sewer blockages, etc

Last fiscal year, approximately 1,500 feet of 2-inch water mains and 930 feet of 4 inch sewer main were replaced with 12 inch water main and 6- inch sewer, while adding manholes, water isolation valves, and fire hydrants.

The construction contract documents were set up for an annually renewal up to five years. The contractor has agreed to keep the unit bid pricing, and, therefore, City Staff recommends extending the construction contract to JM Pipeline, LLC for amount not to exceed \$600,000 for FY2023.

FUNDING SOURCE: Water Department FINANCIAL IMPACT: \$600,000

STAFF RECOMMENDATION:

City staff recommends extending the Water and Sanitary Sewer Main Replacement Project construction contract another year to JM Pipeline, LLC in an amount not to exceed \$600,000.

COMMUNITY VISIONING/STRATEGIC INITIATIVES:

Business Visioning x Family Life Vision
 Government Vision x Quality of Life Vision

DEPARTMENT NAME: KBKunne CREATED: 11/8/2022

FINANCE NAME: Saura Hollenback REVIEWED: 11/9/2022

CITY ATTORNEY NAME: [Signature] APPROVED: 11-9-2022

CITY MANAGER NAME: [Signature] APPROVED: 11/9/22

COMMUNITY VISIONING/STRATEGIC INITIATIVES:

Business Visioning _____

Family Life Vision _____

Government Vision x

Quality of Life Vision _____

DEPARTMENT NAME: KB Kinn

CREATED: 11/8/2022

FINANCE NAME: Saura Hollenbeck

REVIEWED: 11/9/2022

CITY ATTORNEY NAME: D. J. [Signature]

APPROVED: 11-9-2022

CITY MANAGER NAME: Chris Riley

APPROVED: 11/9/22

5210 N. Loop 1604 E
 San Antonio, TX 78247
 Ph: (210) 657-5151
 Fax: (210) 657-5871



201 Commerce Blvd
 Georgetown, TX 78626
 Ph: (512) 930-5151
 Fax: (210) 657-5871

Mr. Garrett Durst
 Street Department
 City of Fredricksburg
 126 W. Main St.
 Fredricksburg, TX

October 7, 2022
 PH: 830 990 2090
 FX:
 CL: 830 307 8940
 gdurst@fbgtx.org

FY2023 BuyBoard Quotation for City of Fredricksburg, TX
Attn: Garrett Durst, Street Supervisor
RE: TASB / BuyBoard Contract # 597-19, Effective 12/1/19

Broce Broom BuyBoard FY23 Quotation

New, 2022 / 23 Broce Model RCT-350, Rear Engine Self-Propelled Broom w/
 Cummins 3.3L, 4 cyl., Tier 4 Final, Diesel Engine producing 74 Net HP, 8' Steel
 Core w/10" x 32" Wafers, Full Gauge Package w/ Tach & Hourmeter, Power Steering &
 Horn, 4-wheel Hyd. Brakes, Radial Tires, Hydrostatic Trans., Dual Element Air Cleaner
 w/Engine Air Pre-cleaner, Reverse Alarm, Brush Lock, Joy Stick Control, Enclosed Engine
 Cover, Front & Rear Fenders, 27 Gal. Fuel & Hydraulic Tanks w/ shutoff valves.

Model RCT 350 List Price	\$ 62,350.00
Enclosed Cab w/Sound Suppression & Front Wipers	\$ 6,160.00
Pressurized Air Conditioning	\$ 4,040.00
150 Gal. Water Sprinkler System	\$ 1,595.00
Heavy Duty Heater & Defroster	\$ 810.00
Rear Wiper	\$ 475.00
Windshield Washers, Front & Rear	\$ 435.00
Suspension Seat	\$ 410.00
Light Group, Class A Turn Signals & Headlamps	\$ 1,075.00
West Coast Mirrors	\$ 155.00
Engine Audible Alarm	\$ 365.00
Safety Engine Shutdown	STD
Air Cleaner Stack Extension	STD
Turbo II Air Pre-Cleaner	\$ 310.00
Strobe Light	\$ 345.00
Vandalism Lock Package	\$ 125.00
Work Lights, Top of Cab, one each side	\$ 230.00
Total List Price	\$ 78,880.00
9% BuyBoard Discount	- 7,099.20
Current BuyBoard Sale Price	\$ 71,780.80
3.75% Manufacturer's Materials Surcharge	\$ 2,958.00
Factory Freight, PDI & Delivery	\$ 4,650.00
Total Customer BuyBoard Sale Amount	\$ 79,388.80

Warranty: One Year, Parts & Labor
 Delivery: Approximately 60 - 90 Days, ARO

Respectfully Submitted,  Rick Chapman, District Manager



DOGGETT FREIGHTLINER OF SOUTH TEXAS LLC - AUSTIN

1701 Smith Rd.
Austin, Texas 78721

Bus: 512-389-0000
Fax: 512-389-2663

INV #:

DATE: 6/22/2022
INVOICE / BUYER'S ORDER

BUYER'S NAME: City of Fredericksburg
ADDRESS: 126 W Main St
CITY: Fredericksburg STATE: Tx ZIP CODE: 78624
YEAR: 2024 MAKE: Freightliner MODEL/BODY: M2-106 VIN: order LICENSE PLATE:

A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY CHARGED TO BUYER FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES. THIS NOTICE IS REQUIRED BY LAW.

UN PAGO DOCUMENTAL NO ES UN CARGO OFICIAL. LA LEYNO EXIGUE SE IMPONGA UN CARGO DOCUMENTAL. PERO ESTE PODRIA COBRARSE A LOS COMPRADORES POR EL MANEJO DE LA DOCUMENTACION EN RELACION CON LE VENTA. UN CARGO DOCUMENTAL NO PUEDE EXCEDER UNA CANIDAD PAZONABLE ACORDADA POR LAS PARTES. ESTA NOTIFICACION SE EXIGUE POR LA LEY.

Disclaimer of Warranties
The above decribed vehicle sold by Freightliner of Ausitn is sold as is, without either express or implied warranties of any kind by Freightliner of Austin, including warranties of merchantability or fitness, and Buyer will bear the entire expense of repairing or correcting any defects that presently exist or that may occur in the vehicle, unless a writte warranty by, or service contract with Freightliner of Austin covering the describe vehicle is delivered to Buyer in conjunction with or within 90 days following the time of sale, but such vehicle or any of its component parts may be subject to warranty by the manufacuter thereof.

Table with columns for Description and Amount. Includes items like TIPS 200-206, 2024 Freightliner M2-106 chassis to accommodate Diamond Steel LPG Ox 10 ft dump body per specs, Completed and Delivered to City, Pricing and production of completed unit subject to change due to factory surcharges and supply shortages, and Tom Standard 512-468-7270.

MILEAGE: YEAR MAKE MODEL/BODY VIN
TRADE-IN: YEAR MAKE MODEL/BODY VIN

Summary table with columns for Description and Amount. Includes PAYOFF TO: \$126,033.00, ADDRESS, TELEPHONE, FAX, GOOD UNTIL, QUOTED BY, SHOW LIEN TO, DATED, DRAFT FOR \$, DRAFT THRU, ADDRESS, and Total Balance Due \$126,033.00.

**The Dealer's Inventory Tax charge is intended to reimburse the dealer for ad valorem taxes on its motor vehicle inventory. The charge, which is paid by the Dealer to the county tax assessor-collector, is not a tax imposed on a consumer by the government, and is not required to be charged by the dealer to the consumer.
The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions on the contract of sale.
La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establezca el contrato y que aparezca en el contrato de venta. If a credit purchase, this is an offer to purchase only. Buyer offers to purchase vehicle on credit terms described herein and no contractual relationship is created. This order does not constitute an agreement for the extension of credit. Manufacturer/Distributor reserves the right to change the price of new vehicles to Seller without notice. In the event that the price to Seller of the new vehicle ordered hereunder is changed prior to delivery to Buyer, Buyer agrees and accepts that the cash delivered price will be changed accordingly. If the Buyer's used vehicle trade-in is not delivered to the Seller until delivery of the new vehicle, the trade-in will be reappraised at that time and Buyer agrees that such reappraised value shall determine the allowance, if any, made for the trade-in. Buyer agrees to deliver the original bill of sale and the title to an trade-in along with the delivery of the trade-in and further agrees to execute and all documents necessary or required to transfer legal title and ownership to Seller or its assigns. Buyer warrants the trade-in to be his property and free and clear of all liens and encumbrances except as otherwise noted herein. Buyer further warrants that the trade-in has not been declared rebuilt salvage, reconditioned, nonrepairable, or flood damaged and that the emission systems have not been tampered with and are in the condition as originally manufactured, except for ordinary wear, unless so disclosed. Seller makes no representations, concerning fuel economy of the sale unit and any information posted on the sale unit or contained in literature relating to the same reflect the results of tests performed, required or prescribed by government agency, upon which Seller has relied. It is expressly agreed to and understood by Buyer and Seller that is the event of a non-credit transaction, Seller retains a security interest in the purchased vehicle until such time as Buyer has paid the Seller for the vehicle. Buyer agrees to all the above listed charges.

BUYER'S SIGNATURE: _____ SELLER'S SIGNATURE: _____ DATE: _____

STANDARD SOURCEWELL OPTIONS:
Option prices per Sourcewell contract #012418-TIM
in addition to above price.

- VST521 insulated articulating telescopic aerial device in lieu of the above VST401 aerial device _____ \$7,043.00
- Secondary Stowage System _____ \$654.00

OPEN MARKET REQUESTED OPTIONS:
Prices shown in addition to above Sourcewell price.

- 2022 Ram 5500 4x4 cab and chassis with 19,500 GVWR, 6 speed automatic transmission, Cummins 6.7 diesel engine, air conditioning, engine block heater, power windows and locks, electric brake controller, and Uconnect 3 with 5" display in lieu of Sourcewell chassis above _____ \$9,208.00
- Nine (9) foot flatbed with 36" head board, 96" x 16" x 13" aluminum tool box on streetside, 48" x 18" x 18" aluminum tool box on curbside full length aluminum cab guard, access step on curbside with grab rails, LED lights, cab guard, and pintle hitch in lieu of the Sourcewell 132" body above _____ \$19,678.00
- Two (2) rubber wheel chocks with holders _____ \$228.00
- Four (4) 18" x 18" x 1" outrigger pads with holders _____ \$720.00
- Six (6) and seven (7) prong trailer receptacle _____ \$150.00
- 24" x 24" liner _____ \$550.00
- Full body safety harness with lanyard _____ \$460.00
- Four (4) amber strobe lights _____ \$600.00
- Auxilliary A-frame outrigger with interlock and valves _____ \$4,137.00
- DOT triangle kit _____ \$125.00
- Weight certification _____ \$13.00

TOTAL PRICE

TOTAL PRICE F.O.B. SHELBY, KNOXVILLE, TENNESSEE:	\$162,169.00
DELIVERY FREIGHT TO FREDERICKSBURG, TX.:	\$ 2,529.00
COMPLETE TOTAL PRICE F.O.B. FREDERICKSBURG, TX.:	\$164,698.00

TERMS: Payment due upon receipt. MSO released when payment received.
SHIPMENT: Approximately 30 days. These are stock units and are subject to prior sales..

Thank you for considering <VERSALIFT> to meet your utility equipment needs. We look forward to earning your business.

Best Regards,

STAN TOMCHESSON

Government Contracts Sales Coordinator

Phone: (254) 399-2167

Email: StanTomchesson@versalift.com



DATE: 08/08/2022

QUANTITY: 1

Please reserve one bucket truck for the City of Fredericksburg.

*Final approval of budget will be in October

VEGETATION SUPERVISOR: DAVID FELLER



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Human Resources / Administration

TO: Mayor and City Council

FROM: Tammie Loth, Human Resources Director

MEETING DATE: 11/15/2022

CATEGORY: Consent

CAPTION: Consider approval of a purchase allocated in the Fiscal Year 2023 Budget - NEOGOV software for the Human Resources Department in the amount of \$95,080.

PRESENTATION: Tammie Loth, Human Resources Director

SUMMARY:

A payroll and employee self-serve software system was approved in the FY23 budget. Implementation of this software is scheduled to begin in the second quarter of 2023, and the system is expected to be fully functional at the beginning of FY24.

BACKGROUND:

Our employees are not currently able to see their payroll records or make any changes to their payroll accounts. This system will allow them access to their payroll records and as the full use is developed and implemented, it will also allow for management of personnel files, assignment of training, and assistance in onboarding. Initially, this software will track time and attendance for our employees and complete the bi-weekly process of payroll.

FUNDING SOURCE: Split - all depts

FINANCIAL IMPACT: \$95,080

STAFF RECOMMENDATION:

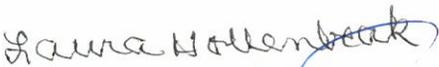
Approval of NEOGOV Software

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Business

ATTACHMENTS: NEOGOV Invoice # INV-30493

APPROVAL/REVIEW: Tammie Loth 

DEPARTMENT NAME: Human Resources

FINANCE NAME: 

CITY ATTORNEY NAME: 

CITY MANAGER NAME: 

CREATED:

REVIEWED: 11/9/2022

APPROVED: 11-9-2022

APPROVED: 11/9/22



Invoice #INV-30493

From

Governmentjobs.com, Inc. DBA NEOGOV
2120 Park Pl,
Suite 100
El Segundo, CA 90245

Bill To

Fredericksburg, City of (TX)
126 W Main St
Fredericksburg, TX 78624-3708
U.S.A.

Invoice Summary

Invoice Number	INV-30493
Date	10/03/2022
Terms	Net 30
Due Date	11/02/2022
Amount Due (USD)	\$ 95,080.00

Item / Description

Payroll

This is your subscription fee for Payroll for the term starting 09/27/2022 and ending 09/26/2023.

Time & Attendance

This is your subscription fee for Time & Attendance for the term starting 09/27/2022 and ending 09/26/2023.

Benefits

This is your subscription fee for Benefits for the term starting 09/27/2022 and ending 09/26/2023.

Core HR

This is your subscription fee for Core HR for the term starting 09/27/2022 and ending 09/26/2023.

Payroll

This is your subscription fee for Payroll for the term starting 09/27/2022 and ending 09/26/2023.

Software Services:Setup - API (217)

Manage Module Setup and Training

Software Services:Setup - API (217)

Payroll Setup

Amount Due (USD) \$ 95,080.00

Thank you for your business!

For questions, or pay by credit card, please reply to this email or reach out to billing@neogov.com. For questions on a renewals invoice, please reach out to renewals@neogov.com.

Please make checks payable to:

Governmentjobs.com, Inc
DEPT LA 25067
Pasadena, CA 91185-5067

For Payments by Wire:

Silicon Valley Bank
Account #: 3302022848
Account Name: Governmentjobs.com, Inc.
Bank Routing No.: 121140399
Swift Code: SVBKUS6SIBO

For a copy of our W9, please click on "Download W9" above.



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Health Department

TO: Mayor and City Council

FROM: Kelli Olfers, Director Gillespie County Health Division

MEETING DATE: 11/15/2022

CATEGORY: Consent

CAPTION: Consider the approval of amendment to the Gillespie County Health Board Cooperative Agreement by amending the number of board members to the Gillespie County Health Board

PRESENTATION: Kelli Olfers, Director Gillespie County Health Division

SUMMARY:

This amended and restated cooperative agreement clarifies existing language and reduces the number of health board members from 9 to 5 board members.

BACKGROUND:

The last amendment to the cooperative agreement took place in 2009. The proposed changes are in line with today's activities.

FUNDING SOURCE: N/A

FINANCIAL IMPACT:

STAFF RECOMMENDATION:

Staff recommends the approval of the Second Amended and Restated Gillespie County Public Health Division Cooperative Agreement.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS:

Second Amended and Restated Gillespie County Public Health Division Cooperative Agreement

APPROVAL/REVIEW: *Kelli Oefen*

DEPARTMENT NAME: Health *Kelli Oefen*

FINANCE NAME: *Laura Hallenbrook*

CITY ATTORNEY NAME: *[Signature]*

CITY MANAGER NAME: *Chris Bailey*

CREATED: 11/7/2022

REVIEWED: *11/9/2022*

APPROVED: *11-9-2022*

APPROVED: *11/9/22*

SECOND AMENDED and RESTATED
GILLESPIE COUNTY PUBLIC
HEALTH DIVISION COOPERATIVE
AGREEMENT

The City of Fredericksburg, Texas, a municipal corporation situated in Gillespie County, Texas, and Gillespie County, Texas, enter into this Second Amended and Restated Gillespie County Public Health Division Cooperative Agreement ("Agreement") for the purpose of changing and continuing the Public Health Division pursuant to authority granted under TEX. HEALTH & SAFETY CODE §121.031, et seq (Vernon 1992). The following terms and provisions shall be followed in the operation of the Health Division.

ARTICLE I. GENERAL PROVISIONS

A. Purpose.

The City of Fredericksburg, Texas, and Gillespie County, Texas, hereinafter referred to as "Operating Members," in consideration of the promises and covenants herein, agree that they, acting by and through their respective governing bodies and pursuant to TEX. HEALTH & SAFETY CODE §121.031, et seq, shall join together to establish and continue a public health division to be known as the "GILLESPIE COUNTY PUBLIC HEALTH DIVISION," which shall have and exercise the powers granted to public health divisions by the law, ordinance or order. The GILLESPIE COUNTY PUBLIC HEALTH DIVISION (Health Division) will be housed in the site existing or developed in the future by agreement of the parties.

B. Definitions.

The following definitions shall apply, unless otherwise indicated:

1. "Act" refers to TEX. HEALTH & SAFETY CODE §121.031, et seq. and any amendments thereto.
2. "Board" refers to the Advisory board for Gillespie County Public Health Division.

3. "Contributing Member" refers to a governmental entity, which has applied and been accepted as a member of the Health Division based on specific monetary contributions made to the Health Division for specific programs or service(s) to be provided by and through the Health Division and designated personnel.
4. "Department" means the Department of State Health Services of the State of Texas.
5. "Director" refers to the chief administrative officer of the Gillespie County Public Health Division.
6. "Health Authority" refers to the physician who shall administer state and local laws relating to the public health.
7. "Health Division" refers to the Gillespie County Public Health Division.
8. "Operating Member" and/or "Government Entity" refers to the City of Fredericksburg, and/or Gillespie County as the political subdivisions creating the Health Division and whose governing bodies are responsible for approving the annual operating budget and funding of the Health Division.

C. Modification of Agreement.

This Agreement may be modified only in writing. A modification is effective upon approval of the governing body of each Operating Member. At times of voting by each Operating Member, such modification shall be reflected in the official minutes of each governing body acting on behalf of each Operating Member.

D. Withdrawal of a Governmental Entity from the Health Division;
Dissolution of the Health Division.

1. Procedures for Dissolution.

- a. If one or more Operating Members desire dissolution of the Health Division, a written notice shall be initiated through the Director at which time he/she will consult with the other Operating Member and will establish a termination date which shall be no sooner than six (6) months nor later than one (1) year from the date that the notice to terminate was delivered to the Director. After the established termination date, each member shall pay its proportionate

share of operating expenses for an additional six (6) month period, if requested by the Board to fund dissolution activities.

- b. The Director shall use every means to coordinate an orderly dissolution and shall receive the advice and support of the Board. All actions shall be exercised in accordance with existing local, state and federal rules and regulations as they pertain to property, termination of personnel and the responsibility to provide for services.

ARTICLE II. ORGANIZATION OF THE HEALTH DIVISION

A. Public Health Board.

This cooperative agreement provides for the creation of an Administrative (Advisory) Public Health Board, known as the Gillespie County Public Health Board, which shall recommend to the Operating Members both substantive and procedural rules necessary and appropriate to protect the health and safety of the citizens of Gillespie County, Texas. Any and all rules recommended by the Board and adopted by the Operating Members shall have the full force and effect of law except where in conflict with a state or federal law or duly enacted local ordinance or county law.

1. Composition of the Board. The Health Division shall be advised by a five (5) member Board, all members of which shall be appointed both by the City Council of the City of Fredericksburg and the Commissioner's Court of the County of Gillespie.
2. Residency Requirements of Board Members. All members of the Board must have resided in Gillespie County or have worked in Gillespie County for at least one (1) year prior to their selection.
3. Compensation. All members of the Board shall serve without compensation.
4. Non-Voting Ex-Officio Members. The Gillespie County Public Health Division Director shall be a non-voting ex-officio member of the Board. The Operating Members, by majority vote of each governing body, may name additional non-voting, ex-officio members as they may determine. Ex-officio members shall not count in determinations of whether or not a quorum is present at any meeting or for any action of the Board.
5. Terms. Board appointments will be made for three year terms, and shall be staggered so that no more than two (2)

members will be appointed or reappointed each year. All terms will commence on January 1st and will end December 31st of each calendar year. There is no limitation on the number of terms that may be served by any one member.

6. Filling Vacancies. The Operating Members shall fill any vacancy on the Board. Individual persons of the Operating Members' governing bodies may nominate new Board members.
7. Officers. The Board shall elect its own officers, at least including a chair, a vice-chair, and a secretary and such other officers as the Board may decide. Officers shall serve one-year terms. Any such officer may be removed from office for any reason by joint action of the Operating Members.
8. Removal of Members. Members of the Board may be removed for just cause, including but not limited to violation of state or local ethics requirements, conviction of a felony, misappropriation of funds or property, embezzlement, or an unexcused failure to attend two (2) consecutive Board meetings. Board action shall determine whether an absence is excused or unexcused.
9. Meetings; Quorum. Meetings shall be held as needed, but shall be held at least twice in each calendar year. Meetings shall be held at the call of the chairperson or the Director or two (2) or more board members acting together. A majority of the Board qualified and serving shall constitute a quorum; Board action shall be effective when adopted by the favorable vote of a majority of the Board qualified and serving.

B. Responsibilities and Role of Director.

1. Appointment and Removal. The Director shall be appointed by the City Manager of the City of Fredericksburg. The selected Director must then be licensed as a Sanitarian by the Department of State Health Services of the State of Texas.
2. Primary Duties. The Director shall have all management and supervisory functions and serve as the chief administrative official over the Division. The Director shall be responsible for the administrative, financial, budgetary, personnel and policy and procedure development of the Division. The Director shall be responsible for recommending the hiring of personnel to the City

Manager of the City of Fredericksburg who will hire all personnel.

3. Implementation and Enforcement of Laws. The Director shall perform all duties necessary to implement and enforce the food establishment ordinance(s) and laws of the County of Gillespie, the City of Fredericksburg, and the State of Texas, and any other law to protect the public health and all duties prescribed by the Texas Board of Health, and shall perform such other duties as are delegated to the Director by the Operating Members. Copies of investigations and reports along with names of witnesses and other data will be forwarded to the Attorney General of Texas as necessary for other divisions of the State or other authorities to have an opportunity to evaluate any lawsuit and determine its position as a necessary party to the legal action. The forwarding of this material shall not, however, delay the legal procedures.

The City agrees to prosecute legal actions, when necessary, for violations occurring within its corporate limits. Where violations are found in Gillespie County but outside of the city limits, the County agrees to prosecute legal action when necessary. This division of responsibility shall not preclude legal action by the other Operating Member, but is for the purpose of assuring that enforcement procedures conducted by the Health Division will receive appropriate attention.

4. Responsibilities and Relationship to Board.
 - a. The Director is responsible for keeping the board informed of matters dealing with the public health.
 - b. With the Board's assistance, the Operating Members shall determine which programs the Director shall perform.
5. Appointment of Health Authority. The Director shall recommend to the Operating Members the initial appointment of a Health Authority, and shall recommend future appointments as necessary to fill any subsequent vacancy in the position.
6. Preparation of Reports. When requested by the Operating Members of the Board, the Director shall prepare and submit reports concerning the status of public health matters in the Health Division.

C. Responsibilities and Role of Health Authority.

1. Qualifications. The Health Authority shall be the Regional Director of the Department of State Health Services of the State of Texas, Region 8 or in the event such Regional Director is not available to the Division, then he or she shall be a competent physician who is legally qualified to practice medicine under the laws of the State of Texas and who is of reputable professional standing. The appointee must take and subscribe to the official oath and file a copy of the oath and appointment with the Texas Board of Health.
2. Duties. The duties of the Health Authority are as described in the various laws of the State of Texas and the ordinances and orders of the City of Fredericksburg and County of Gillespie, including the Gillespie County Emergency Management Plan, and include the oversight of State of Texas Health Programs affecting Gillespie County, the provision of health and medical services during emergency situations, evaluating public requests for health and medical assistance, dissemination of appropriate notifications to other services and agencies and advising the County Judge and City Mayor on the health related aspects of mass gathering permits.
3. Appointment and Removal.
 - a. The Health Authority, if the same is not the Regional Director for the Department of State Health Services of the State of Texas, Region 8, shall be jointly appointed by the governing bodies of each Operating Member. A Health Authority serves for a term of two (2) years and may be appointed to successive terms. The Health Authority may be removed from office during a term for any reason by majority vote of the governmental bodies of each Operating Member.

ARTICLE III. FINANCIAL AND ADMINISTRATION

A. Operating Members Responsible for Costs.

The Operating Members shall each pay one-half of the costs necessary for the operation of the Gillespie County Public Health Division, including but not limited to staff salaries, supplies, suitable office quarters, health and clinic centers and maintenance as set out in an annual budget, except where programs, clinics or other services are requested and funded by one or more contributing members.

Future service level increases will be funded by the member requesting the service and/or whichever member is required to provide such service. Subsequent years' budget percentages should reflect which member is required to provide or desires to provide the service. No Operating Member may require the provision of additional services by the Division without the approval of the other members.

