



City of Fredericksburg

CITY COUNCIL REGULAR MEETING AGENDA TUESDAY, DECEMBER 20, 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 Regular Session on Tuesday, December 20, 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.
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1. CALL TO ORDER

2. INVOCATION

(Susan King, 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 December 6, 2022, Special Meeting:
(Shelley Goodwin, City Secretary)
(Agenda Packet Pages 5 - 14)

7. ORDINANCES, RESOLUTIONS, AND PUBLIC HEARINGS

- A.** Consider proposed Text Amendments to the City's Zoning Code regarding Short-Term Rental for Section 2.100 Definitions (Z-2231) (Anna Hudson, Interim Development Services Director)
- i. Hold a Public Hearing to receive comments for or against the proposed amendments.
 - ii. Presentation
 - iii. Consider the approval of Ordinance 2022-40 amending Section 2.100 - Definitions, of Appendix B - Zoning Ordinance, of the Code of Ordinances, to amend the residency requirement for operation of Short-Term Rental, Accessory units and Short-Term Rental, B&B Units; and providing for an effective date.

(Agenda Packet Pages 15 - 28)

- B.** Consider the following actions related to a Conditional Use Permit requested by Bethany McCullough for property located at 511 W. San Antonio Street (#Z-2228) (Anna Hudson, Interim Development Services Director)
- i. Hold a public hearing to receive comments for or against the request.
 - ii. Presentation
 - iii. Consider the approval of a Conditional Use Permit per Section 6.110 to expand the use of a non-conforming property.

(Agenda Packet Pages 29 - 32)

8. OTHER ACTION ITEMS AND UPDATES

- A.** Consider the approval of a lease agreement with the Fredericksburg Convention and Visitor Bureau (CVB) for property located at 302 E. Austin.(Andrea Schmidt, Parks and Recreation Director).

(Agenda Packet Pages 33 - 46)

- B.** Consider awarding a Construction Contract for the East Main Street Waterline Rehabilitation Project to QRO MEX Construction Company for \$1,790,655.00 (Kris Kneese, Interim Public Works & Utility Director).

(Agenda Packet Pages 47 - 54)

- C.** Consider, discuss, and take action on the Lady Bird Johnson Golf Course Facility Management Agreement with Touchstone Golf, LLC. (Clinton Bailey, City Manager).

(Agenda Packet Pages 55 - 74)

- D.** Consider the approval of a Performance Agreement and associated financial security for 110 percent of the cost of the remaining public improvements required for completion of the Alstadt Village Phase I Subdivision. (Evan Williamson, Staff Engineer).

(Agenda Packet Pages 75 - 86)

9. CITY MANAGER'S REPORT

- A.** Short-Term Rental Permitting and Code Enforcement

- B.** Recent Staff Promotions

10. ITEMS FOR FUTURE AGENDA

(Agenda Packet Page 87)

11. EXECUTIVE SESSION

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

- A. Consider and discuss the appointment of a public officer or employee, specifically the City Attorney [Sec. 551.074]; and
- B. Consider and discuss the purchase, exchange, lease, or value of real property, specifically public utility easements located in the vicinity of the intersection of S. State Highway 16 at E. Highway St., in the City of Fredericksburg [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 2:55 p.m. on December 15, 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, DECEMBER 6, 2022 ~ 9:00 A.M. LAW ENFORCEMENT CENTER 1601 E. MAIN STREET FREDERICKSBURG, TEXAS 78624

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
Kris Kneese, Interim Director of Public Works and Utilities
Andrea Schmidt, Parks & Recreation Director
Derek Seelig, Police Lieutenant
Braxton Roemer, Police Lieutenant
Justin Calhoun, Emergency Management Coordinator
Anna Hudson, Interim Director of Development Services
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, December 6, 2022. He announced a quorum had been met.

2. INVOCATION

Dr. Jared Squires, Heritage School, provided the Invocation.

3. PLEDGE OF ALLEGIANCE

Mayor Hoover led the Pledge of Allegiance.

4. CEREMONIAL MATTERS/PROCLAMATIONS/EMPLOYEE RECOGNITION

Clinton Bailey, City Manager, introduced the graduating group of the Texas Tech Leadership Class

- Brian Vorauer, Police Chief
- Derek