B. Fees/Fines.

The Gillespie County Public Health Division may charge fees to persons who receive its services including for permits or inspections or other application of health rules to any food or other public or commercial establishment. The Board and Director shall be responsible for recommending appropriate fees for services provided by the Division, with the approval of the governing bodies of the Operating Members by a majority vote establishing such fee schedule(s)/rule(s).

Fees shall be received by the City and shall be used to fund the Division's operations.

Fines shall be collected by the Operating Members and the courts of the Operating Members and following remission of the State of Texas mandated fees as required shall either remit the same to the City or add a like sum to the amount paid by such entity above its allocated costs to be used to fund the Division's operations.

C. Budget Preparation and Administration - Responsibility of Director.

The Director shall prepare and administer the budget under the direction and control of the governing bodies of the Operating Members. The fiscal year shall be from October 1 to September 30, and the Director must present the proposed budget to each governing body for approval by July 1 of each fiscal year. Prior to October 1 of each year, each governing body must approve the proposed or amended budget. The budget should include direct revenue payments, facilities to be provided and Operating Member staff support requested by Health Division. As part of the annual budget approval, each member shall include payment schedules to the City of Fredericksburg.

D. Application for Grant Funds.

The Health Division shall apply for state and/or federal financial assistance required in conducting the business of the Health Division.

The monies now and henceforth contributed by the Operating Members shall be as set forth in the federal or state grant application for the particular project which is the subject of the grant request.

E. Division of Funds on Division Dissolution.

In the event of dissolution of the Division hereunder, the Operating Members shall divide all acquired funds and property in accordance with the percent each contributed to the budget in effect at the time of dissolution, provided the requirements of state or federal financial assistance contracts, whenever such is affected, have been complied with.

ARTICLE IV. INTENTIONALLY DELETED

ARTICLE V. COMPATIBILITY WITH LOCAL, STATE AND FEDERAL LAWS

This Agreement is intended to be consistent with all local, state and federal rules, regulations and laws. If one or more provisions or clauses contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This Agreement shall become effective upon the execution of it by each of the Operating Members.

EXECUTED this ____ day of _____ 20__.

City of Fredericksburg, Texas

By: Jeryl Hoover, Mayor

EXECUTED this ____ day of _____ 20__.

Gillespie County, Texas

By: Mark Stroehrer, Gillespie County Judge

FIRST ~~SECOND~~ AMENDED and
RESTATED GILLESPIE COUNTY
PUBLIC HEALTH DIVISION
COOPERATIVE AGREEMENT

The City of Fredericksburg, Texas, a municipal corporation situated in Gillespie County, Texas, and Gillespie County, Texas, enter into this ~~First~~Second Amended and Restated Gillespie County Public Health Division Cooperative Agreement (“Agreement”) for the purpose of changing and continuing the Public Health Division pursuant to authority granted under TEX. HEALTH & SAFETY CODE §121.031, et seq (Vernon 1992). The following terms and provisions shall be followed in the operation of the Health Division.

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B. Definitions.

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Division based on specific monetary contributions made to the Health Division for specific programs or service(s) to be provided by and through the Health Division and designated personnel.

4. "Department" means the Department of State Health Services of the State of Texas.
5. "Director" refers to the chief administrative officer of the Gillespie County Public Health Division.
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7. "Health Division" refers to the Gillespie County Public Health Division.
8. "Operating Member" and/or "Government Entity" refers to the City of Fredericksburg, and/or Gillespie County as the political subdivisions creating the Health Division and whose governing bodies are responsible for approving the annual operating budget and funding of the Health Division.

C. Modification of Agreement.

This Agreement may be modified only in writing. A modification is effective upon approval of the governing body of each ~~operating member~~Operating Member. At times of voting by each ~~operating member~~Operating Member, such modification shall be reflected in the official minutes of each governing body acting on behalf of each ~~operating member~~Operating Member.

D. Withdrawal of a Governmental Entity from the Health Division;
Dissolution of the Health Division.

1. Procedures for Dissolution.

- a. — If one or more ~~operating member~~Operating Members desire dissolution of the ~~organization~~Health Division, a written notice shall be initiated through the Director at which time he/she will consult with the other ~~operating member~~Operating Member and will establish a termination date which shall be no sooner than six (6) months nor later than one (1) year from the date that the notice to terminate was delivered to the Director. After the established termination date, each member shall pay its proportionate share of operating expenses for an additional six (6) month period, if requested by the Board to fund dissolution activities.

a.

b. The Director shall use every means to coordinate an

~~October~~ January 1st and will end ~~September~~ December 30³¹ of each calendar year. There is no limitation on the number of terms that may be served by any one member.

6. Filling Vacancies. The ~~operating member~~ Operating Members shall fill any vacancy on the Board. Individual persons of the ~~operating member~~ Operating Members' governing bodies may nominate new Board members.

7. Officers. The Board shall elect its own officers, at least including a chair, a vice-chair, and a secretary and such other officers as the Board may decide. Officers shall serve one-year terms. Any such officer may be removed from office for any reason by joint action of the ~~operating member~~ Operating Members.

8. Removal of Members. Members of the Board may be removed for just cause, including but not limited to violation of state or local ethics requirements, conviction of a felony, misappropriation of funds or property, embezzlement, ~~and/or~~ an unexcused failure to attend two (2) consecutive Board meetings. Board action shall determine whether an absence is excused or unexcused.

~~9.~~ Meetings; Quorum. Meetings shall be held as needed, but shall be held at least twice in each calendar year. Meetings shall be held at the call of the chairperson ~~and/or~~ the Director ~~and/or~~ ~~three~~ two

9. ~~(3)~~ (2) or more board members acting together. A majority of the Board qualified and serving shall constitute a quorum; Board action shall be effective when adopted by the favorable vote of a majority of the Board qualified and serving.

B. Responsibilities and Role of Director.

1. Appointment and Removal. The Director shall be appointed by the City Manager of the City of Fredericksburg. The selected Director must then be licensed as a Sanitarian by the Department of State Health Services of the State of Texas.

2. Primary Duties. The Director shall have all management and supervisory functions and serve as the chief administrative official over the Division. The Director shall be responsible for the administrative, financial, budgetary, personnel and policy and

procedure development of the Division. The Director shall be responsible for recommending the hiring of personnel to the City Manager of the City of Fredericksburg who will hire all personnel.

2.3. Implementation and Enforcement of Laws. The Director shall perform all duties necessary to implement and enforce the food establishment ordinance(s) and laws of the County of Gillespie, the City of Fredericksburg, and the State of Texas, and any other law to protect the public health and all duties prescribed by the Texas Board of Health, and shall perform such other duties as are delegated to the Director by the ~~operating~~ Operating ~~m~~MMembers. Copies of investigations and reports along with names of witnesses and other data will be forwarded to the Attorney General of Texas as necessary for other divisions of the State or other authorities to have an opportunity to evaluate any lawsuit and determine its position as a necessary party to the legal action. The forwarding of this material shall not, however, delay the legal procedures.

The City agrees to prosecute legal actions, when necessary, for violations occurring within its corporate limits. Where violations are found in Gillespie County but outside of the city limits, the County agrees to prosecute legal action when necessary. This division of responsibility shall not preclude legal action by the other ~~party~~ Operating Member, but is for the purpose of assuring that enforcement procedures conducted by the Health Division will receive appropriate attention.

3.4. Responsibilities and Relationship to Board.

- a. The Director is responsible for keeping the board informed of matters dealing with the public health.
- b. With the Board's assistance, the ~~operating-member~~ Operating Members shall determine which programs the Director shall perform.

4.5. Appointment of Health Authority. The Director shall recommend to the ~~e~~ Operating ~~m~~ MMembers the initial appointment of a Health Authority, and shall recommend future appointments as necessary to fill any subsequent vacancy in the position.

5.6. Preparation of Reports. When requested by the ~~e~~ Operating ~~m~~ MMembers of the Board, the Director shall prepare and submit

reports concerning the status of public health matters in the Health Division.

C. Responsibilities and Role of Health Authority.

1. Qualifications. The Health Authority shall be the Regional Director of the Department of State Health Services of the State of Texas, Region 8 or in the event such Regional Director is not available to the Division, then he or she shall be a competent physician who is legally qualified to practice medicine under the laws of the State of Texas and who is of reputable professional standing. The appointee must take and subscribe to the official oath and file a copy of the oath and appointment with the Texas Board of Health.

2. Duties. The duties of the Health Authority are as described in the various laws of the State of Texas and the ordinances and orders of the City of Fredericksburg and County of Gillespie, including the Gillespie County Emergency Management Plan, and include the oversight of State of Texas Health Programs affecting Gillespie County, the provision of health and medical services during emergency situations, evaluating public requests for health and medical assistance, dissemination of appropriate notifications to other services and agencies and advising the County Judge and City Mayor on the health related aspects of mass gathering permits.

3. Appointment and Removal.

a. The Health Authority, if the same is not the Regional Director for the Department of State Health Services of the State of Texas, Region 8, shall be jointly appointed by the governing bodies of each Operating Member. A Health Authority serves for a term of two (2) years and may be appointed to successive terms.

~~b.a. During a term as described in 3a,~~ The Health Authority may be removed from office during a term for any reason by majority vote of the governmental bodies of each Operating Member.

ARTICLE III. FINANCIAL AND ADMINISTRATION

A. Operating Members Responsible for Costs.

The ~~operating member~~ Operating Members shall each pay one-half of the costs necessary for the operation of the Gillespie County Public Health Division, including but

not limited to staff salaries, supplies, suitable office quarters, health and clinic centers and maintenance as set out in an annual budget, except where programs, clinics or other services are requested and funded by one or more contributing members.

Future service level increases will be funded by the member requesting the service and/or whichever member is required to provide such service. Subsequent years' budget percentages should reflect which member is required to provide or desires to provide the service. No ~~operating member~~Operating Member may require the provision of additional services by the Division without the approval of the other members.

B. Fees/Fines.

The Gillespie County Public Health Division may charge fees to persons who receive its services including for permits or inspections or other application of health rules to any food or other public or commercial establishment. The Board and Director shall be responsible for recommending appropriate fees for services provided by the Division, with the approval of the ~~Boards~~governing bodies of the ~~operating member~~Operating Members by a majority vote establishing such fee schedule(s)/rule(s).

Fees shall be received by the City and shall be used to fund the Division's operations.

Fines shall be collected by the ~~operating member~~Operating Members and the courts of the ~~operating member~~Operating Members and following remission of the State of Texas mandated fees as required shall either remit the same to the City or add a like sum to the amount paid by such entity above its allocated costs to be used to fund the Division's operations.

C. Budget Preparation and Administration - Responsibility of Director.

The Director shall prepare and administer the budget under the direction and control of the governing bodies of the ~~operating member~~Operating Members. The fiscal year shall be from October 1 to September 30, and the Director must present the proposed budget to each governing body for approval by July 1 of each fiscal year. Prior to October 1 of each year, each governing body must approve the proposed or amended budget. The budget should include direct revenue payments, facilities to be provided and ~~operating member~~Operating Member staff support requested by Health Division. As part of the annual budget approval, each member shall include payment schedules to the City of Fredericksburg.

D. Application for Grant Funds.

The Health Division shall apply for state and/or federal financial assistance required in conducting the business of the Health Division.

The monies now and henceforth contributed by the ~~operating member~~ Operating Members shall be as set forth in the federal or state grant application for the particular project which is the subject of the grant request.

E. Division of Funds on Division Dissolution.

In the event of dissolution of the Division hereunder, the ~~operating member~~ Operating Members shall divide all acquired funds and property in accordance with the percent each contributed to the budget in effect at the time of dissolution, provided the requirements of state or federal financial assistance contracts, whenever such is affected, have been complied with.

ARTICLE IV. ~~ORGANIZATIONAL STRUCTURE~~ INTENTIONALLY DELETED

~~The organizational structure is illustrated in Attachment #1.~~

ARTICLE V. COMPATIBILITY WITH MUNICIPAL LOCAL, STATE AND FEDERAL LAWS

This ~~cooperative a~~ Agreement is intended to be consistent with all ~~municipal local~~, state and federal rules, regulations and laws. If one or more provisions or clauses contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This ~~first amended a~~ Agreement shall become effective upon the execution of it by each of the ~~operating member~~ Operating Members.

EXECUTED this _____ day of _____ 20__.

City of Fredericksburg, Texas

By: Jeryl Hoover, Mayor ~~CITY OF FREDERICKSBURG, TEXAS — GILLESPIE COUNTY, TEXAS~~

EXECUTED this _____ day of _____ 20__.

Gillespie County, Texas

By: Mark Stroehrer, Gillespie County Judge

~~JERYL HOOVER — MARK STROEHER~~
~~Mayor County Judge~~

~~ATTEST: ATTEST:~~

~~SHELLEY BRITTON MARY LYNN RUSCHE
City Secretary County Clerk~~

~~APPROVED AS TO FORM: APPROVED AS TO FORM:~~

~~PAT MCGOWAN TAMMY KEENER
City Attorney County Attorney
City of Fredericksburg Gillespie County, Texas~~

~~Date of execution: Date of execution:~~

~~_____, 2009 _____, 2009~~



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Health Department

TO: Mayor and City Council

FROM: Kelli Olfers

MEETING DATE: Nov. 15, 2022

CATEGORY: Consent

CAPTION: Gillespie County Health Board appointments of Amy Montgomery and Hollie Reno to a one-year term (expiring December 2023), reappointing Wanda Detmar and Cathy Lindig for two-year terms (expiring December 2024), and Brett Beyer for a three-year term (expiring December 2025)

PRESENTATION: Kelli Olfers, Gillespie County Health Department Director

SUMMARY:

With the reorganization of the Gillespie County Health Board from a 9 member board to a 5 member board, we are in need of redistributing the terms of proposed board members. Distribution of terms will be 2 members with term ending 12/31/2023, 2 members with term ending 12/31/2024, and 1 board member term ending 12/31/2025.

BACKGROUND:

The Gillespie County Health Board is a county board that advises the City Council and Commissioners Court on items brought to them by these government entities dealing with the general health and safety of Gillespie County residents.

FUNDING SOURCE: N/A

FINANCIAL IMPACT:

STAFF RECOMMENDATION:

It is recommended to City Council the approval for one year term for current board members Amy Montgomery and Hollie Reno. Staff recommends reappointing Wanda Detmar and Cathy Lindig for 2 year term as well as reappointing Brett Beyer for a three term commitment.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS:

APPROVAL/REVIEW: *Kelli O'Leary*

DEPARTMENT NAME: GC Health

FINANCE NAME: *Sandra Hollenbeck*

CITY ATTORNEY NAME: *[Signature]*

CITY MANAGER NAME: *[Signature]*

CREATED: *Kelli O'Leary 11/9/2022*

REVIEWED: *11/9/2022*

APPROVED: *11-9-2022*

APPROVED: *11/9/22*



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Administration

TO: Mayor and City Council

FROM: Shelley Goodwin, City Secretary

MEETING DATE: Nov. 15, 2022

CATEGORY: Consent

CAPTION: Consider the reappointments for Julie Kuhken and Stephen Harris to the Gillespie County Economic Development Commission (GCEDC) with terms expiring on December 31, 2024.

PRESENTATION: Tim Lehmborg, Gillespie County Economic Development Director

SUMMARY: Mr. Lehmborg has notified the City that the GCEDC has two voting City appointed positions with their terms expiring. Both Julie Kuhken and Stephen Harris serve as City representatives and both have agreed and are eligible to serve another term.

BACKGROUND: The City has four voting representatives that serve on the GCEDC. The four voting members serve a two-year term. The attached document provides a list of the members, terms, and the entity they represent.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: Approve the two-year appointments of Julie Kuhken and Stephen Harris.

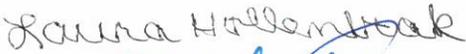
COMMUNITY VISIONING/STRATEGIC INITIATIVES: Business

ATTACHMENTS: GCEDC Officers and Board Directors

APPROVAL/REVIEW: 

DEPARTMENT NAME: City Secretary

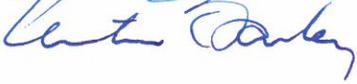
CREATED: 11/8/2022

FINANCE NAME: 

REVIEWED: 11/9/2022

CITY ATTORNEY NAME: 

APPROVED: 11-9-2022

CITY MANAGER NAME: 

APPROVED: 11/9/22

Gillespie County Economic Development Commission 2022 Officers and Board of Directors (Nov. 2022)

President:	Amanda Stevens
Vice President:	Wade Dittmar
Treasurer:	Tony Klein
Secretary:	Julie Kuhlken
Executive Director:	Tim Lehmborg

The 2022 GCEDC Board of Directors with term expiration

Appointed by the City:	Term Expires:
Stephen Harris	Dec. 31, 2022
Julie Kuhlken	Dec. 31, 2022
Brad Hardin	Dec. 31, 2023
Jim Jarreau	Dec. 31, 2023

Appointed by the County:

Steve McAnally	Dec. 31, 2022
Wade Dittmar	Dec. 31, 2022
Ross Allen	Dec. 31, 2023
Tony Klein	Dec. 31, 2023

Appointed by the GCEDC Board of Directors:

Amanda Stevens	Dec. 31, 2023
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Ex-Officio Members: By Position (Confirmed Annually)

County of Gillespie	Mark Stroehler, Charles Olfers
City of Fredericksburg	Bobby Watson, Kent Myers Clinton Bailey
Chamber of Commerce	Penny McBride
Convention/Visitors Bureau	Ernie Loeffler Brady Closson
Harper Community	Dan Abbott
Stonewall Chamber	Jamey Vogel
Airport Manager	Tony Lombardi
Board of Realtors	Mike Starks



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Drainage

TO: Mayor & City Council

FROM: Garret Bonn - Interim City Engineer

MEETING DATE: 11/15/2022

CATEGORY: Ordinance

CAPTION: Consider actions related to Texas Water Development Board (TWDB) Flood Infrastructure Funding for the N. Llano Storm Sewer Project

Resolution 2022-24R approving a Grant Agreement in the amount of \$390,529 and an Escrow Agreement relating thereto

Consideration and approval of Ordinance 2022-37 by the City Council of the City of Fredericksburg, Texas, authorizing the issuance of "City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Series 2022"; providing for the first payment of the principal of and interest on the bonds by a first and prior lien on and pledge of the Pledged Revenues of the City's Drainage Utility System; providing for an effective date

PRESENTATION: Garret Bonn - Interim City Engineer

SUMMARY: Discussion and possible action relating to TWDB Flood Infrastructure Funding for the N. Llano Storm Sewer Project in an amount not to exceed \$2,602,529.

BACKGROUND: On March 16, 2020, the Texas Water Development Board (TWDB) published the Flood Intended Use Plan for State Fiscal Year 2020 and invited eligible applicants to submit abridged applications relating certain types of eligible projects. In response, the City of Fredericksburg submitted two abridged applications for the following projects which both ranked highly in the City's Drainage Master Plan which was completed in 2016:

- 1) Flood Early Warning System (FEWS) Improvements
- 2) Llano (SH 16N) Storm Sewer System

On September 17, 2020, TWDB's governing Board adopted the final 2020 Flood Intended Use Plan. At that same meeting, the Board also approved the prioritization for the 2020 Flood Infrastructure Fund cycle and established the amount of funds available for grants and zero-interest loans. The City's FEWS and N. Llano Storm Sewer projects ranked 67th and 189th, respectively, out of 285 qualifying applications.

On September 1, 2021, the City received a letter from TWDB inviting the City to submit a complete application for the N. Llano Storm Sewer Project under an updated for projects. The N. Llano Storm Sewer System project is a phased approach to address stormwater issues in the College St./N. Llano/Sycamore/Travis area. Phase I of the project would include the installation of inlets in and around the intersection of N. Llano and E. College St. that would capture stormwater and convey it to Town Creek via a storm sewer main along N. Llano (refer to attached exhibit).

On October 18, 2021, City Council authorized staff to proceed with the full application for the project and it was submitted to TWDB on October 26, 2021. On March 3, 2022, TWDB passed a resolution (attached) approving financial assistance in the amount of \$2,602,529 to the City of Fredericksburg. The approved eligible funding for the project is 15% (\$390,529) in the form of grant funds and the City would be responsible for the remaining 85% (\$2,212,000) via a local match or a loan through the FIF. The benefits of a loan through the FIF are that it has zero percent interest rate, and the term can be up to 30 years. The first payment is also not due until 18 months after completion of project construction. The approved FY 2023 budget includes \$350,000 to allow for design of the project to begin with the intent to complete the project in late 2023 or early 2024.

Dan Wegmiller with Specialized Public Finance, Inc. and Stephanie Leibe with Norton, Rose, Fulbright have been coordinating with the TWDB on behalf of the City. The required draft documentation is attached for your review. Mr. Wegmiller will be present at the Council meeting to discuss the required documentation and answer any questions you may have.

FUNDING SOURCE: Drainage

FINANCIAL IMPACT: \$2,602,529

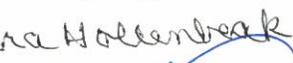
STAFF RECOMMENDATION:

City staff and the City's bond counsel recommend approval of the grant agreement (\$390,529) and drainage revenue bond (\$2,212,000) for project funding through the TWDB-Flood Infrastructure Fund for the City of Fredericksburg N. Llano Storm Sewer System Project

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Government

ATTACHMENTS:

Project Exhibit, Funding Approval Timeline, TWDB Resolution 22-021,
Draft Grant Agreement, Ordinance & Recommendation Letter

APPROVAL/REVIEW: 
DEPARTMENT NAME: Int. City Engineer
FINANCE NAME: 
CITY ATTORNEY NAME: 
CITY MANAGER NAME: 

CREATED: 11-8-2022
REVIEWED: 11/9/2022
APPROVED: 11-9-2022
APPROVED: 11/9/22



FIGURE 1
City of Fredericksburg
N. Llano (SH 16N) Storm Sewer System

LEGEND

-  Storm Sewer
-  Curb Inlets
-  Impacted Drainage Area
-  City Limit Boundary



SPECIALIZED PUBLIC FINANCE INC.
FINANCIAL ADVISORY SERVICES

**City of Fredericksburg, Texas
Timetable for Issuance of
Utility System Drainage Revenue Bonds, Series 2022
Texas Water Development Board – Flood Infrastructure Fund**

Timeline of Events

Thursday, March 3, 2022	TWDB Board approves \$2,602,529 in financial assistance for the City of Fredericksburg consisting of \$2,212,000 in loans and \$390,529 in grant from the Flood Infrastructure Fund (FIF) for design and construction of drainage improvement.
Thursday, October 6, 2022	Draft Ordinance sent to TWDB for review (30 days prior to authorization). (BC)
Monday, November 7, 2022	Interest rates set (5 business days prior to Award.) (FA and BC)
Monday, November 14, 2022	<u>Award</u> . The City Council will consider an Ordinance authorizing the issuance of the Revenue Bonds and awarding them to the TWDB. (FA and BC)
Tuesday, November 29, 2022	Final documents sent to Attorney General. (BC)
Monday, December 12, 2022	Complete and final documentation sent to TWDB (at least 8 days prior to closing). (FA and BC)
Wednesday, December 21, 2022	<u>Delivery Date</u> . The City receives funds from the TWDB.

FA - Financial Advisor

BC – Bond Counsel

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,602,529 TO THE CITY OF FREDERICKSBURG
FROM THE FLOOD INFRASTRUCTURE FUND
THROUGH THE PROPOSED PURCHASE OF
\$2,212,000 CITY OF FREDERICKSBURG, TEXAS
UTILITY SYSTEM DRAINAGE REVENUE BONDS,
PROPOSED SERIES 2022
AND
THE EXECUTION OF A GRANT AGREEMENT
IN THE AMOUNT OF \$390,529

(22-021)

WHEREAS, the City of Fredericksburg (City), located in Gillespie County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, for the design and construction of a flood project, identified as Project No. 40184; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$2,602,529 through the TWDB's proposed purchase of \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Proposed Series 2022 (together with all authorizing documents (Obligations)) and \$390,529 through the execution of a Grant Agreement (Obligations), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of drainage systems revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the City has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that the City has submitted a written memorandum of understanding relating to the management of the project watershed executed by all governing bodies of eligible political subdivisions located in the project watershed;
4. that in its opinion the taxes or revenues pledged by the City will be sufficient to meet all Obligations assumed by the City in accordance with Texas Water Code § 15.536(3);

5. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the FIUP;
6. that the City has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP;
7. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP;
8. that the City has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project;
9. that the Project was developed using the best and most recent available data, in accordance with the FIUP;
10. that the City has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP; and
11. that the City has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

12. A commitment is made by the TWDB to the City of Fredericksburg for financial assistance in the amount of \$2,602,529 from the Flood Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Proposed Series 2022, and the execution of a Grant Agreement in the amount of \$390,529. This commitment will expire on September 30, 2022; however, the Executive Administrator may, at his discretion, grant up to one extension for a maximum of three months.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that the City has complied with all of the requirements of the laws under which said Obligations were issued, that said Obligations were issued in conformity with the Constitution and laws of the State of Texas, and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to

time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

4. the City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2);

The Following Conditions Must Be Included in the Obligations:

5. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
6. the Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
7. the Obligations must provide that the City will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project;
8. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
9. the Obligations must include a provision wherein the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
10. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
11. the Obligations must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
12. the Obligations must include a provision requiring the City to deposit any bond proceeds from the Obligations that are determined to be surplus proceeds remaining

- after completion of the Project and completion of a final accounting, including any interest earned on the bond proceeds, into the Interest and Sinking Fund;
13. the Grant Agreement must include a provision stating that the City shall either return or deposit into the Interest and Sinking Fund any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
 14. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
 15. financial assistance proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
 16. financial assistance proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
 17. the Obligations must contain a provision stating that the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G;
 18. [only for tax-exempt bonds] the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 19. [only for tax-exempt bonds] the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");
 20. the Obligations must contain a provision requiring the City to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow

based on the receipt of the quarterly status reports and the projected quarterly needs for the project.

21. the Obligations shall include a special covenant prohibiting the City from encumbering, pledging, or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the City shall in no way encumber, pledge, or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

Pledge Conditions for the Loan:

22. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
23. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after the term of any financial assistance made by the TWDB pursuant to this commitment, the Obligations must contain a provision providing that the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
24. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the City certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator;

Conditions to Close or for Release of Funds:

25. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
26. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor

and bond counsel, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

27. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
28. prior to closing, the City's bond counsel must prepare a written, unqualified approving opinion acceptable to the executive administrator. Bond counsel may rely on covenants and representations of the City when rendering this opinion; and
29. prior to release of funds for construction, the City must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the City has the legal authority necessary to complete the acquisitions.

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

30. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator.

APPROVED and ordered of record this, the 3rd day of March 2022.

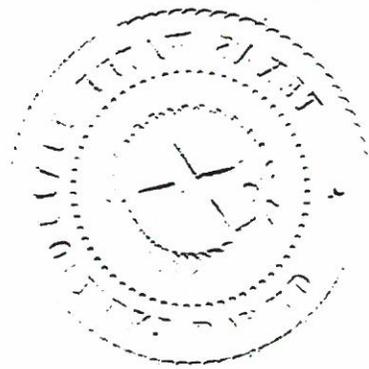
TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: 3/3/22

ATTEST:

Jeff Walker
Jeff Walker, Executive Administrator





Grant Agreement Flood Infrastructure Fund

TEXAS WATER DEVELOPMENT BOARD

AND

CITY OF FREDERICKSBURG

GILLESPIE COUNTY, TEXAS

TWDB COMMITMENT NO. G1001480

TWDB PROJECT NO. 40184

TWDB RESOLUTION NO. 22-021

CITY OF FREDERICKSBURG
TWDB COMMITMENT NO. G1001480
TWDB PROJECT NO. 40184
TWDB RESOLUTION NO. 22-021

GRANT AGREEMENT

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**GRANT AGREEMENT
BETWEEN THE
TEXAS WATER DEVELOPMENT BOARD
AND THE
CITY OF FREDERICKSBURG**

WHEREAS, the City of Fredericksburg (City), located in Gillespie County, has filed an application with the Texas Water Development Board (TWDB) for financial assistance from the Flood Infrastructure Fund to finance a flood project identified as Project No. 40184; and

WHEREAS, on March 3, 2022, the TWDB determined that the City qualifies for financial assistance pursuant to Texas Water Code § 15.534 and the applicable Flood Intended Use Plan (FIUP) and agreed pursuant to the TWDB Resolution to:

- (a) provide a grant in the amount of \$390,529 to the City; and
- (b) provide financing in the amount of \$2,212,000 to be evidenced by the TWDB's proposed purchase of \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Proposed Series 2022; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Grant Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, TWDB guidance, and all terms and conditions set forth herein.

ARTICLE I. DEFINITIONS

The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Grant Agreement and the attached exhibits.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 363.2(8) and required by the TWDB Resolution.

Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget. Expenses incurred prior to March 12, 2020, are not Eligible Expenses.

Escrow Account means an account established by the City that will be used to manage the Grant Funds in accordance with an escrow agreement acceptable to the Executive

Administrator, which is attached hereto as **EXHIBIT E**, until the Executive Administrator authorizes the release of the Grant Funds to the Construction Account.

Executive Administrator means the Executive Administrator of the TWDB or a designated representative.

Force Majeure means a failure or delay in a Party's performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and that, by the exercise of all reasonable due diligence, such Party is unable to overcome.

Grant Funds means the amount of financial assistance from the TWDB under Commitment Number G1001480 in the amount of \$390,529 to finance the Project.

Obligations means the \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, ~~Bond~~ Series 2022, together with all authorizing documents, which evidence the portion of the financial assistance that requires repayment, identified as L1001479.

Outlay Report means TWDB form regarding the total amount of costs incurred relating to the Project for the specified period.

Parties or Party means TWDB and the City and their authorized successors and assignees.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 40184.

State means the State of Texas.

Surplus Funds means those grant funds remaining after the City has submitted final accounting to the Executive Administrator pursuant to 31 TAC § 363.42(a)(2)(C), including interest earned.

TAC means the Texas Administrative Code.

TWDB means the Texas Water Development Board.

TWDB Resolution means TWDB Resolution No. 22-021, dated March 3, 2022, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

ARTICLE II. AUTHORITY AND RECITALS

2.1. AUTHORITY. This Agreement is authorized by Texas Water Code Chapter 15,

Subchapter I and is also governed by Texas Water Code, Chapter 6; 31 TAC Chapter 363, Subchapters A and D; and the TWDB Resolution.

2.2. RECITALS. The Parties agree that the following representations are true and correct and form the basis of this Agreement:

- A. The TWDB may provide financial assistance in the form of a grant for all or a portion of the Project costs in an amount that the TWDB has determined to be eligible.
- B. On March 3, 2022, TWDB considered an application filed by the City for financial assistance for a flood project. Based on the representations made by the City in that application, the TWDB adopted the TWDB Resolution in which the TWDB:
 - 1. determined that the City qualifies for a grant and is eligible for financial assistance; and
 - 2. made a commitment to provide financing through the purchase of bonds in an amount not to exceed \$2,212,000 for the design, and construction of the Project and to provide a grant in an amount not to exceed \$390,529 as a grant without the expectation of repayment.
- C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Grant Funds. The Executive Administrator is authorized to execute this Agreement on behalf of TWDB pursuant to TWDB Resolution, which is attached to this Agreement as **EXHIBIT A**. The City is authorized to execute this Agreement through its authorized representative designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as **EXHIBIT B**.
- D. If the City signs this Agreement with a false statement or it is subsequently determined that the City has violated any of the representations, guarantees, warranties, certifications, or affirmations included in the Agreement, the City will be in default under the Agreement and TWDB may terminate or void the Agreement.
- E. The City and TWDB act in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- F. The City represents and warrants that the provision of financial assistance under this Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. The City also represents that if any existing or potential conflict arises during the term of this contract, it will immediately notify TWDB.

ARTICLE III. LEGAL REQUIREMENTS

3.1. APPLICABLE LAWS. In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to design, and construct the Project in compliance with the following:

- A. all federal laws and regulations that may be applicable to the Project;
- B. Texas Water Code Chapter 15, Subchapter I; and
- C. 31 TAC Chapter 363.

3.2. PROCUREMENT. The City must engage in competitive procurements for work on the Project. All purchases for goods, services, or commodities made with funds provided under this Agreement will comply with State and local procurement and contracting laws.

3.3. IRON AND STEEL. The City will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G.

3.4 NATIONAL FLOOD INSURANCE PROGRAM. The appropriate entities within the PLANNING/PROJECT AREA must currently enforce and continue to enforce floodplain management standards at least equivalent to National Flood Insurance Program minimum standards and may exceed the National Flood Insurance Program minimum standards.

3.5 TERRORIST WATCH LIST. The City certifies that it will not enter into a contract with any contractor or subcontractor that is listed on the federal government's terrorism watch list as described in Executive Order 13224.

3.6 FOREIGN TERRORIST ORGANIZATION. The City certifies that it will not enter into a contract with any contractor or subcontractor that is engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.7 HUMAN TRAFFICKING PROHIBITION. Under Texas Government Code § 2155.0061, the City certifies that the City is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.8 PRIOR DISASTER RELIEF. Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code §§

2155.006 and 2261.053, the City certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

3.9 LOBBYING PROHIBITION. The City represents and warrants that TWDB's payments to the City and the City's receipt of appropriated or other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

ARTICLE IV. DESIGN, AND CONSTRUCTION

- 4.1. PROJECT REQUIREMENTS.** The City must comply with the following requirements.
- A. Plans and Specifications. The City will construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC § 363.41.
 - B. Changes to Plans and Specifications. The City will not make or implement any changes to the scope of the Executive Administrator's approved Project or to the specifications for the Project without the written approval of the Executive Administrator.
 - C. Project Schedule. The City will adhere to the TWDB approved Project schedule, attached as **EXHIBIT C**. The City must not exceed or revise the Project schedule except upon written approval from the TWDB. The City must not delay the Project completion date except by amendment to this Agreement.
 - D. Project Budget. The City will be solely responsible for all costs that exceed the TWDB approved Project Budget, attached as **EXHIBIT D**. The City must notify the Executive Administrator immediately of all changes to the Project Budget, including when it appears that the Project Budget may not be sufficient to complete the Project.
 - E. Environmental Compliance. The City must comply with all environmental conditions and will implement environmental mitigation measures as required through TWDB environmental review under 31 TAC § 363.14.
 - F. Final Environmental Finding/Determination. The City will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project.
 - G. Personnel. The City must assign only qualified personnel to perform the services required to execute the Project as required under this Agreement. The City is responsible for ensuring that any contractor or subcontractor also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill, and ability to perform the

tasks and services required herein according to the standards of performance and care for their trade or profession.

H. Professional Standards. The City must provide the services and deliverables in accordance with applicable professional standards. The City represents and warrants that it is authorized to acquire contractors and/or subcontractors with the requisite qualifications, experience, personnel, and other resources to perform in the manner required by this Agreement.

4.2. **PROGRESS REPORTS.** The City must submit status reports on the progress of the project as requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the status reports and the projected needs for the project.

ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS

5.1. **CONDITIONS FOR DISBURSEMENT OF GRANT FUNDS.** No Grant Funds will be deposited into the Escrow Account or released until the applicable requirements and conditions in the TWDB Resolution and 31 TAC § 363.43, relating to Release of Funds, are met.

5.2. **DELIVERY OF GRANT FUNDS.** The TWDB will deposit the Grant Funds in an approved Escrow Account to be released to the City's Construction Account at the direction of the Executive Administrator.

A. Outlay Reports and Invoices. The City must submit TWDB Outlay Report forms identifying:

1. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
2. identification and description of the City's share of the total costs for the billing period, if applicable; and
3. invoices, receipts, or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an Eligible Expense incurred by the City.

B. Release of Funds. The Executive Administrator will authorize the release of Grant Funds from Escrow when Outlay Reports have been approved by the TWDB.

5.3. **ELIGIBLE EXPENSES.** The City must use Grant Funds for Eligible Expenses. The City must return any Grant Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Grant Funds used for any ineligible or unverified expenses will be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is

insufficient to fully offset the amount of improperly expended Grant Funds, the City must use other funds to fully repay the TWDB. This Section 5.3, Eligible Expenses, survives the termination or expiration of this Agreement.

5.4. FINAL ACCOUNTING. The City must provide a final accounting of funds expended on the Project pursuant to 31 TAC § 363.42. The Executive Administrator will provide written instructions to the City either return or deposit into the Interest and Sinking Fund for the Obligations any Surplus Funds from the grant. This Section 5.4, Final Accounting, survives the termination or expiration of this Agreement.

5.5. WATER AUDIT. If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually must perform and file a water audit computing the City's most recent annual system water loss with the TWDB. The first water audit must be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits. This Section 5.5, Water Audit, survives the termination or expiration of this Agreement.

5.6. ANNUAL FINANCIAL AUDIT. During the Term of this Agreement, the City must submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits will be submitted to the TWDB no later than 180 days after the close of the City's fiscal year.

5.7. INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS. Grant proceeds are public funds and, as such, these proceeds must be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1. OWNERSHIP OF WORKS. It is agreed that all works developed by the City and any subcontractors using funds provided under this Agreement or otherwise rendered in or related to the performance in whole or part of this Agreement, including but not limited to reports, drafts of reports, material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate, are the joint property of the TWDB and the City. The City hereby conveys co-ownership of such works to TWDB as they are created in whole or part. If present conveyance is ineffective under applicable law, the City agrees to convey a co-ownership interest of such works to TWDB after creation and to provide written documentation of such conveyance upon request by TWDB. The TWDB and the City each have full and unrestricted rights to use such works with no compensation obligation.

6.2. SUBCONTRACTORS. The City must include terms and conditions in all contracts or

other engagement agreements with any subcontractors as are necessary to secure these rights and protections and must require that subcontractors include similar such terms and conditions in any contracts or other engagements with their subcontractors.

ARTICLE VII. NON-PERFORMANCE, TERMINATION, AND REMEDIES

7.1. STOP WORK ORDERS.

- A. Stop Work Order (SWO). The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO will provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO will provide the City with a specified time to cure.
- B. City's Response. The City must provide a written response to the SWO and will provide the Executive Administrator with a detailed plan to address and cure the conditions causing the SWO. The City must provide the response within five business days from its receipt of the SWO.
- C. Executive Administrator's Reply. The Executive Administrator may accept, reject, or amend the City's plan and will provide notice of such action to the City within five business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City's execution of the plan to cure. The Executive Administrator may modify the City's plan to cure only in a manner consistent with the terms and conditions of this Agreement.
- D. City's Option. The City must notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City will continue work to complete all obligations under this Agreement.

7.2. TERMINATION. The TWDB may terminate this Agreement, in whole or in part, at any time, without penalty to the TWDB. Upon receipt of a written notice of termination, the City will immediately discontinue all work in connection with the performance of this Agreement and will promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City will be payable from the funding provided pursuant to this Agreement.

Within thirty (30) days of the notice of termination, the City must submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

7.3. SURVIVAL OF TERMS AND CONDITIONS. Termination or expiration of this

Agreement for any reason does not release either Party from any liabilities or obligations set forth in this Agreement that:

1. the Parties have expressly agreed will survive any such termination or expiration, if any; or
2. by their nature, would be intended to be applicable following any such termination or expiration.

7.4. REAL ESTATE. If the City purchases real estate for the Project with Grant Funds and any of the real estate or portion of the real estate is not used for the Project, the City will repay to the TWDB the full amount of the Grant Funds for purchase of the real estate that is not used for the Project. Such amount will be due and payable within 90 days after termination or expiration of this Agreement.

7.5. REMEDIES.

- A. The City will have all remedies available in law or equity.
- B. The TWDB must have all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.
- C. Notwithstanding the availability of all remedies listed above, pursuant to 31 TAC § 363.406(d), if TWDB determines non-performance of the terms of this Agreement, TWDB may require repayment of all or part of the funds provided by grant assistance or impose sanctions such as prohibition of further board financial assistance.
- D. This Section 7.5 survives the termination or expiration of this Agreement.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

8.1 NEPOTISM. The City must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee, or member of the City's governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person.

This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member ~~relate~~ to such person in the prohibited degree.

← related

8.2. OPEN MEETINGS. The City must comply with Texas Government Code Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

8.3. EXCESS OBLIGATIONS PROHIBITED/NO DEBT AGAINST THE STATE. This Agreement is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.

8.4. INSURANCE AND INDEMNIFICATION.

- A. The City must at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City will insure against risks, accidents, casualties, or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB's interest in the Project.
- B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City will indemnify and hold the TWDB and the State harmless to the extent that the City may do so in accordance with State law.
- C. Grant Funds for the Project must not be used by the City when sampling, testing, removing, or disposing of contaminated soils and/or media at the project site. The City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law.

8.5. PERMITS. The City will be responsible for timely filing applications for all licenses, permits, registrations, and other authorizations that the City has identified in the application for financial assistance as required for the design, and construction of the Project. The City will submit copies of all of these final licenses, permits, registrations, and other authorizations issued by local, state, and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

8.6. RECORDS. The City will comply with all terms and conditions relating to records of the Project as follows:

- A. Duty to Maintain Records. The City will maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City must also require its contractors to maintain financial accounting records consistent with Generally Acceptable Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation will be accurate, current, and will reflect recordation of the transactions at or about the time the transactions occurred;

- B. Duty to Retain Records. The City will retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of applicable State law relating to retention and access to records. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after Project completion;
 - C. Public Records. The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City must promptly respond to a request by the TWDB for copies of any of the City's records related to this Agreement; and
 - D. Access to Records.
 - 1. State Auditor. By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Grant Funds received pursuant to this Agreement. The City must comply with directives from the Texas State Auditor and will cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Grant Funds received pursuant to the contract or subcontract.
 - 2. TWDB. The City agrees that the standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement will be made available for audit, examination, excerption, and transcription by the TWDB within a reasonable time after a request from the TWDB.
 - E. Proprietary and Confidential Information. The City warrants and represents that any information that is proprietary or confidential and is received by the City from TWDB will not be disclosed to any third party without the written consent of TWDB, whose consent will not be unreasonably withheld.
- 8.7. UPDATING INFORMATION.** The City must provide TWDB with updated information, reports, statements, and certifications as requested by the Executive Administrator relating

to the financial condition of the City or the Project and the use of Grant Funds. The City will promptly notify TWDB of any material change in the activities, prospects, or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, and agreements under this Grant Agreement.

8.8. FORCE MAJEURE. Unless otherwise provided, neither the City nor the TWDB nor any agency of the State will be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by Force Majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such Force Majeure or otherwise waive this right as a defense.

8.9. NON-ASSIGNABILITY. The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of TWDB.

8.10. ENTIRE AGREEMENT AND AMENDMENT. This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.1 do not require an amendment to this Agreement unless a change to the Project Schedule, **EXHIBIT C**, or the Project Budget, **EXHIBIT D**, results in a different project completion date or total budget amount.

8.11. NO WAIVER. The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement will not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

8.12. LAW AND VENUE. The validity, operation, and performance of this Agreement will be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement will be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the design and construction of the Project, as applicable, and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Gillespie County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB will be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

8.13. NOTICES. All notices, notifications, or requests required or permitted by this Agreement will be in writing and will be transmitted by (1) email and or (2) personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received

by the Party to whom notice is sent.

Email:

Dain.Larsen@twdb.texas.gov

Personal delivery to mail:

Texas Water Development Board

Attn: Executive Administrator

1700 N. Congress Ave., 6th Floor

Austin, Texas 78711-3231

City of Fredericksburg

Attn: Assistant City Engineer

126 W. Main Street

Fredericksburg, Texas 78624

8.14. TERM. This Agreement is effective on the date signed by the Executive Administrator. The Agreement will expire upon successful completion of the Project and Final Accounting in accordance with Section 5.4 of this Agreement.

8.15. SURVIVAL OF TERMS AND CONDITIONS. This Article VIII, General Terms and Conditions, survives the termination or expiration of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed in multiple counterparts, each of which shall be deemed to be an original.

CITY OF FREDERICKSBURG

By: _____

Name: ~~Kent Myers~~
Title: City Manager

Clinton Bailey



Date: _____

TEXAS WATER DEVELOPMENT BOARD

By: _____

Name: Jeff Walker
Title: Executive Administrator

Date: _____

EXHIBIT A

TWDB Resolution No. 22-021

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,602,529 TO THE CITY OF FREDERICKSBURG
FROM THE FLOOD INFRASTRUCTURE FUND
THROUGH THE PROPOSED PURCHASE OF
\$2,212,000 CITY OF FREDERICKSBURG, TEXAS
UTILITY SYSTEM DRAINAGE REVENUE BONDS,
PROPOSED SERIES 2022
AND
THE EXECUTION OF A GRANT AGREEMENT
IN THE AMOUNT OF \$390,529**

(22-021)

WHEREAS, the City of Fredericksburg (City), located in Gillespie County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, for the design and construction of a flood project, identified as Project No. 40184; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$2,602,529 through the TWDB's proposed purchase of \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Proposed Series 2022 (together with all authorizing documents (Obligations)) and \$390,529 through the execution of a Grant Agreement (Obligations), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of drainage systems revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the City has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that the City has submitted a written memorandum of understanding relating to the management of the project watershed executed by all governing bodies of eligible political subdivisions located in the project watershed;
4. that in its opinion the taxes or revenues pledged by the City will be sufficient to meet all Obligations assumed by the City in accordance with Texas Water Code § 15.536(3);

5. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the FIUP;
6. that the City has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP;
7. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP;
8. that the City has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project;
9. that the Project was developed using the best and most recent available data, in accordance with the FIUP;
10. that the City has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP; and
11. that the City has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

12. A commitment is made by the TWDB to the City of Fredericksburg for financial assistance in the amount of \$2,602,529 from the Flood Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$2,212,000 City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Proposed Series 2022, and the execution of a Grant Agreement in the amount of \$390,529. This commitment will expire on September 30, 2022; however, the Executive Administrator may, at his discretion, grant up to one extension for a maximum of three months.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that the City has complied with all of the requirements of the laws under which said Obligations were issued, that said Obligations were issued in conformity with the Constitution and laws of the State of Texas, and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to

time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

4. the City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2);

The Following Conditions Must Be Included in the Obligations:

5. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
6. the Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
7. the Obligations must provide that the City will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project;
8. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
9. the Obligations must include a provision wherein the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
10. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
11. the Obligations must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
12. the Obligations must include a provision requiring the City to deposit any bond proceeds from the Obligations that are determined to be surplus proceeds remaining

- after completion of the Project and completion of a final accounting, including any interest earned on the bond proceeds, into the Interest and Sinking Fund;
13. the Grant Agreement must include a provision stating that the City shall either return or deposit into the Interest and Sinking Fund any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
 14. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
 15. financial assistance proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
 16. financial assistance proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
 17. the Obligations must contain a provision stating that the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G;
 18. [only for tax-exempt bonds] the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 19. [only for tax-exempt bonds] the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");
 20. the Obligations must contain a provision requiring the City to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow

based on the receipt of the quarterly status reports and the projected quarterly needs for the project.

21. the Obligations shall include a special covenant prohibiting the City from encumbering, pledging, or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the City shall in no way encumber, pledge, or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

Pledge Conditions for the Loan:

22. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
23. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after the term of any financial assistance made by the TWDB pursuant to this commitment, the Obligations must contain a provision providing that the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
24. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the City certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator;

Conditions to Close or for Release of Funds:

25. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
26. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor

and bond counsel, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

27. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
28. prior to closing, the City's bond counsel must prepare a written, unqualified approving opinion acceptable to the executive administrator. Bond counsel may rely on covenants and representations of the City when rendering this opinion; and
29. prior to release of funds for construction, the City must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the City has the legal authority necessary to complete the acquisitions.

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

30. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator.

APPROVED and ordered of record this, the 3rd day of March 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: 3/3/22

ATTEST:

Jeff Walker
Jeff Walker, Executive Administrator

EXHIBIT B
City of Fredericksburg Resolution

RESOLUTION NO. 2022-24R

A RESOLUTION APPROVING A GRANT AGREEMENT IN THE AMOUNT OF \$390,529 AND AN ESCROW AGREEMENT RELATING THERETO; AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER, OR THEIR DESIGNEES, TO EXECUTE ANY AND ALL DOCUMENTS RELATED THERETO; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Fredericksburg, Texas (the *City*) deems it necessary to request additional financial assistance from the Texas Water Development Board's (the *Board*) Flood Infrastructure Fund as evidenced by a contract (the *Grant Agreement*); and

WHEREAS, the City of Fredericksburg, Texas (the *City*) deems it necessary to request additional financial assistance from the Flood Infrastructure Fund of the Texas Water Development Board (the *Board*) as evidenced by a contract (the *Grant Agreement*); and

WHEREAS, in accordance with the rules and regulations of the Board, which govern the procedures in making this request, the governing body of the City is required to pass a resolution to accompany this request; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS THAT:

1. It is hereby found and determined that the City cannot reasonably finance the proposed project without the financial assistance of the Board in the amount requested in the City's Resolution adopted on October 5, 2020 filing an application (the *Application*) with the Board.

2. The Mayor and City Manager of the City are hereby authorized to execute and submit to the Board the Grant Agreement and the Escrow Agreement, and the Mayor and City Manager of the City, together with the bond counsel, financial advisors and consulting engineers named in the Application, are authorized to appear before the Board in support of the Application and this additional request.

3. The Mayor and City Manager of the City are further specifically authorized to make any required assurances to the Board in accordance with the rules, regulations, and policies of the Board.

4. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this resolution for all purposes and are adopted as a part of the judgment and findings of the City.

5. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

7. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Resolution would have been enacted without such invalid provision.

8. 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 Chapter 551, as amended, Texas Government Code.

9. This resolution shall be in force and effect from and after its passage on the date shown below.

[The remainder of this page intentionally left blank]

PASSED, ADOPTED AND APPROVED on the ____ day of _____, 2022.

CITY OF FREDERICKSBURG, TEXAS

Mayor

Attest:

City Secretary

(CITY SEAL)

EXHIBIT A

[GRANT] AGREEMENT FLOOD INFRASTRUCTRE FUND

SEE TAB NO. __

EXHIBIT B
ESCROW AGREEMENT
SEE TAB NO. __

EXHIBIT C
Project Schedule

**Fredericksburg
40184 – N Llano Storm Sewer System**

Project Schedule

Task	Schedule Date
Engineering Feasibility Report Completion (End of Planning Phase)	September 1, 2022
Design Phase	March 1, 2023
Start of Construction	June 1, 2023
Construction Completion	December 30, 2023

EXHIBIT D
Project Budget



Current Budget Detail
Fredericksburg
40184 - N Llano Storm Sewer System

Last Update: 12/21/2021

Budget Items	G1001480	L1001479		
	TWDB Funds	TWDB Funds	Local Funds	Total
Construction				
Construction	\$390,529.00	\$1,371,080.00	\$0.00	\$1,761,609.00
Subtotal for Construction	\$390,529.00	\$1,371,080.00	\$0.00	\$1,761,609.00
Basic Engineering Services				
Construction Engineering	\$0.00	\$32,200.00	\$0.00	\$32,200.00
Design	\$0.00	\$279,200.00	\$0.00	\$279,200.00
Planning	\$0.00	\$0.00	\$25,000.00	\$25,000.00
Subtotal for Basic Engineering Services	\$0.00	\$311,400.00	\$25,000.00	\$336,400.00
Special Services				
Environmental	\$0.00	\$10,000.00	\$0.00	\$10,000.00
Geotechnical	\$0.00	\$15,000.00	\$0.00	\$15,000.00
Inspection	\$0.00	\$37,111.00	\$0.00	\$37,111.00
Surveying	\$0.00	\$30,000.00	\$0.00	\$30,000.00
Subtotal for Special Services	\$0.00	\$92,111.00	\$0.00	\$92,111.00
Fiscal Services				
Bond Counsel	\$0.00	\$8,500.00	\$0.00	\$8,500.00
Financial Advisor	\$0.00	\$13,852.00	\$0.00	\$13,852.00
Fiscal/Legal	\$0.00	\$5,000.00	\$0.00	\$5,000.00
Subtotal for Fiscal Services	\$0.00	\$27,352.00	\$0.00	\$27,352.00
Contingency				
Contingency	\$0.00	\$410,057.00	\$0.00	\$410,057.00
Subtotal for Contingency	\$0.00	\$410,057.00	\$0.00	\$410,057.00
Total	\$390,529.00	\$2,212,000.00	\$25,000.00	\$2,627,529.00

EXHIBIT E
Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (Agreement), made by and between City of Fredericksburg, Texas, a political subdivision of the State of Texas in Gillespie County, Texas (the City), acting by and through its City Council, and _____, as Escrow Agent together with any successor in such capacity;

WITNESSETH:

WHEREAS, pursuant to a Grant Agreement, pursuant to which the City will accept certain contractual obligations (Obligations) to obtain financial assistance from the Texas Water Development Board (TWDB) for the purpose of funding a project identified as Project No. 40184 (Project); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code, Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of the proceeds of the Obligations (Proceeds) in escrow subject to being withdrawn only with the approval of the Executive Administrator or another designated representative; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount of fees to be paid by the City to the Escrow Agent, as set forth on **EXHIBIT A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise, and agree for themselves, their respective representatives and successors, as follows:

SECTION 1: ESCROW ACCOUNT(S). Upon the delivery of the Obligations described above, the Proceeds identified under TWDB Commitment Number(s) G1001480 shall be deposited to the credit of a special escrow account(s) or escrow subaccount(s) (Escrow Account(s)) maintained at the Escrow Agent on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account(s) shall be entitled "TWDB Commitment No. G1001480, City of Fredericksburg, Texas Grant Agreement" and shall not be subject to warrants, drafts or checks

drawn by the City but shall be disbursed or withdrawn to pay the costs of the Project for which the Obligations were issued or other purposes in accordance with the Grant Agreement and solely upon written authorization from the Executive Administrator or his/her designated representative. The Escrow Agent shall provide to the City and to the TWDB the Escrow Account(s) bank statements upon request.

SECTION 2: COLLATERAL. All cash deposited to the credit of such Escrow Account(s) and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Texas Government Code, Chapter 2257.

SECTION 3: INVESTMENTS. While the Proceeds are held in escrow, the Escrow Agent shall only invest escrowed Proceeds in investments that are authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256 (PFIA). It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the PFIA but also with its own written investment policy.

SECTION 4: DISBURSEMENTS. The Escrow Agent shall not honor any disbursement from the Escrow Account(s), or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator or his/her designated representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account(s) provided that all such investments are consistent with the PFIA requirements.

SECTION 5: UNEXPENDED FUNDS. Any Proceeds remaining unexpended in the Escrow Account(s) after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Grant Agreement. The City shall deliver a copy of such TWDB approval of the final accounting to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Grant Agreement, that being the sole obligation of the City.

SECTION 6: CERTIFICATIONS. The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

SECTION 7: LIABILITY OF ESCROW AGENT. To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed

upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations.

SECTION 8: RECORDS. The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

SECTION 9: MERGER/CONSOLIDATION. In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

SECTION 10: AMENDMENTS. This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Escrow Agent without its consent.

SECTION 11: TERMINATION. In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within five business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed

by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

SECTION 12: EXPIRATION. This Agreement shall expire upon final transfer of the funds in the Escrow Account(s) to the City.

SECTION 13: POINT OF CONTACT. The points of contact for the City, the Escrow Agent and the TWDB are as follows:

(Printed Name of Escrow Agent)	Executive Administrator
Physical (Street) Address	Texas Water Development Board
Phone Number	1700 North Congress Avenue
Fax Number	Austin, Texas 78701
Email Address	

Clinton Bailey
City Manager
City of Fredericksburg
126 W. Main Street
Fredericksburg, Texas 78624

SECTION 14: CHOICE OF LAW. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

SECTION 15: ASSIGNABILITY. This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

SECTION 16: ENTIRE AGREEMENT. This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or the Escrow Account(s). No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

SECTION 17: VALIDITY OF PROVISIONS. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 18: COMPENSATION FOR ESCROW SERVICES. The Escrow Agent shall be entitled to compensation for its services as stated in Exhibit A, which compensation shall be paid by the City but may not be paid directly from the Escrow Account(s).

SECTION 19: ANTI-BOYCOTT VERIFICATION. The Escrow Agent represents that, to the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2271 of the Texas Government Code, and subject to applicable Federal law, the Escrow Agent or any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Escrow Agent either (i) meets one of the exemption criteria under Section 2271.002 of the Texas Government Code or (ii) does not boycott Israel and will not boycott Israel through the term of this Agreement. The term "boycott Israel" as used in this paragraph has the meaning assigned in Section 808.001 of the Texas Government Code, as amended.

SECTION 20: IRAN, SUDAN AND FOREIGN TERRORIST ORGANIZATIONS. The Escrow Agent represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, neither the Escrow Agent nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Escrow Agent (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

SECTION 21: ANTI-BOYCOTT VERIFICATION OF ENERGY COMPANIES. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2274.002 of the Texas Government Code (as added by Senate Bill 13 of the 87th Texas Legislative Session), as amended, solely for purposes of compliance with Chapter 2274 of the Texas Government Code, the Corporation and the Escrow Agent hereby certify that the aggregate value of this Agreement shall not exceed the dollar limitation set forth in Chapter 2274 of the Texas Government Code and is therefore exempt from Section 2274.002(b), Texas Government Code (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), as amended, pursuant to Section 2274.002(a)(2), Texas Government Code, as amended (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session).

SECTION 22: ANTI-BOYCOTT VERIFICATION OF FIREARM COMPANIES AND ASSOCIATED TRADE ASSOCIATIONS. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2274.002 of the Texas Government Code (as added by Senate Bill 19 of the 87th Texas Legislative Session), as amended, solely for purposes of compliance with Chapter 2274 of the Texas Government Code, and subject to applicable

Federal law, the Corporation and the Escrow Agent hereby certify that the aggregate value of this Agreement shall not exceed the dollar limitation set forth in Chapter 2274 of the Texas Government Code and is therefore exempt from Section 2274.002(b), Texas Government Code(as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), as amended, pursuant to Section 2274.002(a)(2), Texas Government Code, as amended (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session).

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective upon signature of both parties.

City of Fredericksburg, Texas

By: _____
Authorized Representative

Date: _____

City of Fredericksburg, Texas

Address:

(Seal)

<<NAME OF BANK>>,
as Escrow Agent

By: _____
Title: _____
Date: _____

Address:

(Bank Seal)

EXHIBIT A
Fee Schedule

NORTON ROSE FULBRIGHT

November 9, 2022

Via E-Mail

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States

Mr. Clinton Bailey
City Manager
City of Fredericksburg, Texas
126 West Main Street
Fredericksburg, Texas 78624

Stephanie V. Leibe
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Tel +1 512 474 5201
Fax +1 512 536 4598
nortonrosefulbright.com

Re: City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Series 2022

Dear Mr. Bailey:

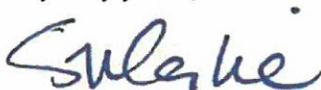
I enclose as Exhibit A to this letter the agenda item to be utilized in preparing the agenda for the November 14, 2022 regular meeting of the City Council. Thank you for ensuring that this agenda item is posted in accordance with the provisions of the Texas Open Meetings Act. I also enclose as Exhibit B the suggested motion for this item.

I also enclose a draft copy of the Ordinance for inclusion in the City Council's agenda packets. Please send any comments to the Ordinance to me as soon as possible so that it may be finalized.

Lastly, I enclose Exhibit A and Exhibit B in Word format for your convenience.

Thank you, in advance, for your prompt attention to this matter. If I can provide any additional assistance concerning this matter, please do not hesitate to contact me.

Very truly yours,



Stephanie V. Leibe

SVL/
Enclosures

cc: Laura Hollenbeak (City of Fredericksburg, Texas)
Steve Wetz (City of Fredericksburg, Texas)
Daniel Jones (City of Fredericksburg, Texas)
Dan Wegmiller (Specialized Public Finance Inc.)
Patrick O'Daniel (Firm)
Matthew A. Lee (Firm)
Chris Guevara (Firm)

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EXHIBIT A

CONSIDERATION AND APPROVAL OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS AUTHORIZING THE ISSUANCE OF "CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS, SERIES 2022"; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS BY A FIRST AND PRIOR LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE CITY'S DRAINAGE UTILITY SYSTEM; AND PROVIDING FOR AN EFFECTIVE DATE

EXHIBIT B

I MOVE TO ADOPT AN ORDINANCE AUTHORIZING THE "CITY OF
FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS,
SERIES 2022"

EXHIBIT A

CONSIDERATION AND APPROVAL OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS AUTHORIZING THE ISSUANCE OF "CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS, SERIES 2022"; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS BY A FIRST AND PRIOR LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE CITY'S DRAINAGE UTILITY SYSTEM; AND PROVIDING FOR AN EFFECTIVE DATE

EXHIBIT B

I MOVE TO ADOPT AN ORDINANCE AUTHORIZING THE "CITY OF
FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS,
SERIES 2022"

ORDINANCE 2022-37

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS AUTHORIZING THE ISSUANCE OF “CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS, SERIES 2022”; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS BY A FIRST AND PRIOR LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE CITY'S DRAINAGE UTILITY SYSTEM; PROVIDING THE TERMS AND CONDITIONS OF SUCH BONDS, INCLUDING THE APPROVAL OF AN APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD; RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SUCH BONDS; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND AN ESCROW AGREEMENT; COMPLYING WITH THE REQUIREMENTS OF THE LETTER OF REPRESENTATIONS EXECUTED WITH THE DEPOSITORY TRUST COMPANY; COMPLYING WITH THE REGULATIONS PROMULGATED BY THE TEXAS WATER DEVELOPMENT BOARD; AND PROVIDING FOR AN EFFECTIVE DATE

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ORDINANCE 2022-37

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS AUTHORIZING THE ISSUANCE OF “CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS, SERIES 2022”; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS BY A FIRST AND PRIOR LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE CITY'S DRAINAGE UTILITY SYSTEM; PROVIDING THE TERMS AND CONDITIONS OF SUCH BONDS, INCLUDING THE APPROVAL OF AN APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD; RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SUCH BONDS; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND AN ESCROW AGREEMENT; COMPLYING WITH THE REQUIREMENTS OF THE LETTER OF REPRESENTATIONS EXECUTED WITH THE DEPOSITORY TRUST COMPANY; COMPLYING WITH THE REGULATIONS PROMULGATED BY THE TEXAS WATER DEVELOPMENT BOARD; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council (the *City Council*) of the City of Fredericksburg, Texas (the *City*) has determined that revenue bonds (the *Bonds*) payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues (hereinafter defined) of the City's drainage utility system (as further defined and described herein, the *System*) should be issued for the purposes hereinafter described; and

WHEREAS, the City is empowered by the provisions of Chapter 1502, as amended, Texas Government Code and Section 552.051, as amended, Texas Local Government Code to issue the Bonds; and

WHEREAS, the City intends to utilize the proceeds of the Bonds for the purpose of designing, acquiring, constructing, improving, enlarging, repairing, and extending the System, including constructing improvements related to flood early warning systems, and to pay the costs of issuing the Bonds; and

WHEREAS, the Bonds herein authorized for issuance are to be delivered to the Texas Water Development Board (the *Board* or the *Purchasers*) in evidence of a loan commitment received in the aggregate amount of the Bonds; and

WHEREAS, in connection with its agreement to purchase the Bonds, the Board awarded additional financial assistance to the City in the form of a grant in the amount of \$390,529 under the Board's Flood Infrastructure Fund, acceptance of which requires the City to enter into certain additional agreements with the Board in satisfaction of the Board's rules and regulations; and

WHEREAS, the City Council hereby finds and determines that this action and the adoption of this Ordinance is in the best interest of the residents of the City; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS THAT:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Revenue bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount of TWO MILLION TWO HUNDRED TWELVE AND NO/100 DOLLARS (\$2,212,000), to be designated and bear the title of “CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM DRAINAGE REVENUE BONDS, SERIES 2022” (the *Bonds*), pursuant to an ordinance adopted by the City Council (the *Ordinance*) for the purpose of (i) designing, acquiring, constructing, improving, enlarging, repairing, and extending the System, including constructing improvements related to flood early warning systems, and (ii) paying the costs of issuing the Bonds. The Bonds shall be payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues (hereinafter defined) of the System. The Bonds are authorized to be issued pursuant to the authority conferred by and in conformity with the laws of the State of Texas, particularly Chapter 1502, as amended, Texas Government Code, and the Ordinance.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates – Bond Date. The Bonds are issuable in fully registered form only; shall be dated December 1, 2022 (the *Bond Date*), and shall generally be in denominations of \$5,000 or any integral multiple thereof and shall be lettered “R” and numbered consecutively from One (1) upward. The Bonds shall become due and payable on February 15 in each of the years and in principal amounts (the *Stated Maturities*) and bear interest on the unpaid principal amounts from the Closing Date (anticipated to occur on or about December 21, 2022), or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to the earlier of redemption or Stated Maturity, at the per annum rates, while Outstanding, in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2024	93,000	0.00
2025	93,000	0.00
2026	93,000	0.00
2027	93,000	0.00
2028	92,000	0.00
2029	92,000	0.00
2030	92,000	0.00
2031	92,000	0.00
2032	92,000	0.00
2033	92,000	0.00
2034	92,000	0.00
2035	92,000	0.00
2036	92,000	0.00

<u>Year of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2037	92,000	0.00
2038	92,000	0.00
2039	92,000	0.00
2040	92,000	0.00
2041	92,000	0.00
2042	92,000	0.00
2043	92,000	0.00
2044	92,000	0.00
2045	92,000	0.00
2046	92,000	0.00
2047	92,000	0.00

The Bonds shall bear interest on the unpaid principal amount thereof at the per annum rates shown above, computed on the basis of a 360-day year of twelve 30-day months, and interest thereon shall be payable on February 15 and August 15 of each year (each, an *Interest Payment Date*), commencing February 15, 2024, while the Bonds are Outstanding; provided, however, that the Certificates shall bear interest at a rate of 0% and therefor no interest will be due and payable on any Interest Payment Date.

SECTION 3: Payment of Bonds - Interest Payments - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable, without exchange or collection charges to the Holder (as hereinafter defined), appearing on the registration and transfer books maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of and interest on the Bonds shall be without exchange or collection charges to the Holder (as hereinafter defined) of the Bonds.

The selection and appointment of BOKF, NA, Dallas, Texas (the *Paying Agent/Registrar*), to serve as the initial Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached, in substantially final form, as Exhibit A hereto, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The City covenants to maintain and provide a Paying Agent/Registrar at all times while the Bonds are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and authorized by law to serve as a Paying Agent/Registrar.

The City reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or ordinance terminating

such agency. Additionally, the City agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Bonds by United States Mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption or otherwise, shall be payable only to the registered owner of the Bonds appearing on the Security Register (the *Holder* or *Holder*s) maintained on behalf of the City by the Paying Agent/Registrar as hereinafter provided (i) on the Record Date (hereinafter defined) for purposes of payment of interest thereon, (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof upon redemption of the Bonds or at the Bonds' Stated Maturity, and (iii) on any other date for any other purpose. The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of, and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office (provided, however, with respect to principal payments prior to the final Stated Maturity, the Bonds need not be surrendered to the Paying Agent/Registrar, who will merely document this payment on an internal ledger maintained by the Paying Agent/Registrar). Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the [last business] day of the month next preceding an Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States Mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense. While the Bonds are held by the Purchasers (as defined in Section 31 hereof), payment of principal of, premium, if any, and interest on the Bonds shall be made by federal funds wire transfer, at no cost to the Purchasers, to an account at a financial institution located in the United States designated by the Purchasers.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

(a) Optional Redemption. The Bonds shall be subject to redemption prior to Stated Maturity, at the option of the City, in inverse order of Stated Maturity on any date, as a whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar), at the redemption price of par plus accrued interest to the date of redemption.

(b) Special Mandatory Redemption. In the event that the Purchasers at such time remains the sole holder of the Bonds and the final accounting delivered by the City to the Purchasers in the form and manner specified in, and in compliance with the provisions of, Section 36(d) of this Ordinance evidences that the total cost of the project to be financed with Bond proceeds is less than the amount of Bond proceeds available for paying such costs, then the City shall, as soon as practicable (but in no event later than six months after the Purchasers' acceptance of the aforementioned accounting) redeem Bonds in the amount of such excess to the nearest multiple of the authorized denomination for the Bonds. Bonds redeemed pursuant to this provision shall be redeemable on any date, in inverse order of Stated Maturity, as a whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity, selected at random and by lot by the Paying Agent/Registrar), at the redemption price of par plus accrued interest to the date of redemption.

(c) Exercise of Redemption Option. At least forty-five (45) days prior to a date set for the redemption of Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Bonds on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Bonds to be redeemed, provided that if less than the entire principal amount of a Bond is to be redeemed, the Paying Agent/Registrar shall treat such Bond then subject to redemption as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bond by \$5,000.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, the Paying Agent Registrar shall cause a notice of redemption to be sent by United States Mail, first-class postage prepaid, in the name of the City and at the City's expense, by the Paying Agent/Registrar to each Holder of a Bond to be redeemed, in whole or in part, at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Bond Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Bond Reporter*).

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount

thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder.

If a Bond is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on said Bonds (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue, and such Bonds shall not be deemed to be Outstanding in accordance with the provisions of this Ordinance.

(e) Transfer/Exchange. Neither the City nor the Paying Agent/Registrar shall be required to (i) transfer or exchange any Bond during a period beginning forty-five (45) days prior to the date fixed for redemption of the Bonds or (ii) to transfer or exchange any Bond selected for redemption, provided; however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond which is subject to redemption in part.

SECTION 5: Execution - Registration. The Bonds shall be executed on behalf of the City by its Mayor or Mayor Pro Tem, its seal reproduced or impressed thereon, and attested by its City Secretary. The signature of any of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who were, at the time of the Bond Date, the proper officers of the City shall bind the City, notwithstanding that such individuals or either of them shall cease to hold such offices prior to the delivery of the Bonds to the Purchasers (hereinafter defined), all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8(c), executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8(d), executed by the Paying Agent/Registrar by manual signature, and either such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified or registered and delivered.

SECTION 6: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Bonds, or, if appropriate, the nominee thereof. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the corporate trust office of the Paying Agent/Registrar, the City shall execute and the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds of authorized denomination and having the same Stated Maturity and of a like interest rate and aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of the same series and of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the City shall execute, and the Paying Agent/Registrar shall register and deliver, the Bonds, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or be sent by registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid and binding obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered upon such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any fee, tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Bonds, evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered and delivered pursuant to Section 30 in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 7: Initial Bond. The Bonds herein authorized shall be issued initially either as a single fully-registered Bond in the total principal amount of \$2,212,000 with principal installments to become due and payable as provided in Section 2 and numbered T-1, or as one (1) fully-registered Bond for each year of Stated Maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (the *Initial Bond*) and, in either case, the Initial Bond shall be registered in the name of the Purchasers or the designee thereof. The Initial Bond shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the Purchasers. Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, upon written instructions from the Purchasers or their designee, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates, on the unpaid principal amounts from the Closing Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to Stated Maturity, and shall be lettered "R" and numbered consecutively from one (1) upward for transfer and delivery to the

Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the Purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including insurance legends in the event the Bonds, or any Stated Maturities thereof, are insured and identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of Bond Counsel (hereinafter referenced)) thereon as may, consistent herewith, be established by the City or determined by the officers executing the Bonds as evidenced by their execution thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, or engraved, produced by any combination of these methods, or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond submitted to the Attorney General of the State of Texas may be typewritten or photocopied or otherwise reproduced.

(b) Form of Definitive Bond.

REGISTERED
NO.

REGISTERED
PRINCIPAL AMOUNT
\$ _____

United States of America
State of Texas
County of Gillespie
CITY OF FREDERICKSBURG, TEXAS
UTILITY SYSTEM DRAINAGE REVENUE BONDS,
SERIES 2022

Bond Date: December 1, 2022 Interest Rate: Stated Maturity: CUSIP No.

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Fredericksburg, Texas (the *City*), a body corporate and municipal corporation in the County of Gillespie, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner specified above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount specified above (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid Principal Amount hereof (computed on the basis of a 360-day year of twelve 30-day months) from the Closing Date (anticipated to occur on or about December 21, 2022), or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until such Principal Amount has become due and payment thereof has been made or duly provided for, to the earlier of redemption or Stated Maturity, while Outstanding, at the per annum rate of interest specified above; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*) commencing February 15, 2024; provided, however, that the Certificates shall bear interest at a rate of 0% and therefor no interest will be due and payable on any Interest Payment Date..

Principal and premium, if any, of the Bond shall be payable to the Registered Owner hereof (the *Holder*) upon presentation and surrender, at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon or a successor thereof (provided, however, with respect to principal payments prior to the final Stated Maturity, the Bonds need not be surrendered to the Paying Agent/Registrar, who will merely document this payment on an internal ledger maintained by the Paying Agent/Registrar). Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the [last business day] of the month next preceding each Interest Payment Date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United

States Mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder hereof at the Holder's risk and expense. While the Bonds are held by the Purchasers payment of principal of, premium, if any, and interest on the Bonds shall be made by federal funds wire transfer, at no cost to the Purchasers, to an account at a financial institution located in the United States designated by the Purchasers.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$2,212,000 (the *Bonds*) pursuant to an ordinance adopted by the City Council of the City (the *Ordinance*), for the purpose of (i) designing, acquiring, constructing, improving, enlarging, repairing, and extending the System, including constructing improvements related to flood early warning systems, and (ii) paying the costs of issuing the Bonds. The Bonds are authorized to be issued pursuant to the authority conferred by and in conformity with the laws of the State of Texas, particularly Chapter 1502, as amended, Texas Government Code, and the Ordinance.

The Bonds may be redeemed prior to their Stated Maturities, at the option of the City, in inverse order of Stated Maturity, on any date, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States Mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Bond is subject to redemption prior to Stated Maturity and is in a denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof.

In addition to the foregoing right to optional redemption, in the event that the Purchasers at such time remains the sole holder of the Bonds and the final accounting delivered by the City to the Purchasers in the form and manner specified in the Ordinance (and in compliance with the provisions of Section 36(d) of the Ordinance) evidences that the total cost of the project to be financed with Bond proceeds is less than the amount of Bond proceeds available for paying such costs, then the City shall, as soon as practicable (but in no event later than six months after the Purchasers' acceptance of the aforementioned accounting) redeem Bonds in the amount of such excess to the nearest multiple of the authorized denomination for the Bonds. Bonds redeemed pursuant to this provision shall be redeemable on any date, in inverse order of Stated Maturity, as a whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity, selected at random and by lot by the Paying Agent/Registrar), at the redemption price of par plus accrued interest to the date of redemption.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption has been duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the

principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the City or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Bonds of this series are special obligations of the City payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues, comprised primarily of Net Revenues of the City derived from its ownership and operation of the City's drainage utility system (as further described and defined in the Ordinance, the *System*). In the Ordinance, the City retains the right to issue Additional Prior Lien Obligations, Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations without limitation as to principal amount but subject to any terms, conditions, or restrictions set forth in the Ordinance as may be applicable thereto under law or otherwise. The Bonds do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the City or System, except with respect to the Pledged Revenues.

The Holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Reference is hereby made to the Ordinance, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description and nature of the Pledged Revenues of the System pledged for the payment of the Bonds; the terms and conditions under which the City may issue Additional Prior Lien Obligations, Junior Lien Obligations, Subordinate Lien Obligations, and Limited Pledge Obligations; the terms and conditions relating to the transfer or exchange of the Bonds; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be redeemed or discharged at or prior to the Stated Maturity thereof, and deemed to be no longer Outstanding thereunder; and for the other terms and provisions specified in the Ordinance. Capitalized terms used herein have the same meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register upon presentation and surrender at the corporate trust office of the Paying Agent/Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Holder hereof, or his duly authorized agent, and thereupon one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder hereof whose name appears on the Security Register (i) on the Record Date as the owner hereof for purposes of receiving payment of interest hereon, (ii) on the date of surrender of this Bond as the owner hereof for purposes of receiving payment of principal hereof at its Stated Maturity, or

its redemption, in whole or in part, and (iii) on any other date as the owner hereof for all other purposes, and neither the City nor the Paying Agent/Registrar, or any such agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to the issuance of this Bond in order to render the same a legal, valid, and binding special obligation of the City have been performed, exist, and have been done, in regular and due time, form, and manner, as required by the laws of the State of Texas and the Ordinance, and that issuance of the Bonds does not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by a pledge of and lien on the Pledged Revenues of the System. In case any provision in this Bond or any application thereof shall be deemed invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF FREDERICKSBURG, TEXAS

By _____
Mayor

ATTESTED:

City Secretary

(CITY SEAL)

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Signature guaranteed:

(f) The Initial Bond shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Bond shall be modified as follows:

(i) immediately under the name of the Bond the headings "Interest Rate" and "Stated Maturity" shall both be completed "as shown below";

(ii) the first two paragraphs shall read as follows:

The City of Fredericksburg, Texas (the *City*), a body corporate and municipal corporation in the County of Gillespie, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount specified above on the 15th day of February in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

<u>Years of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amounts (\$)</u>	<u>Interest</u> <u>Rates (%)</u>
---	---	-------------------------------------

(Information to be inserted
from schedule in Section 2 hereof)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amounts hereof from the Closing Date (anticipated to be December 21, 2022 or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for until the Principal Amount has become due and payment thereof has been made or duly provided for, to the earlier of redemption or Stated Maturity, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*) commencing February 15, 2024; provided, however, that the Certificates shall bear interest at a rate of 0% and therefor no interest will be due and payable on any Interest Payment Date

Principal of this Bond shall be payable to the Registered Owner hereof (the *Holder*), upon its presentation and surrender, at the corporate trust office of BOKF, NA, Dallas, Texas (the *Paying Agent/Registrar*) (provided, however, with respect to principal payments prior to the final Stated Maturity, the Bonds need not be surrendered to the Paying Agent/Registrar, who will merely document this payment on an internal ledger maintained by the Paying Agent/Registrar). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the [last business day] of the month next preceding each Interest Payment Date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States Mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof. While the Bonds are held by the Purchasers, payment of principal of, premium, if any, and interest on the Bonds shall be made by federal funds wire transfer, at no cost to the Purchasers, to an account at a financial institution located in the United States designated by the Purchasers.

[END OF FORMS]

(g) Insurance Legend. If bond insurance is obtained by the Purchasers or the City for the Bonds, the definitive Bonds and the Initial Bond(s) shall bear an appropriate legend as provided by the bond insurer to appear under the following header:

[BOND INSURANCE]

SECTION 9: Definitions. For all purposes of this Ordinance (as defined below), except as otherwise expressly provided or unless the context otherwise requires: the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 32 and 50 of this Ordinance have the meanings assigned to them in Sections 32 and 50, and all such terms include the plural as well as the singular; all references in this Ordinance to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Ordinance as originally adopted; and the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision.

(a) The term *Additional Prior Lien Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation, or other evidences of indebtedness which the City reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in Section 18 of this Ordinance and which are equally and ratably secured solely by a prior and first lien on and pledge of the Pledged Revenues of the System and (ii) any obligations hereafter issued to refund any of the foregoing if issued in a manner so as to be payable from and secured by a prior and first lien on and pledge of the Pledged Revenues as determined by the City Council in accordance with applicable law.

(b) The term *Authorized Official* shall mean the Mayor, Mayor Pro Tem, City Manager, Director of Finance, and/or City Secretary.

(c) The term *Average Annual Debt Service Requirements* shall mean that average amount which, at the time of computation, will be required to pay the Debt Service Requirements on the Bonds when due (either at Stated Maturity or mandatory redemption) and derived by dividing the total of such Debt Service Requirements by the number of Fiscal Years then remaining before Stated Maturity of such Bonds. For purposes of this definition, a fractional period of a Fiscal Year shall be treated as an entire Fiscal Year. Capitalized interest payments provided from any bond proceeds shall be excluded in making the aforementioned computation.

(d) The term *Bond Fund* shall mean the special Fund or account created and established by the provisions of Section 13 of this Ordinance.

(e) The term *Bonds* shall mean the “City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Series 2022”, dated December 1, 2022, authorized by this Ordinance.

(f) The term *Bonds Similarly Secured* shall mean the Bonds and any Additional Prior Lien Obligations hereafter issued by the City or bonds issued to refund any of the foregoing if issued in a manner that provides that the refunding bonds are payable from and equally and ratably secured by a first and prior lien on and pledge of the Pledged Revenues of the System.

(g) The term *City* shall mean the City of Fredericksburg located in the County of Gillespie, Texas and, where appropriate, the City Council of the City.

(h) The term *Closing Date* shall mean the date of physical delivery of the Initial Bonds for the payment in full by the Purchasers.

(i) The term *Debt Service Requirements* shall mean as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest calculated by assuming (i) that the interest rate for every 12-month period on such bonds is equal to the rate of interest reported in the most recently published edition of The Bond Buyer (or its successor) at the time of calculation as the “Revenue Bond Index” or, if such Revenue Bond Index is no longer being maintained by The Bond Buyer (or its successor) at the time of calculation, such interest rate shall be assumed to be 80% of the rate of interest then being paid on United States Treasury obligations of like maturity and (ii) that the principal of such bonds is amortized

such that annual debt service is substantially level over the remaining stated life of such bonds, and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

(j) The term *Depository* shall mean an official depository bank of the City.

(k) The term *Fiscal Year* shall mean the twelve month accounting period used by the City in connection with the operation of the System, currently ending on September 30th of each year, which may be any twelve consecutive month period established by the City, but in no event may the Fiscal Year be changed more than one time in any three calendar year period.

(l) The term *Government Securities* shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Bonds.

(m) The term *Gross Revenues* shall mean all income, receipts, and revenues of every nature derived or received from the operation and ownership of the System excluding refundable meter deposits, restricted gifts, and grants in aid of construction, but including earnings and income derived from the investment or deposit of money (except the Construction Fund established pursuant to Section 31 hereof) in any special fund or account created, established, and maintained for the payment, security, or benefit of the Bonds Similarly Secured.

(n) The term *Holder* or *Holder*s shall mean the registered owner, whose name appears in the Security Register, for any Bond.

(o) The term *Interest Payment Date* shall mean the date semiannual interest is payable on the Bonds, being February 15 and August 15 of each year, commencing February 15, 2024, while any of the Bonds remain Outstanding.

(p) The term *Junior Lien Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation or other obligations hereafter issued by the City payable wholly or in part from and equally and ratably secured by a junior and inferior lien and pledge of the Net Revenues of the System, that is junior and inferior to the first and prior lien thereon and pledge thereof that is a part of the Pledged Revenues that secures the payment of the Bonds Similarly Secured, but prior and superior to the lien on and pledge of the limited amount of the Net Revenues securing, in part, the payment of any Limited Pledge Obligations hereafter issued by the City, all as further

provided in Section 19 of this Ordinance, and (ii) any obligations issued to refund the foregoing that are payable from and secured by such a junior and inferior lien on and pledge of the Net Revenues of the System as determined by the City Council in accordance with any applicable law.

(q) The term *Limited Pledge Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation or other evidences of indebtedness hereafter issued by the City payable in part from a limited pledge of and lien on Net Revenues of the System being a lien on and pledge of Net Revenues that is subordinate and inferior to the lien thereon and pledge thereof securing the payment of the currently outstanding Prior Lien Obligations and any Junior Lien Obligations, or Subordinate Lien Obligations hereafter issued by the City, which pledge of revenues is limited pursuant to Section 1502.052, as amended, Texas Government Code, all as further provided in Section 19 of this Ordinance, and (ii) any obligations issued to refund the foregoing as determined by the City Council in accordance with any applicable law.

(r) The term *Maintenance and Operating Expenses* shall mean all current expenses of operating and maintaining the System as authorized by the provisions of Chapter 1502, as amended, Texas Government Code, including, but not limited to, all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair obligations payable from Net Revenues shall be deducted in determining Net Revenues. Depreciation, amortization, or other expenditures which, under standard accounting practice, should be charged to capital non-cash expenditures shall not constitute or be regarded as Maintenance and Operating Expenses of the System. Payments required to be made by the City for drainage services or drainage facilities, or fuel supply, or similar payments, which payments under law constitute operation and maintenance expenses of any part of the System, shall constitute and be regarded as Maintenance and Operating Expenses of the System under this Ordinance.

(s) The term *Net Earnings* shall be the meaning assigned to such term in Section 18 hereof.

(t) The term *Net Revenues* shall mean Gross Revenues of the System, with respect to any period, after deducting the System's Maintenance and Operating Expenses during such period.

(u) The term *Ordinance* shall mean this ordinance adopted by the City Council on November 15, 2022.

(v) The term *Outstanding* shall mean when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

(1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds for which payment has been duly provided by the City in accordance with the provisions of Section 34 of this Ordinance by the irrevocable deposit with the Paying Agent/Registrar, or an authorized escrow agent, of money or Government

Securities, or both, in the amount necessary to fully pay the principal of, premium, if any, and interest thereon to maturity or redemption, as the case may be, provided that, if such Bonds are to be redeemed, notice of redemption thereof shall have been duly given pursuant to this Ordinance or irrevocably provided to be given to the satisfaction of the Paying Agent/Registrar, or waived; and

(3) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 30 hereof.

(w) The term *Pledged Revenues* shall mean (1) a prior and first lien on and pledge of the Net Revenues, plus (2) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, for the benefit of the System which hereafter are pledged by the City to the payment of the Bonds Similarly Secured or any Additional Prior Lien Obligations hereafter issued by the City, and excluding those revenues excluded from Gross Revenues.

(x) The term *Purchasers* shall mean the initial purchaser or purchasers of the Bonds named in Section 31 of this Ordinance.

(y) The term *Required Reserve Amount* shall mean the amount required to be deposited and maintained in the Reserve Fund under the provisions of Section 14 of this Ordinance.

(z) The term *Required Reserve Fund Deposits* shall mean the monthly deposit required to be deposited and maintained in the Reserve Fund under the provisions of Section 14 of this Ordinance.

(aa) The term *Stated Maturity* shall mean the annual principal payments of the Bonds payable on February 15 of each year, as set forth in Section 2 of this Ordinance.

(bb) The term *Subordinate Lien Obligation* shall mean (i) any bonds, notes, warrants, certificates of obligation or any similar obligations hereafter issued by the City that are payable wholly or in part from and equally and ratably secured by a subordinate and inferior lien on and pledge of the Net Revenues of the System that is subordinate and inferior to the lien thereon and pledge thereof securing the payment of the Bonds Similarly Secured (as a result of such first and prior lien on and pledge of Net Revenues being made a part of the Pledged Revenues) and any Junior Lien Obligations hereafter issued by the City, but prior and superior to the lien on and pledge of the limited amount of the Net Revenues securing, in part, the payment of any Limited Pledge Obligations hereafter issued by the City, all as further provided in Section 19 of this Ordinance and (ii) any obligations issued to refund the foregoing that are payable from and equally and ratably secured by a subordinate and inferior lien on and pledge of the Net Revenues of the System as determined by the City Council in accordance with any applicable law.

(cc) The term *Surety Policy* shall mean a surety bond, insurance policy, letter of credit, or other agreement or instrument whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

(dd) The term *System* shall mean all properties, facilities and plants currently owned, operated, and maintained by for the collection, storage and distribution of stormwater and the protection of public health and safety from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arise from nonpoint source runoff, together with all future extensions, improvements, replacements and additions thereto, whether situated within or without the limits of the City, and the City expressly reserves the right at its sole discretion to include additional utility (including electric), telecommunications, technology, or similar enterprise services as components of the System (though such additional components are not at this time included); provided, however, that notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not mean to include facilities of any kind which are declared not to be a part of the System and which are acquired or constructed by or on behalf of the City with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being special revenue obligations of the City which are not payable from Net Revenues, but which are payable from and equally and ratably secured by other liens on and pledges of any revenues, sources or payments, not pledged to the payment of the Bonds Similarly Secured including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities.

SECTION 10: Pledge of Pledged Revenues. (a) The City hereby covenants and agrees that the Pledged Revenues of the System are hereby irrevocably pledged to the payment and security of the Bonds Similarly Secured including the establishment and maintenance of the special funds or accounts created and established for the payment and security thereof, all as hereinafter provided; and it is hereby ordained that the Bonds Similarly Secured, and the interest thereon, shall constitute a first and prior lien on and pledge of the Pledged Revenues of the System and be valid and binding without any physical delivery thereof or further act by the City, and the lien created hereby on the Net Revenues of the System resulting from this lien on and pledge of the Pledged Revenues for the payment and security of the Bonds Similarly Secured shall be prior in right and claim as to the lien on and pledge of the Net Revenues securing payment of any Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations hereafter issued by the City.

(b) Chapter 1208, as amended, Texas Government Code, applies to the issuance of the Bonds and the pledge of Pledged Revenues granted by the City under subsection (a) of this Section, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the Pledged Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in this pledge, the City Council agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, as amended, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

SECTION 11: Rates and Charges. For the benefit of the Holders of the Bonds Similarly Secured and in addition to all provisions and covenants in the laws of the State of Texas and in this Ordinance, the City hereby expressly stipulates and agrees, while any of the Bonds Similarly Secured are Outstanding, to establish and maintain rates and charges for facilities and services afforded by the System that are reasonably expected, together with any other lawfully available

funds, on the basis of available information and experience and with due allowance for contingencies, to produce Gross Revenues in each Fiscal Year sufficient:

(a) To pay all Maintenance and Operating Expenses, or any expenses required by statute to be a first claim on and charge against the Gross Revenues of the System;

(b) To produce Pledged Revenues, together with any other lawfully available funds, sufficient to pay (1) 1.25 times the Average Annual Debt Service Requirements on the Bonds Similarly Secured and (2) the amounts required to be deposited in any reserve or contingency fund or account created for the payment and security of the Bonds Similarly Secured, and any other obligations or evidences of indebtedness issued or incurred that are payable from and secured solely by a prior and first lien on an pledge of the Net Revenues of the System;

(c) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Junior Lien Obligations hereafter issued by the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Junior Lien Obligations hereafter issued by the City, and any other obligations or evidences of indebtedness issued or incurred that are payable from and secured solely by a junior lien on and pledge of the Net Revenues of the System;

(d) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Subordinate Lien Obligations hereafter issued by the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Subordinate Lien Obligations hereafter issued by the City, and any other obligations or evidences of indebtedness issued or incurred that are payable from equally and ratably secured, in part, by a subordinate and inferior lien on and pledge of the Net Revenues of the System;

(e) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Limited Pledge Obligations hereafter issued by the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Limited Pledge Obligations, and any other obligations or evidences of indebtedness issued or incurred that are payable from equally and ratably secured, in part, by a lien on and pledge of a limited amount of the Net Revenues of the System; and

(f) To pay, together with any other lawfully available funds, any other legally incurred indebtedness payable from the Net Revenues of the System and/or secured by a lien on the System.

SECTION 12: System Fund. The City hereby covenants, agrees, and affirms that the Gross Revenues of the System shall be deposited, as collected and received, into a separate Fund or account to be created, established, and maintained with the Depository known as the "City of Fredericksburg, Texas Utility System Revenue Fund" (the *System Fund*) and that the Gross Revenues of the System shall be kept separate and apart from all other funds of the City. All Gross Revenues deposited into the System Fund shall be pledged and appropriated to the extent required for the following uses and in the order of priority shown:

FIRST: to the payment of all necessary and reasonable Maintenance and Operating Expenses as defined herein or required by statute, including, but not limited to, Chapter 1502, as amended, Texas Government Code, to be a first charge on and claim against the Gross Revenues of the System.

SECOND: to the payment of the amounts required to be deposited into the special funds and accounts created and established for the payment, security and benefit of any Bonds Similarly Secured.

THIRD: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security and benefit of any Junior Lien Obligations hereafter issued by the City.

FOURTH: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security, and benefit of any Subordinate Lien Obligations hereafter issued by the City.

FIFTH: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security, and benefit of any Limited Pledge Obligations hereafter issued by the City.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 13: Bond Fund; Excess Bond Proceeds. For purposes of providing funds to pay the principal of and interest on the Bonds Similarly Secured as the same become due and payable, the City agrees to maintain, at the Depository, a separate and special Fund or account to be created and known as the "City of Fredericksburg, Texas Utility System Drainage Revenue Bonds, Series 2022 Bond Fund" (the *Bond Fund*). The City covenants that there shall be deposited into the Bond Fund prior to each principal and interest payment date from the available Pledged Revenues an amount equal to one hundred percent (100%) of the amount required to fully pay the interest on and the principal of the Bonds Similarly Secured then falling due and payable, such deposits to pay maturing principal and accrued interest on the Bonds Similarly Secured to be made in substantially equal monthly installments on or before the tenth day of each month, beginning on or before the tenth day of the month next following the delivery of the Bonds to the Purchasers. If the Pledged Revenues in any month are insufficient to make the required payments into the Bond Fund, then the amount of any deficiency in such payment shall be added to the amount otherwise required to be paid into the Bond Fund in the next month.

The required monthly deposits to the Bond Fund for the payment of principal of and interest on the Bonds Similarly Secured shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Bond Fund and Reserve Fund is equal to the amount required to fully pay and discharge all Outstanding Bonds Similarly Secured (principal and interest) or (ii) the Bonds are no longer Outstanding.

Accrued interest and premium, if any, received from the Purchasers shall be taken into consideration and reduce the amount of the monthly deposits hereinabove required to be deposited

into the Bond Fund from the Pledged Revenues of the System. Additionally, any proceeds of the Bonds, and investment income thereon, not expended for authorized purposes shall be deposited into the Bond Fund and shall be taken into consideration and reduce the amount of monthly deposits required to be deposited into the Bond Fund from the Pledged Revenues of the System.

SECTION 14: Reserve Fund. To accumulate and maintain a reserve for the payment of the Bonds Similarly Secured (the "Required Reserve Amount") equal to (i) the Average Annual Debt Service Requirements (calculated on a Fiscal Year basis and determined as of the date of issuance of the Bonds or the most recently issued series of Additional Prior Lien Obligations then Outstanding) for the Bonds Similarly Secured or (ii) the maximum amount in a reasonably required reserve fund for the Bonds Similarly Secured from time to time that can be invested without restriction as to yield pursuant to section 148 of the Code (as defined in Section 32), the City agrees to create, establish, and maintain a separate and special fund or account known as the "City of Fredericksburg, Utility System Drainage Revenue Bond Reserve Fund" (the *Reserve Fund*), which fund or account shall be maintained at the Depository. All funds deposited into the Reserve Fund (excluding earnings and income derived or received from deposits or investments which will be transferred to the System Fund established in Section 12 of this Ordinance during such period as there is on deposit in the Reserve Fund the Required Reserve Amount) shall be used solely for the payment of the principal of and interest on the Bonds Similarly Secured when (whether at maturity, upon defeasance, or upon a redemption date or any Interest Payment Date) other funds available for such purposes are insufficient, and, in addition, may be used to retire the last stated maturity or interest on the Bonds Similarly Secured.

By reason of the issuance of the Bonds, the total amount required to be accumulated and maintained in the Reserve Fund is hereby determined to be \$[92,166.67], which shall be accumulated, if necessary (and subject to the further conditions on funding such Reserve Fund on the Closing Date as provided in this Section), in the following manner. Beginning on or before the tenth day of the month next following the delivery of the Bonds to the Purchasers and on or before the tenth day of each following month until the Required Reserve Amount has been accumulated in the Reserve Fund, the City covenants and agrees to deposit to the Reserve Fund from the Net Revenues of the System, at the level of priority specified in Section 12, or any other lawfully available funds, an amount not less than \$[1,536.11], being the Required Reserve Fund Deposits (and equaling the minimum amount necessary to cause the accumulation of the Required Reserve Amount to occur over a period of 60 months). The Required Reserve Amount may only be released from the Reserve Fund with the written consent of the Purchasers.

As and when Additional Prior Lien Obligations are delivered or incurred, the Required Reserve Amount shall be increased, if required, to an amount calculated in the manner provided in the first paragraph of this Section. Any additional amount required to be maintained in the Reserve Fund shall be so accumulated by the deposit of the necessary amount of the proceeds of the issue or other lawfully available funds in the Reserve Fund immediately after the delivery of the then proposed Additional Prior Lien Obligations, or, at the option of the City, by the deposit of monthly installments, made on or before the tenth day of each month following the month of delivery of the then proposed Additional Prior Lien Obligations, of not less than 1/60th of the additional amount to be maintained in the Reserve Fund by reason of the issuance of the Additional Prior Lien Obligations then being issued (or 1/60th of the balance of the additional amount not

deposited immediately in cash), thereby ensuring the accumulation of the appropriate Required Reserve Amount.

When and so long as the cash and investments in the Reserve Fund equal the Required Reserve Amount, no deposits need be made to the credit of the Reserve Fund; but, if and when the Reserve Fund at any time contains less than the Required Reserve Amount (other than as the result of the issuance of Additional Prior Lien Obligations as provided in the preceding paragraph), the City covenants and agrees to cure the deficiency in the Required Reserve Amount by resuming the Required Reserve Fund Deposits to said Fund or account from the Net Revenues of the System, or any other lawfully available funds, such monthly deposits to be in amounts equal to not less than 1/60th of the Required Reserve Amount covenanted by the City to be maintained in the Reserve Fund with any such deficiency payments being made on or before the tenth day of each month until the Required Reserve Amount has been fully restored. The City further covenants and agrees that, the Net Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve Amount and to cure any deficiency in such amounts as required by the terms of this Ordinance and any other ordinance pertaining to the issuance of any Additional Prior Lien Obligations.

During such time as the Reserve Fund contains the Required Reserve Amount, the City may, at its option, withdraw all surplus funds in the Reserve Fund in excess of the Required Reserve Amount and deposit such surplus in the System Fund; provided, however, that any release of surplus funds from the Reserve Fund that are Bond proceeds shall only be used to retire then-Outstanding Bonds or be used for an authorized purpose, as described in Section 1 hereof, for which the Bonds are originally issued (being improvements to the System).

Subject to the requirements of Section 36(n) herein, the City, at its option and consistent with the provisions of this Section, may fund the Reserve Fund at the Required Reserve Amount by purchasing an insurance policy that will unconditionally obligate the insurance company or other entity to pay all, or any part thereof, of the Required Reserve Amount in the event funds on deposit in the Bond Fund are not sufficient to pay the debt service requirements on the Bonds Similarly Secured. All ordinances adopted after the date hereof authorizing the issuance of Additional Prior Lien Obligations shall contain a provision to this effect. The City reserves the right to use Gross Revenues of the System to fund the payment of (1) periodic premiums on the insurance policy or Surety Policy as a part of the payment of Maintenance and Operating Expenses and (2) any repayment obligation incurred by the City (including interest) to the issuer of the insurance policy or Surety Policy, the payment of which will result in the reinstatement of such insurance policy or Surety Policy, prior to making payments required to be made to the Reserve Fund pursuant to the provisions of this Section to restore the balance in such fund to the Required Reserve Amount for the Bonds Similarly Secured.

In the event an insurance policy or other Surety Policy issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the Required Reserve Amount, the City may transfer such excess amount to any fund or account established for the payment of or security for the Bonds Similarly Secured (including any escrow established for the final payment of any such obligations pursuant to Chapter 1207, as amended, Texas Government Code) or use such excess amount for any lawful purpose now or hereafter provided by law; provided, however, to the extent that such excess

amount represents Bond proceeds, then such amount must be transferred to the Bond Fund or as otherwise permitted in accordance with then applicable Texas law.

Notwithstanding anything to the contrary contained in this Section, the requirements set forth above to fund the Reserve Fund in the amount of the Required Reserve Amount shall be suspended for any Bonds Similarly Secured (including with respect to the Bonds) for such time as the Pledged Revenues for each Fiscal Year are equal to at least 125% of the Average Annual Debt Service Requirements. In the event that the Pledged Revenues for any Fiscal Year are less than 125% of the Average Annual Debt Service Requirements, the City will be required to commence making the deposits to the Reserve Fund, as provided above, and to continue making such deposits until the earlier of (i) such time as the Reserve Fund contains the Required Reserve Amount or (ii) the Pledged Revenues in each of two consecutive Fiscal Years have been equal to not less than 125% of the Average Annual Debt Service Requirements.

SECTION 15: Deficiencies; Excess Net Revenues. (a) If on any occasion there shall not be sufficient Pledged Revenues of the System (after making all payments pertaining to the currently Outstanding Bonds Similarly Secured) to make the required deposits into the Bond Fund and the Reserve Fund, then such deficiency shall be cured as soon as possible from the next available unallocated Net Revenues of the System, or from any other sources available for such purpose, and such payments shall be in addition to the amounts required to be paid into these Funds or accounts during such month or months.

(b) Subject to making the required deposits to the Bond Fund and the Reserve Fund when and as required by this Ordinance, or any ordinance authorizing any Bonds Similarly Secured (or any Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations hereafter issued), the excess Net Revenues of the System may be used by the City for any lawful purpose, including but not limited to, the redemption of any Bonds Similarly Secured.

SECTION 16: Payment of Bonds. While any of the Bonds Similarly Secured are outstanding, an Authorized Official shall cause to be transferred to the Paying Agent/Registrar therefor, from funds on deposit in the Bond Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly each installment of interest on and principal of the Bonds Similarly Secured as such installment accrues or matures or comes due by reason of redemption prior to maturity; such transfer of funds must be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds Similarly Secured at the close of the business day next preceding the date a debt service payment is due on the Bonds Similarly Secured.

SECTION 17: Investments. Funds held in any Fund or account created, established, or maintained pursuant to this Ordinance, at the option of the City, may be invested as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, or any other law (collateralized pursuant to the Public Funds Collateral Act, as amended, Chapter 2257, Texas Government Code), and secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and

credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured, or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Association, or Federal Housing Association; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund or account will be available at the proper time or times. Such investments (except State and Local Government Series investments held in book entry form, which shall at all times be valued at cost) shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 30 days of the date of passage of each ordinance authorizing the issuance of any Additional Prior Lien Obligations. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the Bond Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14, be credited to and deposited in the System Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 18: Issuance of Additional Prior Lien Obligations. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the City hereby expressly reserves the right to hereafter issue, from time to time as needed, Additional Prior Lien Obligations for any lawful purpose. Such Additional Prior Lien Obligations may be issued in such form and manner as now or hereafter authorized by the laws of the State of Texas for the issuance of evidences of indebtedness or other instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided only that each of the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(a) the Director of Finance of the City (or other official of the City, including the City Manager, having primary responsibility for the fiscal affairs of the City) shall have executed a certificate stating that (i) except for a refunding to cure a default, or the deposit of a portion of the proceeds of any Additional Prior Lien Obligations to satisfy the City's obligations under this Ordinance, the City is not then in default as to any covenant, obligation, or agreement contained in any ordinance or other proceedings relating to any obligations of the City payable from and secured by a first and prior lien on and pledge of the Pledged Revenues of the System and (ii) all payments into all special funds or accounts created and established for the payment and security of all outstanding obligations payable from and secured by a first and prior lien on and pledge of the Pledged Revenues of the System have been duly made and that the amounts on deposit in such special funds or accounts are the amounts then required to be deposited therein;

(b) the City has secured a certificate or opinion from (i) a Certified Public Accountant, or (ii) City's Director of Finance (or other official of the City, including the City Manager, having primary responsibility for the fiscal affairs of the City) to the effect that, according to the books and records of the City, the Net Earnings of the System, for the preceding Fiscal Year or for any 12 consecutive months out of the 15 months immediately preceding the month the ordinance authorizing the Additional Prior Lien Obligations is adopted (such period ending in no event more than 90 days before the date the ordinance authorizing the Additional Prior Lien Obligations is

adopted), are at least equal to one and one-fourth (1-1/4) (1.25) times the Average Annual Debt Service Requirements for the payment of principal of and interest on all outstanding Bonds Similarly Secured after giving effect to the Additional Prior Lien Obligations then proposed. In making a determination of the Net Earnings, the Certified Public Accountant or Director of Finance, as appropriate, may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are to be determined and, for purposes of satisfying the above Net Earnings test, make a pro forma determination of the Net Earnings for the period of time covered by his certification based on such change in rates and charges being in effect for the entire period covered by the Certified Public Accountant's or Director of Finance's certificate, as appropriate. Notwithstanding the foregoing, the Additional Prior Lien Obligations sold to the Purchasers by the City may satisfy the additional bonds test if the City certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of one and one-fourth (1-1/4) times the Average Annual Debt Service Requirements, provided that an authorized representative of the City must provide calculations, identifying reasonably assumptions, in a manner and format that is acceptable to the Purchasers;

(c) As used in this Section, the term "Net Earnings" shall mean the Gross Revenues of the System after deducting the Maintenance and Operating Expenses of the System, but not depreciation charges or expenditures which, under generally accepted accounting principles, should be charged to capital expenditures;

(d) The Additional Prior Lien Obligations shall be scheduled to mature or be payable as to principal on February 15 or August 15 (or both) in each year the same are to be outstanding or during the term thereof;

(e) the ordinance authorizing the issuance of the Additional Prior Lien Obligations provides for deposits to be made to the Bond Fund in amounts sufficient to pay the principal of and interest on such Additional Prior Lien Obligations as same mature; and

(f) the ordinance authorizing the issuance of the Additional Prior lien Obligations provides that the amount to be accumulated and maintained in the Reserve Fund (subject, however, to any funding suspension mechanism that may at such time be in effect) shall be in an amount equal to not less than the Average Annual Debt Service Requirements for the payment of any Bonds Similarly Secured then Outstanding after giving effect to the issuance of the proposed Additional Prior Lien Obligations, and provides that any additional amount to be maintained in the Reserve Fund shall be accumulated within sixty (60) months from the date the Additional Prior Lien Obligations are delivered.

All calculations of principal and interest requirements made pursuant to this Section are made as of and from the date of the Additional Prior Lien Obligations then proposed to be issued.

SECTION 19: Obligations of Inferior Lien and Pledge. The City hereby reserves the right to issue, at any time, obligations including, but not limited to, Junior Lien Obligations, Subordinate Lien Obligations, and/or Limited Pledge Obligations payable from and equally and ratably secured, in whole or in part, by a lien on and pledge of the Net Revenues of the System, subordinate and inferior in rank and dignity to the lien on and pledge of such first lien on and pledge of Net

Revenues of the System included in the Pledged Revenues securing the payment of the Bond Similarly Secured, as may be authorized by the laws of the State of Texas upon satisfying any conditions precedent contained in the ordinances authorizing the issuance of any Bonds Similarly Secured.

SECTION 20: Refunding Bonds. The City reserves the right to issue refunding bonds to refund all or any part of the Outstanding Bonds Similarly Secured, pursuant to any law then available, upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all such Outstanding Bonds Similarly Secured are refunded, the conditions precedent prescribed, for the issuance of Additional Prior Lien Obligations, set forth in Section 18 of this Ordinance shall be satisfied and the certificate required in subparagraph (b) shall give effect to the Debt Service Requirements of the proposed refunding bonds (but shall not give effect to the Debt Service Requirements of the bonds being refunded following their cancellation or provision being made for their payment); provided, however, if the refunding of any then-Outstanding Bonds Similarly Secured (in whole or in part) produces an aggregate net present value debt service savings, then the certificate identified in Section 18(b) above shall not be required as a condition to the issuance of such refunding obligations (notwithstanding the fact that, upon issuance, such refunding obligations shall be Bonds Similarly Secured for all purposes).

SECTION 21: Maintenance of System - Insurance. The City covenants, agrees, and affirms its covenants that while the Bonds Similarly Secured remain outstanding it will maintain and operate the System with all possible efficiency and maintain casualty and other insurance on the properties of the System and its operations of a kind and in such amounts customarily carried by municipal corporations in the State of Texas engaged in a similar type of business (which may include an adequate program of self-insurance); and that it will faithfully and punctually perform all duties with reference to the System required by the laws of the State of Texas, but in no event shall the amount of insurance maintained on the projects financed with the proceeds of the Bonds be less than the amount necessary to protect the Purchasers' interest. All money received from losses under such insurance policies, other than public liability policies, shall be retained for the benefit of the holders of the Bonds until and unless the proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, either by replacing the property destroyed or repairing the property damaged, and adequate provision for making good such loss or damage must be made within ninety (90) days after the date of loss. The payment of premiums for all insurance policies required under the provisions hereof shall be considered Maintenance and Operating Expenses. Nothing in this Ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the System but nothing herein shall be construed as preventing the City from doing so.

SECTION 22: Records and Accounts – Annual Audit. The City covenants, agrees, and affirms its covenants that so long as any of the Bonds Similarly Secured remain outstanding, it will keep and maintain separate and complete records and accounts pertaining to the operations of the System in which complete and correct entries shall be made of all transactions relating thereto, as provided by Chapter 1502, as amended, Texas Government Code, or other applicable law. The Holder or Holders of any Bonds Similarly Secured or any duly authorized agent or agents of such Holders shall have the right at all reasonable times to inspect such records, accounts and data relating thereto, and to inspect the System and all properties comprising the same. The City

further agrees that following (and in no event later than 270 days) the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Copies of each annual audit shall be furnished, without charge, to the (i) the Texas Water Development Board, Attention: Executive Administrator and (ii) upon written request, to and at the expense of such Holder, to any subsequent Holder thereof. Expenses incurred in making the annual audit of the operations of the System are to be regarded as Maintenance and Operating Expenses.

SECTION 23: Special Covenants. The City further covenants and agrees by and through this Ordinance as follows:

(a) It has the lawful power to pledge the Pledged Revenues supporting the Bonds Similarly Secured and has lawfully exercised this power under the laws of the State of Texas, including the power existing under Chapter 1502, as amended, Texas Government Code.

(b) The Bonds Similarly Secured shall be equally and ratably secured by a first and prior lien on and pledge of the Pledged Revenues of the System in a manner that one bond shall have no preference over any other bond.

(c) Other than for the payment of the Bonds, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(d) As long as any Bonds, or any interest thereon, remain Outstanding, the City will not sell, lease, or encumber the System or any substantial part thereof (except as provided in Sections 18, 19, or 20 of this Ordinance) provided that this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System;

(e) The City, to the extent and in the manner authorized by law, may sell or exchange for consideration representing the fair value thereof, as determined by the City Council of the City, any property not necessary or required in the efficient operations of the System, or any equipment not necessary or useful in the operations thereof or which is obsolete, damaged or worn out or otherwise unsuitable for use in the operation of the System. The proceeds of any sale of properties of the System shall be deposited in the System Fund.

(f) No free service of the System (except water provided to the City for municipal fire-fighting purposes) shall be allowed, and, should the City or any of its agents or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of funds from sources other than the revenues and income of the System; and

(g) To the extent that it legally may, the City further covenants and agrees that, so long as any of the Bonds Similarly Secured, or any interest thereon, are Outstanding, no franchise shall be granted for the installation or operation of any competing utility systems, other than those owned by the City, and the operation of any such systems by anyone other than the City is hereby prohibited; provided, however, the City expressly reserves the right to eliminate or modify this covenant, at its sole discretion, for any purpose or in order to comply with then existing federal or Texas law.

SECTION 24: Limited Obligations of the City. The Bonds Similarly Secured are limited, special obligations of the City payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues of the System, and the Holders thereof shall never have the right to demand payment of the principal or interest on the Bonds Similarly Secured from any funds raised or to be raised through taxation by the City.

SECTION 25: Security of Funds. All money on deposit in the Funds or accounts for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and money on deposit in such Funds or accounts shall be used only for the purposes permitted by this Ordinance.

SECTION 26: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas and specifically to confirm that the Purchasers have all rights and remedies available under Texas law hereunder, the City also covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Bond Fund or Reserve Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the Holders of any of the Bonds shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the City Council of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

SECTION 27: Notices to Holders Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 28: Bonds Are Negotiable Instruments. Each of the Bonds authorized herein shall be deemed and construed to be a "security" and as such a negotiable instrument with the meaning of the Chapter 8 of the Texas Uniform Commercial Code.

SECTION 29: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the City.

SECTION 30: Mutilated, Destroyed, Lost, and Stolen Bonds. If any mutilated Bond is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Stated Maturity and interest rate and of like tenor and principal amount, bearing a number not contemporaneously outstanding. In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond. Upon the issuance of any new Bond or payment in lieu thereof, under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith. Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 31: Sale of Bonds. The Bonds authorized by this Ordinance are hereby sold by the City to the Texas Water Development Board (the *Purchasers*, having all of the rights, duties, and obligations of a Holder), at the price of par and no accrued interest pursuant to a loan commitment received from the Purchasers is hereby approved and confirmed. The pricing and terms of the sale of the Bonds are hereby found and determined to be the most advantageous reasonably obtainable by the City. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Ordinance, upon payment therefor in accordance with the terms of the loan commitment, this Ordinance, and the Paying Agent/Registrar Agreement.

Proceeds from the sale of the Bonds shall be applied as follows:

- (1) Accrued interest, if any, received from the Purchasers shall be deposited into the Bond Fund.
- (2) The balance of the proceeds derived from the sale of the Bonds (after paying costs of issuance) shall be deposited into the escrow fund established under the Escrow

Agreement authorized and entered into by the City pursuant to Section 37 hereof and, thereafter and from time to time in accordance with the Purchasers' rules, transferred to a Construction Fund (hereinafter defined), created for the projects to be constructed with the proceeds of the Bonds. This Construction Fund shall be established and maintained at the Depository and shall be invested in accordance with the provisions of Section 17 of this Ordinance, but any money deposited into the Construction Fund shall not be commingled with any other funds of the City. Interest earned on the proceeds of the Bonds pending completion of the projects financed with such proceeds shall be accounted for, maintained, deposited, and expended as permitted by the provisions of Chapter 1201, as amended, Texas Government Code, or as required by any other applicable law. Thereafter, such amount shall be expended in accordance with Section 13.

SECTION 32: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of

any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except as would not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if- (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds

or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder, or except to the extent that the Issuer complies with Subsection J of this Section:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any

other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) No Rebate Required. The City need not comply with the covenants and duties imposed by the provisions of Subsection (h) of this Section if:

(1) the City is a governmental unit with general taxing powers;

(2) 95% of the Net Proceeds of the Bonds and all income from the investment thereof will be used for the governmental activities of the City;

(3) the aggregate face amount, within the meaning of Section 1.148-8(c)(1) of the Regulations, of all debt obligations (other than private activity bonds) issued or expected to be issued by the City or any subordinate entity in the calendar year in which the Bonds are issued is not reasonably expected to exceed \$5,000,000; and

(4) the City otherwise satisfies the requirements of paragraph (4)(c) of section 148(f) of the Code and Section 1.148-8 of the Regulations and rulings thereunder.

(k) Bonds Not Hedge Bonds.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued.

(2) Not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Elections. The City hereby directs and authorizes any Authorized Official, either individually or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. Such elections shall be deemed to be made on the Closing Date.

SECTION 33: Control and Custody of Bonds. The Mayor shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas and shall take and have charge and control of the Bonds pending their approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers.

Furthermore, any Authorized Official, either or all, are hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the City's financial advisor, bond counsel, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bonds to the Purchasers.

SECTION 34: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of the Pledged Revenues of the System under this Ordinance and all other obligations of the City to the Holders shall thereupon cease, terminate, and become void and be discharged and satisfied.

Bonds, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at Stated Maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations will mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. In the event of a defeasance of the Bonds, the City shall deliver a certificate from its financial advisor, the Paying Agent/Registrar, an independent accounting firm or another qualified third party concerning the deposit of cash and/or Government Obligations to pay, when due, the principal of, redemption premium (if any), and interest due on any defeased Bonds. As and to the extent applicable, if at all, the City covenants that no deposit of money or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of section 148 of the Code (as defined in Section 32). As long as the Purchasers hold all of the Bonds, the City will give the Purchasers notice of the creation of any escrow pursuant to this Section. Failure to give such notice shall not affect the validity or effectiveness of the creation of such an escrow.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall, upon the request of the City, be remitted to the City against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem defeased Bonds that is made in conjunction with the payment arrangements specified in subsections (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Bonds immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Bonds, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Bonds.

SECTION 35: Ordinance a Contract – Amendments – Outstanding Bonds. The City acknowledges that the covenants and obligations of the City herein contained are a material inducement to the purchase of the Bonds. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section. The City, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of Holders holding a majority in aggregate principal amount of the Bonds Similarly Secured then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided; however, that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 36: Compliance with Purchasers' Rules and Regulations. The City will comply with all of the requirements contained in the resolution or resolutions adopted by the Purchasers with respect to the issuance of the Bonds. In addition, in compliance with the Purchasers' Flood Infrastructure Fund Program Rules, the City agrees and covenants:

(a) to keep and maintain full and complete records and accounts pertaining to the construction of the project financed with the proceeds of sale of the Bonds, including the Construction Fund, in accordance with the standards set forth by the Government Accounting Standards Board;

(b) to create and establish at the Depository a "City of Fredericksburg, Texas Flood Infrastructure Fund Loan Construction Fund" (the *Construction Fund*) for the receipt and disbursement of all proceeds from the sale of the Bonds and all other funds acquired by the City in connection with the planning and construction of the projects financed, in whole or in part, by the Purchasers pursuant to the loan evidenced by the Bonds and all funds deposited to the credit of the Construction Fund shall be disbursed only for the payment of costs and expenses incurred in connection with the planning and building of such projects as approved by the Purchasers and as otherwise allowed by the rules and in accordance with the provisions of Chapter 15 or 17 of the Texas Water Code, as amended;

(c) to provide the Purchasers with copies of "as built plans" pertaining to the projects financed, in whole or in part, with any funds of the Purchasers;

(d) upon completion of the construction of the projects financed, in whole or in part, by the loan evidenced by the Bonds, to provide a final accounting to the Purchasers of the total costs of the projects. Thereafter, the City shall submit a final accounting and a final funds registration form to the Executive Administrator, or her designee. Upon receipt of this information, the Purchasers shall within 60 days of receipt of this information provide written direction of the City of the course of action to be taken with respect to such surplus funds. If the projects as finally completed are built at a total cost less than the amount of available funds for building the projects, or if the Executive Administrator of the Purchasers disapproves construction of any portion of such projects as not being in accordance with the plans and specifications, the City agrees to immediately, with filing of the final accounting, return to the Purchasers the amount of any such excess and/or the cost determined by the Executive Administrator of the Purchasers relating to the parts of such projects not built in accordance with the plans and specifications, to the nearest multiple of the authorized denominations for the Bonds, by (i) the effectuation of a redemption of such amount of Bonds pursuant to Section 4(b) hereof, (ii) the deposit into the Bond Fund for the next scheduled payment of interest or principal on the Bonds, or (iii) spending such amount on other eligible project costs as authorized by the Executive Administrator. In determining the amount of available funds for building the project, the City agrees to account for all amounts deposited to the credit of the Construction Fund, including all loan funds extended by the Purchasers, all other funds available from the projects as described in the project engineer's or fiscal representative's sufficiency of funds statement and all interest earned by the City on money in the Construction Fund;

(e) in addition to the requirements contained in Section 21 hereof, to maintain adequate insurance coverage on the projects financed with the proceeds of the Bonds in amounts adequate to protect the Purchasers' interest;

(f) in addition to the requirements contained in Section 22 hereof, to maintain current, accurate, and complete records and accounts necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(g) to implement any water conservation program required by the Purchasers until all financial obligations to the Purchasers have been discharged;

(h) to comply with any special conditions, if any, specified by the City's water conservation plan maintained in accordance with 31 TAC 363.15, as well as any environmental determination until all financial obligations to the Purchasers have been discharged;

(i) to abide by the Purchasers' rules and relevant state statutes, including, but not limited to, the Purchasers' pre-design funding procedures and pursuant to the requirements of the Purchasers' Resolution No. 22-021 adopted on March 3, 2022; and

(j) to not use Bond proceeds to pay for the cost of sampling, testing, removing or disposing of injection well fluids, brine concentration, municipal solid wastes, soils and/or media contaminated by hazardous substances, and for managing and disposing of any other hazardous substances, including (but not limited to) radioactive substances and low-level radioactive wastes, that may be generated at the project site during planning, design, and construction activities;

(k) Bond proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site and the City also agrees, to the extent permitted by law, to indemnify, hold harmless and protect the Purchasers from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, and disposition of any hazardous substance, radioactive substance, and/or solid waste, as those terms are defined in the Texas Solid Waste Disposal Act (codified at Chapter 361, as amended, Texas Health and Safety Code) and the Radiation Control Act (codified at Chapter 401, as amended, Texas Health and Safety Code, and/or removal and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees during the course of the project;

(l) to apply for and obtain all permits, licenses, letter authorizations, notifications of solid waste registration, notices of intent and other regulatory approvals that may be required by those federal, state, regional, and local governmental entities responsible for regulating environmental, health and safety, and transportation-related matters arising from or pertaining to the generation, management, and disposal of all municipal solid wastes, radioactive substances, and low-level radioactive-wastes that may be generated as the result of the planning, design, and construction of the project financed with Bond proceeds, including (but not necessarily limited to) surface water discharge permit(s), stormwater permits, underground injection control permits, solid waste facility registrations, notifications, and/or permits, hazardous waste permits, radioactive materials management licenses, and low-level radioactive waste permits, registrations, and exemptions;

(m) the City shall be required to submit outlay reports with sufficient supporting documentation (e.g., invoices, receipts) on a quarterly basis, and the Purchasers shall retain the right to request project progress reports and outlay reports monthly as the project proceeds through each project phase and the City covenants to ensure that all Bond proceeds are timely and expeditiously utilized on the project;

(n) the City will not utilize a surety policy to fund all or a portion of the Reserve Fund as provided in Section 14 hereof without the express written consent from the Executive Administrator of the Purchasers;

(o) the City shall abide by all applicable construction requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G and Texas Water Code §17.183;

(p) the City will submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the City that the average weighted maturity of the obligations purchased by the Purchasers does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

(q) the City will provide the Purchasers documentation that it met all applicable State and federal procurement requirements under the Disadvantaged Business Enterprises program, 40 U.S.C. §1101 and 33 U.S.C. §1382(b)(14).

(r) the Bonds must contain a provision that the Purchasers may exercise all remedies available to it in law or equity, and any provision of the Bonds that restricts or limits the Purchasers' full exercise of these remedies shall be of no force and effect;

(s) loan proceeds are public funds and, as such, the Bond proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

(t) the Bonds must contain language detailing compliance with the requirements set forth in 33 U.S.C. §1382 et seq. related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

(u) Since the Bonds are issued for new money purposes only and because current federal law prohibits the "advance refunding" of existing tax-exempt debt, the City certifies to the Purchasers that it will refrain from using any proceeds of the Bonds to pay any debt service on another issue of the City's tax-exempt obligations in contravention of section 149(d) of the Code; and

SECTION 37: Authorization of Escrow Agreement. The City Council hereby finds and determines that it is in the best interest of the City to authorize the execution of an Escrow Agreement, to comply with the Purchasers' rules and regulations and provide for the installment deliveries of the proceeds of the Bonds to the Purchasers, if any. A copy of the Escrow Agreement is attached hereto, in substantially final form, as Exhibit B, and is incorporated by reference to the provisions of this Ordinance for all purposes. The Mayor and/or the City Manager, or the respective designee of either of such parties, are authorized to execute the Escrow Agreement as the act and deed of the City Council.

SECTION 38: Application to Texas Water Development Board. The City Council ratifies and confirms its prior approval of the form and content of the Application to the Texas Water Development Board prepared in connection with the sale of the Bonds and hereby approves the form and content of any addenda, supplement, or amendment thereto.

SECTION 39: Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Norton Rose Fulbright US LLP, Austin, Texas, as Bond Counsel, approving certain legal matters as to the Bonds, said opinion to be dated and delivered as of the date of initial delivery and payment for such Bonds. Printing of a true and correct copy of said opinion on the reverse side of each of said Bonds, with appropriate certificate pertaining thereto executed by facsimile signature of the City Secretary of the City is hereby approved and authorized.

SECTION 40: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 41: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 42: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, Bond Counsel, Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, Bond Counsel, the Paying Agent/Registrar, and the Holders.

SECTION 43: Inconsistent Provisions. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 44: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 45: Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 46: Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 47: Authorization of Paying Agent/Registrar Agreement. The City Council hereby finds and determines that it is in the best interest of the City to authorize the execution of a Paying Agent/Registrar Agreement concerning the payment, exchange, and transferability of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated by reference to the provisions of this Ordinance.

SECTION 48: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 49: No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bond.

SECTION 50: Continuing Disclosure Undertaking.

(a) Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

EMMA means the MSRB's Electronic Municipal Market Access system, accessible by the general public, without charge, on the internet through the uniform resource locator (URL) <http://www.emma.msrb.org>.

Financial Obligation means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

MSRB means the Municipal Securities Rulemaking Board.

Rule means SEC Rule 15c2-12, as amended from time to time.

SEC means the United States Securities and Exchange Commission.

Undertaking means the City's continuing disclosure undertaking, described in subsections (b) through (f) below, hereunder accepted and entered into by the City for the purpose of compliance with the Rule.

(b) Annual Reports.

The City shall file annually with the MSRB, within six months after the end of each fiscal year ending in or after 2023, financial information and operating data with respect to the City of the general type included in the final Application authorized by Section 38 of this Ordinance being

the information described in Exhibit C hereto. All such information must be filed with MSRB pursuant to its Electronic Municipal Access (EMMA) System. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit C hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation and (ii) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall file unaudited financial statements within such period and audited financial statements for the applicable Year with the MSRB, when and if the audit report on such statements becomes available. Under current Texas law, including, but not limited to, Chapter 103, as amended, Texas Local Government Code, the City must have its records and accounts audited annually and shall have an annual financial statement prepared based on the audit. The annual financial statement, including the auditor's opinion on the statement, shall be filed in the office of the City Secretary within 180 days after the last day of the City's fiscal year. Additionally, upon the filing of this financial statement and the annual audit, these documents are subject to the Texas Open Records Act, as amended, Texas Government Code, Chapter 552.

If the City changes its Fiscal Year, it will file notice thereof with the MSRB of such change (and of the date of the new Fiscal Year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) Notice of Certain Events. The City shall file notice of any of the following events with respect to the Bonds, to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds, if material;

- (11) rating changes;
- (12) bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
- (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional paying agent/registrar or the change of name of a paying agent/registrar, if material;
- (15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; an
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City and (b) the City intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The City shall file notice with the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with this Section by the time required by this Section.

(d) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit that causes the Bonds to be no longer Outstanding.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide

only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The City may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the City so amends the provisions of this Section, the City shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

(e) Information Format – Incorporation by Reference.

The City information required under this Section shall be filed with the MSRB through EMMA in such format and accompanied by such identifying information as may be specified from time to time thereby. Under the current rules of the MSRB, continuing disclosure documents submitted to EMMA must be in word-searchable portable document format (PDF) files that permit the document to be saved, viewed, printed, and retransmitted by electronic means and the series of obligations to which such continuing disclosure documents relate must be identified by CUSIP number or numbers.

Financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public through EMMA or filed with the SEC.

(f) Policies and Procedures Concerning Compliance with the Rule.

Because the issuance of the Bonds is subject to the provisions of the Rule and because the potential “underwriters” in a negotiated sale of the Bonds or the initial purchasers in a competitive sale of the Bonds may be subject to MSRB rules and regulations with respect to such sale (including certain due diligence and suitability requirements, among others), the City hereby adopts the General Policies and Procedures Concerning Compliance with the Rule (the Policies and Procedures), attached hereto as Exhibit E, with which the City shall follow to assure compliance with the Undertaking. The City has developed these Policies and Procedures for the purpose of meeting its requirements of the Undertaking and, in connection therewith, has sought the guidance from its internal staff charged with administering the City’s financial affairs, its co-municipal or financial advisors, its legal counsel (including its Bond Counsel), and its independent accountants (to the extent determined to be necessary or advisable). The Policies and Procedures can be amended at the sole discretion of the City and any such amendment will not be deemed to be an amendment to the Undertaking. Each Authorized Official is hereby authorized to amend the Policies and Procedures as a result of a change in law, a future issuance of indebtedness subject to the Rule, or another purpose determined by the Authorized Official to be necessary or desirable for or with respect to future compliance with the Undertaking.

SECTION 51: Book-Entry Only System.

The Bonds may initially be registered so as to participate in a securities depository system (the *DTC System*) with The Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bonds described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The City and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit D (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Bonds, as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Bond, of any amount with respect to principal of, premium, if any, or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest on the Bonds pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

In the event that (a) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the City determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City shall notify the Paying Agent/Registrar, DTC, and the Depository Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. However, the City will not discontinue the use of DTC without the prior notice and consent of the Purchasers for so long as the Purchasers are the holder of any of the Bonds. At that time, the City may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the City, or such depository's agent or designee, and if the City and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 52: Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Ordinance shall be given in such other manner and at such time or times as in the judgment of the City or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such

manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirements for publication thereof.

SECTION 53: No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bond.

SECTION 54: Further Procedures. The officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, and the Application. In addition, prior to the initial delivery of the Bonds, any Authorized Official, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Application, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General's office. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 55: City's Consent to Provide Information and Documentation to the Texas MAC. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in compliance with applicable law, the City hereby consents to and authorizes any Authorized Official, Bond Counsel to the City, and/or Financial Advisor to the City to provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Bonds; provided, however, that no such information and documentation shall be provided prior to the Closing Date. This consent and authorization relates only to information and documentation that is a part of the public record concerning the issuance of the Bonds.

SECTION 56: Effective Date. This Ordinance shall be in force and effect from and after its final passage, and it is so ordained.

[The remainder of this page left intentionally blank.]

PASSED AND ADOPTED on the 15th day of November, 2022.

CITY OF FREDERICKSBURG, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

APPROVED AS TO FORM:

City Attorney

INDEX TO EXHIBITS

Exhibit A	Paying Agent/Registrar Agreement
Exhibit B.....	Escrow Agreement
Exhibit C.....	Description of Annual Financial Information
Exhibit D	DTC Letter of Representations
Exhibit E.....	General Policies and Procedures Concerning Compliance with the Rule

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

SEE TAB NO. 3

EXHIBIT B
ESCROW AGREEMENT
SEE TAB NO. 4

EXHIBIT C

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 50 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Application referred to) below:

The City's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the City referenced in the Application, but for the most recently concluded fiscal year.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

EXHIBIT D

DTC LETTER OF REPRESENTATIONS

SEE TAB NO. 5

EXHIBIT E

General Policies and Procedures Concerning Compliance with the Rule

I. Capitalized terms used in this Exhibit have the meanings ascribed thereto in Section 50 of the Ordinance. *Bonds* refer to the Bonds that are the subject of the Ordinance to which this Exhibit is attached.

II. As a capital markets participant, the City is aware of its continuing disclosure requirements and obligations existing under the Rule prior to February 27, 2020, the effective date of the most recent amendment to the Rule (the *Effective Date*), and has implemented and maintained internal policies, processes, and procedures to ensure compliance therewith. Adherence to these internal policies, processes, and procedures has enabled underwriters in non-exempt negotiated sales and initial purchasers in non-exempt competitive sales to comply with their obligations arising under various MSRB rules and regulations concerning due diligence and findings of suitability, among other matters, regarding the City's compliance with the Rule.

III. The City is aware that the Rule was amended as of the Effective Date (the *Rule Amendment*) and has accommodated this amendment by adding subparagraphs (15) and (16) to Section 50(c) of the Ordinance, which provisions are a part of the Undertaking.

IV. The City is aware that "participating underwriters" (as such term is defined in the Rule) of the Bonds must make inquiry and reasonably believe that the City is likely to comply with the Undertaking and that the standards for determining compliance have increased over time as a result of, among others, the United States Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative and regulatory commentary relating to the effectiveness of the Rule Amendment.

V. The City now establishes the following general policies and procedures (the *Policies and Procedures*) for satisfying its obligations pursuant to the Undertaking, which policies and procedures have been developed based on the City's informal policies, procedures, and processes utilized prior to the Effective Date for compliance with the City's obligations under the Rule, the advice from and discussions with the City's internal senior staff (including staff charged with administering the City's financial affairs), its municipal or financial advisors, its legal counsel (including Bond Counsel), and its independent accountants, to the extent determined to be necessary or advisable (collectively, the *Compliance Team*):

1. The Director of Finance (the *Compliance Officer*) shall be responsible for satisfying the City's obligations pursuant to the Undertaking through adherence to these Policies and Procedures;
2. the Compliance Officer shall establish reminder or "tickler" systems to identify and timely report to the MSRB, in the format thereby prescribed from time to time, the City's information of the type described in Section 50(b) of the Ordinance;
3. the Compliance Officer shall promptly determine the occurrence of any of the events described in Section 50(c) of the Ordinance;

4. the Compliance Officer shall work with external consultants of the City, as and to the extent necessary, to timely prepare and file with the MSRB the annual information of the City and notice of the occurrence of any of the events referenced in Clauses 2 and 3 above, respectively, the foregoing being required to satisfy the terms of the Undertaking;
5. the Compliance Officer shall establish a system for identifying and monitoring any Financial Obligations, whether now existing or hereafter entered into by the City, and (upon identification) determining if such Financial Obligation has the potential to materially impact the security or source of repayment of the Bonds;
6. upon identification of any Financial Obligation meeting the materiality standard identified in Clause 5 above, the Compliance Officer shall establish a process for identifying and monitoring any City agreement to covenants, events of default, remedies, priority rights, or other similar terms under such Financial Obligation;
7. the Compliance Officer shall establish a process for identifying the occurrence of any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation, the occurrence of any of which reflect financial difficulties of the City; and
8. the Compliance Officer shall annually review these Policies and Procedures with the remainder of the Compliance Team, make any modifications on an internal document retained by the Compliance Officer and available to any “participating underwriter” (as defined in the Rule), if requested, and on the basis of this annual review (to the extent determined to be necessary or desirable), seek additional training for herself or himself, as well as other members of the City’s internal staff identified by the Compliance Officer to assist with the City’s satisfaction of the terms and provisions of the Undertaking.



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Finance

TO: Mayor and City Council

FROM: Laura Hollenbeak, Finance Director

MEETING DATE: Nov. 15, 2022

CATEGORY: Resolution

CAPTION: Consider the approval of Resolution 2022-22R approving the Acquisition and Lease Purchase Financing of Fire/EMS Radio System Equipment with Cogent Leasing and Financing, Inc.

PRESENTATION: Laura Hollenbeak, Finance Director

SUMMARY:

FY 2023 adopted City Budget approved funding for lease purchase payments for the acquisition of Fire/EMS Radio System Equipment. \$1,124,625 will be financed over five years. The financing was bid with the low bid received from BankFunding, LLC on behalf of Cogent Leasing and Financing, Inc. with an interest rate of 3.850%.

BACKGROUND:

City Council awarded the Lease/Purchase Financing to BankFunding, LLC at the October 18, 2022, City Council meeting. Total cost of the Fire/EMS Radio System Equipment is \$3,099,000, which will be funded by the City and the County. At today's meeting, City Council needs to approve the attached Resolution and Contract with Cogent Leasing and Financing, Inc. approving the acquisition and financing of the Fire/EMS Radio System Equipment.

FUNDING SOURCE: Fire Department & EMS Fund

FINANCIAL

IMPACT: Total Lease/Purchase Financing: \$1,124,625, Fire Department \$349,875, EMS Fund \$774,750.00. Fire Department L/P funding is less than EMS due to the use of \$424,857 ARPA funds to offset total General Fund Fire Department amount financed. FY 2023 Financial impact - Fire

Department Principal Payment \$75,359.20, EMS Fund Principal Payment \$166,872.58. Each fund will pay a one time fee at closing of \$1,409.00, for a total of \$2,818.00.

STAFF RECOMMENDATION:

Staff recommends approval of resolution and contract with Cogent Leasing and Financing, Inc. for the Lease Purchase Financing of the Fire/EMS Radio System Equipment.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Government

ATTACHMENTS: Resolution and Contract

APPROVAL/REVIEW: Laura Hollenbeak

DEPARTMENT NAME: Finance

FINANCE NAME: *Sandra Hollenbeak*

CITY ATTORNEY NAME: *[Signature]*

CITY MANAGER NAME: *[Signature]*

CREATED: 11/3/2022

REVIEWED: *11/9/2022*

APPROVED: *11-9-2022*

APPROVED: *11/9/22*

RESOLUTION NO. 2022-22R

**A RESOLUTION OF THE CITY COUNCIL OF FREDERICKSBURG,
TEXAS, APPROVING THE ACQUISITION AND LEASE PURCHASE
FINANCING OF PUBLIC EQUIPMENT, AND AUTHORIZING THE
EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN
CONNECTION THEREWITH.**

WHEREAS, the City of Fredericksburg (“City”) desires to procure equipment using lease purchase financing; and

WHEREAS, the City has awarded the bid to provide said financing to *Cogent Leasing and Financing, Inc.*, based on competitive bidding and procurement practices as required by Texas Law.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Fredericksburg, Texas, that:

1. The City Council hereby approves the acquisition and financing of equipment, using financing provided by COGENT LEASING AND FINANCING, INC., said equipment being generally described as:

a. Fire/EMS Radio System Equipment

2. The City Council hereby approves the financing at a total cost and interest rate as set forth on the LEASE SCHEDULE NO. 2 dated as of November 15, 2022 (“Equipment Schedule”), a copy of which is attached hereto as Exhibit “A”, which is made a part of that certain Master Lease-Purchase Agreement dated as of November 15, 2022 (the “Master Agreement”, and together with the Equipment Schedule known collectively as the “Lease”); and

3. The City Council hereby authorizes Clinton Bailey, in his capacity as City Manager, and Laura Hollenbeak, in her capacity as Director of Finance, to execute the Lease and other documents related to said financing, on behalf of the City.

PASSED AND APPROVED this _____ day of _____, 20____.

Mayor

ATTEST:

City Secretary

LEASE SCHEDULE NO. 2
to Master Lease Purchase Agreement

Dated November 15, 2022

This Lease Schedule (this "Lease Schedule") relates to the Master Lease Purchase Agreement dated as of November 15, 2022 (the "Agreement") between the undersigned Lessor and Lessee, together with the terms and conditions of the Agreement incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Agreement. All terms and conditions of the Agreement are incorporated herein by reference.

1. Equipment Description. As used in the Lease, "Equipment" means all of the property described in Exhibit 1 attached to this Lease Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Purchase Price. The Purchase Price for the Equipment is \$1,124,625.00, which shall be deposited in the escrow fund established under that certain Escrow Agreement related to this Lease Schedule between Lessee, Lessor, and Cogent Bank, as Escrow Agent thereunder.
3. Rental Payments; Lease Term. The Rental Payments to be paid by Lessee to Lessor and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Lease Schedule as Exhibit 2.
4. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; and to continue this Lease.
5. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of execution of this Lease Schedule.
6. Bank Qualified. Lessee certifies that it has designated this Lease as a qualified tax-exempt obligation in accordance with Section 265(b)(3) of the Code, that it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such Section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.
7. Optional Prepayment. Lessee has the option to prepay its obligation hereunder in whole on any Payment Date, as provided in Section 4.2 of the Agreement, and the Payment Schedule attached hereto provides the applicable Prepayment Price for any Payment Date such option is exercised.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor has caused this Lease Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease Schedule to be executed in its name by its duly authorized officer.

CITY OF FREDERICKSBURG
Lessee

COGENT LEASING AND FINANCING, INC.
Lessor

By: _____
Name: Clinton Bailey
Title: City Manager

By: _____
Name: Michael J. Horkey
Title: President

Address: 126 W Main Street
Fredericksburg, TX 78624
Attn: Finance Director

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: (830)997-7521
E-mail address: hollenbeak@fbgtx.org

Telephone: 410.409.7579
E-mail address: mhorkey@cogentbank.net

[Signature Page to Lease Schedule No. 2]

Equipment Description

Fire/EMS Radio System Equipment, including the following:

(186) Motorola APX8000 Portable Radios 700/800/VHF bands with Phase 2 TDMA, P25 Link Layer Authentication, P25 9600 Baud Trunking, SmartZone Operation, Astro Digital CAI Operations, ADP, Single Unit Charger, Battery, Antenna, Holder and APX Wireless RSM. Including 5-year warranty.

(74) Motorola APX 4500 Enhanced Mobile Radios, 700/800 bank with 9600 Baud trunking single system, Advance System KeyHardware Key, APX 02 Control Head, Remote Mount, Key Mic, Antenna 3DB low-profile, TDMA Operation, Multi-key Encryption Operation, AES Encryption, 74 Coax Cables, 74 Mini UHF Connectors. Including 5-year warranty.

Total Equipment Cost: \$1,124,625.00

Location of Equipment: Fire Department

Payment Schedule

Rate: 3.85%

Lease Date: 11/15/2022

Payment Date	Payment Amount	Interest	Principal	Balance	Prepayment Price
11/15/2022				\$ 1,124,625.00	
11/15/2022	\$ 242,231.78	0.00	242,231.78	882,393.22	900,041.08
11/15/2023	242,231.78	33,972.13	208,259.65	674,133.57	687,616.24
11/15/2024	242,231.78	25,954.14	216,277.64	457,855.93	467,013.05
11/15/2025	242,231.78	17,627.45	224,604.33	233,251.60	237,916.63
11/15/2026	242,231.78	8,980.18	233,251.60	0.00	0.00
Grand Totals	\$ 1,211,158.90	\$ 86,533.90	\$ 1,124,625.00		

[Exhibit 2 to Lease Schedule No. 2]

ACCEPTANCE CERTIFICATE

Lease Schedule No. 2

Re: Lease Schedule No. 2 dated November 15, 2022 (the "Lease Schedule") to that certain Master Lease Purchase Agreement dated as of November 15, 2022 (the "Agreement" and together with the Lease Schedule, the "Lease") between Cogent Leasing and Financing, Inc., as Lessor, and the City of Fredericksburg, Texas, as Lessee

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above-referenced Lease Schedule, that:

1. The Equipment subject to the Lease Schedule and the Lease has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.

2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.

3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.

4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

Date: _____

CITY OF FREDERICKSBURG

Lessee

By: _____

Name:

Title:



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Finance

TO: Mayor and City Council

FROM: Laura Hollenbeak, Finance Director

MEETING DATE: Nov. 15, 2022

CATEGORY: Resolution

CAPTION: Consider the approval of Resolution 2022-23R approving the Acquisition and Lease Purchase Financing of Vehicle and Equipment with Cogent Leasing and Financing, Inc.

PRESENTATION: Laura Hollenbeak, Finance Director

SUMMARY:

FY 2023 adopted City Budget approved funding for lease purchase payments for the acquisition of Vehicles and Equipment. \$933,977.65 will be financed over three years. The financing was bid with the low bid received from BankFunding, LLC on behalf of Cogent Leasing and Financing, Inc. with an interest rate of 3.820%.

BACKGROUND:

City Council awarded the Lease/Purchase Financing to BankFunding, LLC at the October 18, 2022, City Council meeting. Total cost of the Vehicles and Equipment is \$933,977.65. Vehicles and Equipment to be funded with Lease/Purchase Financing, include a Bucket Truck for the Electric Fund, Tractor and Shredder for the Sanitation Fund, 4 Ventilators, 5 LUCAS Chest Compression Systems, and 1 Ambulance for the EMS Fund, and a Bucket Truck for the Drainage Fund.

FUNDING SOURCE: Lease Purchase Financing Principal & Interest payments will be funded with operating revenues from the Electric, Sanitation, EMS and Drainage Funds.

FINANCIAL IMPACT: Total Lease/Purchase Financing: \$933,977.65. Electric Fund \$200,000, Sanitation Fund \$43,000, EMS Fund \$525,977.65, and Drainage Fund \$165,000. FY 2023 Financial impact - Electric Fund Principal payment \$69,180.92, Sanitation Fund Principal payment

\$14,873.90, EMS Fund Principal payment \$181,938.09, Drainage Fund Principal payment \$57,074.26. Each fund will pay a one time fee at closing of \$704.50, for a total of \$2,818.00.

STAFF RECOMMENDATION:

Staff recommends approval of resolution and contract with Cogent Leasing and Financing, Inc. for the Lease Purchase financing of Vehicles and Equipment for the Electric, Sanitation, EMS and Drainage funds.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Government

ATTACHMENTS: Resolution and Contract

APPROVAL/REVIEW: Laura Hollenbeak

DEPARTMENT NAME: Finance

FINANCE NAME: *Laura Hollenbeak*

CITY ATTORNEY NAME: *[Signature]*

CITY MANAGER NAME: *[Signature]*

CREATED: 11/3/2022

REVIEWED: *11/9/2022*

APPROVED: *11-9-2022*

APPROVED: *11/4/22*

RESOLUTION NO. 2022-23R

**A RESOLUTION OF THE CITY COUNCIL OF FREDERICKSBURG,
TEXAS, APPROVING THE ACQUISITION AND LEASE PURCHASE
FINANCING OF PUBLIC EQUIPMENT, AND AUTHORIZING THE
EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN
CONNECTION THEREWITH.**

WHEREAS, the City of Fredericksburg ("City") desires to procure equipment using lease purchase financing; and

WHEREAS, the City has awarded the bid to provide said financing to *Cogent Leasing and Financing, Inc.*, based on competitive bidding and procurement practices as required by Texas Law.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Fredericksburg, Texas, that:

1. The City Council hereby approves the acquisition and financing of equipment, using financing provided by COGENT LEASING AND FINANCING, INC., said equipment being generally described as:

- a. two (2) Bucket Trucks
- b. one (1) Tractor
- c. one (1) Ambulance
- d. four (4) ventilators
- e. five (5) chest compression systems

2. The City Council hereby approves the Master Lease-Purchase Agreement dated as of November 15, 2022, a copy of which is attached hereto as Exhibit "A", (the "Master Agreement", and together with the Equipment Schedule known collectively as the "Lease"); and

3. The City Council hereby approves the financing at a total cost and interest rate as set forth on the LEASE SCHEDULE NO. 1 dated as of November 15, 2022 ("Equipment Schedule"), a copy of which is attached hereto as Exhibit "B", which is made a part of that certain Master Lease-Purchase Agreement dated as of November 15, 2022; and

4. The City Council hereby authorizes Clinton Bailey, in his capacity as City Manager, and Laura Hollenbeak, in her capacity as Director of Finance, to execute the Lease and other documents related to said financing, on behalf of the City.

PASSED AND APPROVED this _____ day of _____, 20____.

Mayor

ATTEST:

City Secretary

MASTER LEASE PURCHASE AGREEMENT

This Master Lease Purchase Agreement (this "Agreement"), dated as of November 15, 2022, is made and entered into by and between COGENT LEASING AND FINANCING, INC. (together with its successors and assigns, "Lessor"), and the CITY OF FREDERICKSBURG, a political subdivision of the State of Texas ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. LEASE OF EQUIPMENT; FUNDING

1.1. Lease; Possession and Use. Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor the property described in each Lease Schedule (defined herein) executed and delivered by Lessor and Lessee, upon the terms and conditions set forth herein, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the "Equipment"). Each Lease (defined herein) executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment described therein. This Agreement is not a commitment by Lessor to enter into any Lease and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease. The decision whether Lessor enters into any Lease is within Lessor's sole discretion. As used herein, (i) "Lease Schedule" means a schedule substantially in the form attached as Exhibit A to this Agreement, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented, and (ii) "Lease" means a Lease Schedule each together with this Agreement the terms and conditions of which are incorporated therein.

1.2. Funding. Unless otherwise provided in the applicable Lease Schedule, in order to provide financing to pay the costs to acquire and install the Equipment and to pay certain costs related to the execution and delivery of the Lease Documents (defined herein) as set forth in the applicable Lease Schedule (the "Purchase Price"), Lessor and Lessee shall execute and deliver an escrow agreement relating to such Schedule in form and substance and with an escrow agent satisfactory to Lessor (an "Escrow Agreement"). If all conditions set forth in Section 1.3 have been satisfied in full or waived, then Lessor will deposit or cause to be deposited into an escrow fund under the related Escrow Agreement, if applicable, or pay to Lessee an amount equal to the Purchase Price for the Equipment to be financed under the related Lease Schedule.

1.3. Funding Requirements. The funding of the Purchase Price and the performance by Lessor of any of its obligations pursuant to any Lease, are subject to the satisfaction or waiver of the following:

(a) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance as required by the Lease; (2) an opinion of Lessee's counsel and/or bond counsel to Lessee with respect to certain matters related to the Lease; (3) waivers of third party holders of interests in the real property where the Equipment will be located, as Lessor may deem necessary; (4) copies of resolutions by Lessee's governing body, duly authorizing the Lease and the Escrow Agreement and incumbency certificates for the person(s) executing the Lease and the Escrow Agreement; (5) such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under the Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than 60 days prior to the funding of the Purchase Price; (6) if all or a portion of the Purchase Price will be paid to Lessee (or vendor(s) or supplier(s) of the Equipment on behalf of Lessee), an acceptance certificate for the Equipment (substantially in the form attached as Exhibit B to this Agreement)(an "Acceptance Certificate"); and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

(b) Lessee has executed and delivered to Lessor the Lease Schedule, its related Payment

Schedule and the related Escrow Agreement (if applicable);

- (c) no Event of Default shall have occurred and be continuing under any Lease;
- (d) no material adverse change shall have occurred in the financial condition of Lessee;
- (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (defined herein) other than the respective rights of Lessor and Lessee as herein provided; and
- (f) all representations of Lessee in the Lease remain true, accurate and complete.

1.4. Delivery, Installation and Acceptance of Equipment. Lessee shall order each Equipment, shall cause the Equipment to be delivered and installed at the locations specified under the applicable Lease Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. If the Purchase Price is deposited under an Escrow Agreement for the acquisition of the Equipment, such funds shall be disbursed as provided therein. The insufficiency of proceeds of any Lease to pay all costs of the Equipment subject thereto shall not affect Lessee's obligations under this Section. When the Equipment described in such Lease Schedule is delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor an Acceptance Certificate for the Equipment.

2. TERM

2.1. Term. The term of each Lease (the "Lease Term") shall commence on the Lease Date set forth in the applicable Lease Schedule and shall continue until the end of the fiscal year of Lessee in effect at such Lease Date (the "Original Term"); provided that the Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any renewal term of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Lease (each a "Renewal Term"), as specified in the Lease Schedule applicable thereto up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term, unless sooner terminated pursuant to the Lease.

3. RENTAL PAYMENTS

3.1. Rental Payments. Lessee agrees to pay the rent payments ("Rental Payments") in the amounts and on the dates (each a "Payment Date") as specified in the Payment Schedule attached to each Lease Schedule. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule for each Lease. All Rental Payments shall be paid to Lessor, at such places as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

3.2. Current Expense. The obligations of Lessee under this Agreement and all Lease Schedules, including its obligation to pay the Rental Payments due in any fiscal year shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State of Texas (the "State"). THE RENTAL PAYMENTS AND ANY OTHER AMOUNTS PAYABLE HEREUNDER ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NONE OF LESSEE, THE STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of the Lessee, the State or any political subdivision or agency thereof. The person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year, and will use all reasonable and lawful means available to secure the

appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein; provided that Lessee's governing body retains the authority to approve or reject such budget request. Lessor acknowledges that appropriation for Rental Payments and any other amounts payable hereunder is a governmental function which Lessee cannot contractually commit itself in advance to perform. Without committing itself to do so, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Term.

3.3. Unconditional Rental Payments. Subject to Section 3.4 hereof, (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of these payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment; and (e) Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

3.4. Nonappropriation. If during the then current fiscal year of Lessee, sufficient funds are not appropriated to make Rental Payments required under a Lease for the following fiscal year (an "Event of Nonappropriation"), Lessee shall be deemed not to have renewed such Lease for the following fiscal year, and the Lease shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to make Rental Payments under the Lease beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment subject to the Lease to Lessor in accordance with the requirements of Section 11.3. Lessee shall notify Lessor in writing no later than 30 days following an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return the applicable Equipment or otherwise comply with Section 11.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if the Lease had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Lease, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor.

3.5. Security Interest. As security for Lessee's obligations to pay all Rental Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, moneys and investments held from time to time in the escrow fund under each Escrow Agreement and any and all proceeds of any of the foregoing. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

3.6. Tax Covenants.

(a) Lessee covenants and agrees that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest

moneys on deposit in the any escrow fund related to each Lease from time to time in a manner that will not cause such Lease to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings in any such escrow fund to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments under each Lease from federal gross income pursuant to Section 103 of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor that Lessor may not exclude the interest component of any Rental Payment under a Lease from federal gross income, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments under the Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction evidenced by such Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Rental Payment due date in such amount as will maintain such after tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error).

4. PURCHASE AND PREPAYMENT

4.1. End of Lease Term. Lessee shall have the option to purchase all of the Equipment under a Lease upon the expiration of the Lease Term and payment in full of all Rental Payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

4.2. Optional Prepayment. Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date as set forth in the applicable Payment Schedule , but only if and to the extent the Lease Schedule provides for such prepayment. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under such Lease, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Prepayment Price set forth in the applicable Payment Schedule (the "Prepayment Price").

4.3. Excess Proceeds. Lessee's obligations under a Lease shall be prepaid in part from the excess proceeds of the Lease on the terms set forth in any Escrow Agreement pursuant to which proceeds of the Lease are being held.

4.4. Release of Lessor's Interest. Upon timely receipt, in collected funds, of all amounts required for the purchase of the Equipment subject to any Lease pursuant to Section 4.1 or the prepayment in whole of any Lease pursuant to Section 4.2, such Lease shall terminate, all of Lessor's right, title and interest in and to the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of the Lease and Lessor's interest in the Equipment, without warranty by or recourse to Lessor.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Representations and Warranties. Lessee shall be deemed to make the following representations and warranties to Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, the other Lease Documents and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the other Lease Documents.

(b) The execution and delivery of this Agreement and the Lease Schedule have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(c) This Agreement and the Lease Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Lease Schedule by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other Lease Document or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other Lease Document.

(f) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(g) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term.

6. INSURANCE

6.1. Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence unless specified differently in the related Lease Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price.

6.2. Insurance Requirements. All insurance policies required by Section 6.1 shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 6.1 with the prior written consent of Lessor.

7. ADDITIONAL OBLIGATIONS

7.1. Use and Maintenance of Equipment. Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the related Lease Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section, Lessor may (to the extent permitted by law and in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

7.2. Taxes. Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Equipment.

7.3. Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

7.4. Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment (each, a "Lien"), other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time.

7.5. Financial Information. Lessee shall deliver to Lessor (i) its annual audited financial statements within 210 days after the end of each fiscal year, (ii) its annual budget for each fiscal year promptly following approval thereof, and (iii) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement and the Lease as may be reasonably requested by Lessor from time to time.

8. TITLE; NO WARRANTIES BY LESSOR

8.1. Title. During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease Schedule and this Agreement. Upon an Event of Default or Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

8.2. Personal Property. The Equipment is and shall at all times be and remain personal property and not fixtures.

8.3. No Warranties. LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER,

SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor for the benefit of the Lessee in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

9. RISK OF LOSS; CASUALTY; INDEMNITY

9.1. Risk of Loss. As between Lessee and Lessor, Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to any Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 9.

9.2. Notice of Loss. If a casualty occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

9.3. Application of Proceeds. If any item of Equipment has suffered a casualty loss is beyond repair, then Lessee shall either: (a) promptly replace such Equipment with similar equipment in good repair, condition and working order free and clear of any liens (except Lessor's rights hereunder), in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Payment Date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Prepayment Price set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Prepayment Price to be paid by Lessee with respect to the such Equipment.

9.4. Claims and Expenses. To the extent permitted by and enforceable under State law, Lessee shall bear the risk for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorneys' fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease.

10. ASSIGNMENT

10.1. Assignment by Lessor. Lessor may assign its rights, title and interest in and to any Lease, any Equipment or any Escrow Agreement (including the escrow fund thereunder), and/or may grant or assign a security interest in any Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder), in whole or in part, to any party at any time and from time to time without Lessee's consent. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease and Escrow Agreement. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY

CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder) shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee agrees to acknowledge in writing any such assignments if so requested. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

10.2. Assignment and Subleasing by Lessee. Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

11. EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default Defined. The occurrence of any of the following events with respect to a Lease shall constitute an Event of Default under the Lease:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under the Lease within ten (10) days following the due date thereof, other than by reason of an Event of Nonappropriation;

(b) Lessee fails to perform or observe any of its obligations under Section 6, 7.4 or 10.2 hereof;

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant with respect to the Lease for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Lessee is in default with respect to the payment or performance of any indebtedness, liability or obligation to Lessor or any of its affiliates under any note, loan agreement, security agreement, lease, title retention or conditional sales agreement or any other instrument or agreement (including the occurrence of any Event of Default under any other Lease then held by Lessor), whether accelerated or otherwise and any applicable grace period with respect thereto has expired; or

(e) Any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or

(f) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law.

11.2. Remedies on Default. Upon the occurrence of any Event of Default with respect to a Lease, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies with respect to the Lease:

(a) Lessor, with or without terminating the Lease, may declare all Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 11.3 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand,

without any court order or other process of law and without liability for any damage occasioned by such repossession; and Lessor may thereafter dispose of the Equipment. If Lessor terminates the Lease and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments under the Lease; and (vi) any other amounts then due under the Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(c) By written notice to any escrow agent that is holding proceeds of the Lease under an Escrow Agreement, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Lease; or

(d) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Lessee shall pay the reasonable attorneys' fees and expenses incurred by Lessor in exercising any remedy hereunder.

11.3. Return of Equipment; Release of Lessee's Interest. Upon termination of any Lease prior to the payment of all Rental Payments or the applicable Prepayment Price thereunder (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 7; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; (c) return such Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee; and (d) comply with any additional return conditions specified in the Lease Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

With respect to any provision of the Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of the Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the Prepayment Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

11.4. Late Charge. To the extent permitted by and enforceable under State law, Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the interest rate set forth in the applicable Lease Schedule plus 5% per annum or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

11.5. No Remedy Exclusive. Each of the rights and remedies under this Agreement and each Lease is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement or any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement or any Lease, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

11.6. Costs and Attorneys' Fees. To the extent permitted by and enforceable under State law, upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in

addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

12. MISCELLANEOUS PROVISIONS

12.1. Notices. All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, 24 hours after deposit with a courier, or, if given by other means, when delivered.

12.2. Binding Effect. This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means, with respect to a Lease, any person or entity to whom Lessor has assigned its right to receive Rental Payments under such Lease.

12.3. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. Entire Agreement; Amendments. Each Lease constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. Each Lease may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

12.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

12.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in this Agreement and each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each Lease.

12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

12.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Lease Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the applicable Lease Term so that the interest is uniform through such term.

12.9. Waiver of Jury Trial. To the extent permitted by applicable law, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

12.10. Relationship of Parties. Lessee acknowledges and agrees that (i) this Agreement and each Lease and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and any Lease, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

12.11. Filing of Leases. Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement or any Lease, any document related to this Agreement or any Lease, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any Lease or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by the Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

12.12. Counterparts. This Agreement and any Lease Schedules may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Agreement and any Lease Schedules it shall not be necessary to produce or account for more than one such counterpart.

12.13. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement and any Lease Schedule shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and such Lease Schedule(s). The parties agree that any electronically signed document (including this Agreement and any Lease Schedule) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[The remainder of this page is intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

CITY OF FREDERICKSBURG
Lessee

COGENT LEASING AND FINANCING, INC.
Lessor

By: _____
Name: Clinton Bailey
Title: City Manager

By: _____
Name: Michael J. Horkey
Title: President

Address: 126 W Main Street
Fredericksburg, TX 78624
Attn: Finance Director

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: (830)997-7521
E-mail address: lhollenbeak@fbgtx.org

Telephone: 410.409.7579
E-mail address: mhorkey@cogentbank.net

[Signature Page to Master Lease Purchase Agreement]

LEASE SCHEDULE NO. 1
to Master Lease Purchase Agreement

Dated November 15, 2022

This Lease Schedule (this "Lease Schedule") relates to the Master Lease Purchase Agreement dated as of November 15, 2022 (the "Agreement") between the undersigned Lessor and Lessee, together with the terms and conditions of the Agreement incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Agreement. All terms and conditions of the Agreement are incorporated herein by reference.

1. Equipment Description. As used in the Lease, "Equipment" means all of the property described in Exhibit 1 attached to this Lease Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Purchase Price. The Purchase Price for the Equipment is \$933,977.65, which shall be deposited in the escrow fund established under that certain Escrow Agreement related to this Lease Schedule between Lessee, Lessor, and Cogent Bank, as Escrow Agent thereunder.
3. Rental Payments; Lease Term. The Rental Payments to be paid by Lessee to Lessor and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Lease Schedule as Exhibit 2.
4. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; and to continue this Lease.
5. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of execution of this Lease Schedule.
6. Bank Qualified. Lessee certifies that it has designated this Lease as a qualified tax-exempt obligation in accordance with Section 265(b)(3) of the Code, that it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such Section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.
7. Optional Prepayment. Lessee has the option to prepay its obligation hereunder in whole on any Payment Date, as provided in Section 4.2 of the Agreement, and the Payment Schedule attached hereto provides the applicable Prepayment Price for any Payment Date such option is exercised.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor has caused this Lease Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease Schedule to be executed in its name by its duly authorized officer.

CITY OF FREDERICKSBURG
Lessee

COGENT LEASING AND FINANCING, INC.
Lessor

By: _____
Name: Clinton Bailey
Title: City Manager

By: _____
Name: Michael J. Horkey
Title: President

Address: 126 W Main Street
Fredericksburg, TX 78624
Attn: Finance Director

Address: 420 S. Orange Ave, Ste. 150
Orlando, FL 32801
Attn: Public Finance

Telephone: (830)997-7521
E-mail address: lhollenbeak@fbgtx.org

Telephone: 410.409.7579
E-mail address: mhorkey@cogentbank.net

Equipment Description

Quantity / Detail / Department	Price per Unit (\$)	Total Cost
One (1) new 2022 RAM 5500 4x4 Bucket Truck for the City's Public Works Department.	165,000.00	\$165,000.00
One (1) new 2022 RAM 4x4 Bucket Truck for the City's Electric Department.	200,000.00	\$200,000.00
One (1) new 2022 John Deere 5050E Open Operator Station Utility Tractor, with MX7 Lift -Type Rotary Cutter.	43,000.00	\$43,000.00
One (1) 2024 Ford F550 Type I Ambulance, plus additional equipment to outfit the vehicle (Public Safety).	406,090.00	\$406,090.00
Four (4) new ventilators (Public Safety).	7,999.00	\$31,996.00
Five (5) new LUCAS Chest Compression Systems (Public Safety).	17,578.33	\$87,891.65

Total Equipment Cost: \$933,977.65

Payment Schedule

Rate: 3.82%

Lease Date: 11/15/2022

Payment Date	Payment Amount	Interest	Principal	Balance	Prepayment Price
11/15/2022				\$ 933,977.65	
11/15/2022	\$ 323,067.17	0.00	323,067.17	610,910.48	623,128.69
11/15/2023	323,067.17	23,336.78	299,730.39	311,180.09	317,403.69
11/15/2024	323,067.17	11,887.08	311,180.09	0.00	0.00
Grand Totals	\$ 969,201.51	\$ 35,223.86	\$ 933,977.65		

[Exhibit 2 to Lease Schedule No. 1]

ACCEPTANCE CERTIFICATE

Lease Schedule No. 1

Re: Lease Schedule No. 1 dated November 15, 2022 (the "Lease Schedule") to that certain Master Lease Purchase Agreement dated as of November 15, 2022 (the "Agreement" and together with the Lease Schedule, the "Lease") between Cogent Leasing and Financing, Inc., as Lessor, and the City of Fredericksburg, Texas, as Lessee

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above-referenced Lease Schedule, that:

1. The Equipment subject to the Lease Schedule and the Lease has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.
2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.
4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

Date: _____

CITY OF FREDERICKSBURG
Lessee

By: _____
Name:
Title:



CITY COUNCIL AGENDA MEMO

DEPARTMENT: City Secretary

TO: Mayor and City Council

FROM: Shelley Goodwin, City Secretary

MEETING DATE: Nov. 15, 2022
Items

CATEGORY: Other Action

CAPTION: Consider the approval of the 2023 City Employee Holiday Calendar

PRESENTATION: Shelley Goodwin, City Secretary

SUMMARY:

The City Council is required to approve the City Employee Holidays for 2023.

BACKGROUND:

This year only 1 holiday will interfere with a City Council Meeting; which is July 4th. The July 4th meeting will be held on Wednesday, July 5th and the request for the Law Enforcement Center Room has already been sent to the Gillespie County.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION:

Approve the attached list of 13 City Employee Holidays.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Family Life

ATTACHMENTS:

2023 City Employee Holidays

APPROVAL/REVIEW: 

DEPARTMENT NAME: City Secretary

CREATED: 11/4/2022

FINANCE NAME:  Laura Hollenback

REVIEWED: 11/9/2022

CITY ATTORNEY NAME: 

APPROVED: 11-9-2022

CITY MANAGER NAME: 

APPROVED: 11/9/22

2023 City of Fredericksburg Employee Holiday Schedule

New Year's Day	Friday, December 30, 2022
Martin Luther King Day	Monday, January 16, 2023
Presidents' Day	Monday, February 20, 2023
Good Friday	Friday, April 7, 2023
Memorial Day	Monday, May 29, 2023
Independence Day	Tuesday, July 4, 2023 *
County Fair Day	Friday, August 25, 2023
Labor Day	Monday, September 4, 2023
Veterans Day	Friday, November 10, 2023
Thanksgiving	Thursday, November 23, 2023 Friday, November 24, 2023
Christmas Eve & Christmas Day	Monday, December 25, 2023 Tuesday, December 26, 2023

*City Council Meeting will move to the next day (Wednesday).
If the holiday falls on a Saturday, it will be observed on Friday; if the holiday falls on a Sunday, it will be observed on Monday.



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Parks & Recreation

TO: City Council

FROM: Andrea Schmidt, Parks and Recreation Department Director

MEETING DATE: November 15, 2022

CATEGORY: Other Action Items

CAPTION: Consider approval to award a bid to Tuscany Pavers, LLC. for \$7.25 a square foot (not to exceed \$250,000) for the replacement of pavers at Marktplatz.

PRESENTATION:

Andrea Schmidt, Parks and Recreation Department Director

SUMMARY:

An invitation for bids was advertised in October 2022. At the pre-bid meeting, one company attended and only one bid was submitted. Tuscany Pavers LLC bid \$7.25 per square foot for the pavers. Tuscany Pavers also was awarded phase I of the project last fiscal year. We have approximately 25,000 square feet of pavers left to replace which at this price would total \$181,250. Even if the measurements are off some, we will still be well below the budgeted amount.

The contractor plans to order the pavers as soon as possible. These typically take about 6 weeks to arrive on site. The contractor has agreed to do sections at a time so the sidewalks can be open on the weekends. Phase II of this project should be completed by March 9, 2023, if there are no major delays.

The pavers on the northwest corner of Marktplatz will be replaced as part of the Market Square Redevelopment project that is set to begin in January of 2023 and are separate from this project.

BACKGROUND:

The pavers at Marktplatz have been deteriorating over the last decade. The winter storm in 2021 caused this process to speed up. Funds were budgeted in the FY '22 budget to replace approximately half the pavers. Additional funds were budgeted this year to replace the remaining pavers. The current paver project budget is \$250,000.

The current pavers at Marktplatz are clay and susceptible to freezing water damage. The new pavers will be concrete and should not crack during winter freezes. These new pavers will match the pavers along Austin Street where we do not have damage.

FUNDING SOURCE: Tourism Fund

FINANCIAL IMPACT: approximately \$182,000

STAFF RECOMMENDATION:

Consider approving the Tuscany Pavers LLC bid for \$7.25 ft² for paver replacement at Marktplatz not to exceed \$250,000.

ATTACHMENTS: Tuscany Pavers bid submittal

COMMUNITY VISIONING/STRATEGIC INITIATIVES:

Business Visioning _____

Family Life Vision _____

Government Vision _____

Quality of Life Vision X

DEPARTMENT NAME: PARD *Andrea Schmitt*

CREATED: 10/31/22

FINANCE NAME: *Laura Hollembeck*

REVIEWED: 11/9/2022

CITY ATTORNEY NAME: *D. J. [Signature]*

APPROVED: 11-9-2022

CITY MANAGER NAME: *Chris [Signature]*

APPROVED: 11/9/22

Bid Prices

Bid Item	Description	Unit	Estimated Quantity	Unit Bid Price	Total Item Bid Price
1	Removal of existing pavers: The total amount for furnishing all labor, materials, tools, equipment, and incidentals required for removal and disposal of existing pavers in accordance with the general specifications.	SF	1,000	\$1.50	\$1,500.00
2	Installation of concrete pavers: The total amount for furnishing all labor, materials, tools, equipment, and incidentals required for the installation of concrete pavers in accordance with the general specifications.	SF	1,000	\$5.75	\$5,750.00
A. BID AMOUNT			Seven thousand two hundred fifty Dollars and NO Cents		\$ 7,250.00

\$ 7.25/sq.ft.

TOTAL BID AMOUNT

Seven thousand two hundred fifty dollars AND
 NO CENTS , \$ (7,250.00)

(Use words)

(Use figures)

TUSCANY Pavers, LLC
 Attn: Garrett Lindholm
 201 Barefoot Park Ln.
 Georgetown, TX. 78628
 (512) 947-2705
 TUSCANYPAVERS11@gmail.com



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Parks and Recreation Department

TO: Mayor and City Council

FROM: Andrea Schmidt, Parks and Recreation Director

MEETING DATE: November 15, 2022

CATEGORY:

CAPTION: Consider, discuss, and take possible action on the soccer fields located adjacent to Oakcrest Park and the possible plans moving forward

PRESENTATION: Andrea Schmidt, Parks and Recreation Director

SUMMARY:

The city has given the youth soccer association the right to occupy and manage approximately 12.7 acres of property adjacent to Oakcrest Park for temporary fields. Over the last couple of years, the City has been working with the Fredericksburg soccer association on construction and management of new permanent soccer fields at this property. The soccer association has submitted a proposal for the development of these fields.

Proposed funding for this project would include private donations raised by the soccer association, and city and county contributions.

The current temporary fields are in poor condition and have become unplayable for some of the older youth.

BACKGROUND:

The City held two bond elections to construct a sports park next to Oakcrest Park. Neither of the bonds passed so the Fredericksburg soccer association has been working to raise funds to construct and maintain the fields themselves.

FUNDING SOURCE:

FINANCIAL IMPACT:

STAFF RECOMMENDATION:

Discussion on soccer fields located adjacent to Oakcrest Park and steps for moving forward.

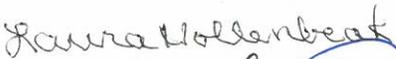
COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS:

Soccer proposal with budget summary and layout

APPROVAL/REVIEW: Andrea Schmidt

DEPARTMENT NAME: PARD 

FINANCE NAME: 

CITY ATTORNEY NAME: 

CITY MANAGER NAME: 

CREATED: 11/3/2022

REVIEWED: 11/7/2022

APPROVED: 11-9-2022

APPROVED: 11/9/22

**City of Fredericksburg Oak Crest Park
Summary of budget costs for soccer field construction**

10/5/2022

Friends of the Fields Soccer responsibility and in need of fund raising			
Item	Description	Item Total	
1	Earthwork mobilization / demobilization	\$ 10,000	
2	SWP3 permit, silt fence, inspection	\$ 10,000	
3	Salvage,screen, stockpile, and replace topsoil over fields	\$ 100,000	
4	Excavation	\$ 100,000	
5	Embankment	\$ 100,000	
6	Added topsoil for fields (3")	\$ 125,000	
7	Revegetation outside of fields and silt control	\$ 30,000	
8	Establishing grass	\$ 250,000	
9	Portable light systems. LED.	\$ 98,000	
10			
11			\$ 823,000
12			
13	Soft costs - design, civil, architectural, structural, electrical	\$ 100,000	
14	Planning level contingency	\$ 100,000	\$ 200,000
Friends of the Fields Responsibility			\$ 1,023,000

City Responsibility

	Description		
20	Note: City of Fredericksburg is providing the land and it will remain City property.		
21	Water and Sewer service for irrigation and restrooms	\$ 40,000	
22	Commercial concrete driveway	\$ 15,000	
23	Irrigation system allowance (excludes storage or pumps)	\$ 250,000	
24	Electrical distribution for field lights (110 V)	\$ 40,000	
25	Base and chip seal in parking lot	\$ 400,000	
26			
27			
City Responsibility			\$ 745,000.00

Potential County Responsibility - Restrooms / Pavilion (Phase 2)

	Description		
30	Concession stand and bathrooms slab up	\$ 450,000	
31	ADA spaces and ramps phase 1 & 2	\$ 20,000	
32	Sidewalks and patio around concession stand	\$ 40,000	
33	Covered rest area / shade	\$ 150,000	
34			
			\$ 660,000.00
			\$ 2,428,000



HILL COUNTRY UNITED SOCCER CLUB
375 BERMUDA LANE
FREDERICKSBURG, TX 78624

October 4, 2022 (UPDATED)

To: City of Fredericksburg

From: Hill Country United Soccer Club (Soccer association) Dan Kemp, Mark Cornett

RE: DRAFT agreement items for soccer field construction with City of Fredericksburg and Gillespie County

Vision: Develop a public – private partnership between the City of Fredericksburg, Soccer association, and Gillespie County that will provide soccer fields for the use of youth and adult recreational and competitive leagues. The infrastructure of the fields would be owned by the City of Fredericksburg and maintained through a partnership with the Soccer association.

Soccer Association and private funding

1. Design, construct and maintain soccer fields in master plan location. We will provide the grading and field construction through establishing grass. We will provide excavation to subgrade for parking lot.
2. Maintenance of youth fields, electricity for field lighting.
3. Maintenance of irrigation system including repairs and operations.
4. Topo survey and field data, which has been completed.
5. Portable light system.

We request the **City** to provide:

1. Land adequate to construct the fields. See attached exhibit.
2. Irrigation water and irrigation system capable of watering the fields with City supplied water.
3. Concrete driveway approach from Fair Drive along with suitable concrete apron for safe entrance and exit (3,000 s.f.). Include an appropriate gate that can be locked to keep vehicles out if the fields are closed (single pipe gate okay).
4. City to provide electricity and water to facility.
5. Provide and extend water and sewer service to restroom / concession site.
6. Gravel or paved parking area suitable for all weather. Pavement for dust control.

We request the **City** to maintain:

1. Restrooms along with normal maintenance like the existing baseball restrooms near the fields. Restrooms need to be operational during seasonal use.
2. Normal trash service in conjunction with baseball facility.
3. Gravel or paved parking area suitable for all weather. Pavement for dust control.

We request the **County** to provide or fund:

1. Restroom, small concession stand, and meeting/storage room facility similar to Kerrville building.

2. Sidewalks around restroom facility patio.
3. Coordination with drainage issues as our site will drain into the airport property.

Field Ownership: The City will continue to own the area delineated by the soccer fields. The soccer association will lease the fields on an annual basis for an initial period of 30 years at \$10 per year. Reasonable conditions to the use, maintenance, and purpose of the fields – youth and adult sport fields. The applicable local soccer association board would manage the fields. Through dues, lease of the fields, and activity charges the association would be responsible for maintenance of turf. The local soccer board will provide an annual report to the estimated usage, revenues, and related costs associated with maintenance of the fields.

Utilities: City to provide potable water, sewer. Soccer will pay for electricity usage at building and field lights.

Insurance: We will maintain insurance on the fields and regulate them as per our insurance requirements.

We operate with volunteers, parents, coaches, referees. We have revenue from registration fees, donations and sponsorships, and fundraising that will be used to maintain the fields. Additionally, we intend to offer advertising on annual basis to assist with field maintenance and would therefore reserve advertising rights to generate maintenance revenue for the duration of our lease.

A proper sign listing out the cooperation status of the soccer fields between the City, County, major donors to construct the fields, management of the fields, scheduling, and related regulations will be provided at the entrance.

Dan W. Kemp
President
Hill Country United Soccer Club

Future Agenda Worksheet
December 6, 2022 – December 20, 2022

	CITY COUNCIL MEETING DATES & FUTURE AGENDA ITEMS	ACTION	PRESENTER
	Tuesday, December 6, 2022 (Work Session or Special Meeting)		
1	November 15, 2022, Regular Meeting Minutes	Consent	Shelley
2	Events - mass event rentals and fees at Market Square	Discussion	Andrea
3	Z-2225 – 507 Cora STR Facility CUP	Public Hearing/Approval	Anna
4	Z-2226 – 406 N. Orange STR Unoccupied CUP	Public Hearing/Approval	Anna
5	Z-2227 – New Fisd Middle School Campus - Rezone	Public Hearing/Approval	Anna
6	Sports Park, Fees and Facilities	Discussion	Andrea
7	Affordable Housing Update	Discussion	Vince Michel
8	HRB fill vacancy	Appoint	Shelley
9	Purchasing Policy	Approval	Laura
	Tuesday, December 20, 2022 (Regular Meeting)		
1	December 6, 2022, Minutes	Approval	Shelley
2	Main Street Waterline	Discussion	Kris
	FUTURE AGENDA ITEMS		
1	Lady Bird Johnson Golf Course Lease	Approval	Clinton
2	Capital Improvement Fund in General Fund (postponed from 5-16-2022)	Resolution	Laura
3	Naming rights for Market Square	Approval	Andrea
4	Boards and Commissions (1 Market Square Redevelopment vacancy & 1 HRB vacancy)	Appoint	Shelley
5	W. Live Oak Zoning & Land Use Change	Public Hearing & Approval	Anna
6	CVB Lease Agreement	Approval	Clinton
7	Performance Agreement – Alstadt Phase I	Approval	Evan
8	East Main Street Waterline Project - Construction Contract Bid Award	Approval	Kris
9	Intersection Traffic Control Device Modifications	Public Hearing & Approval	Garret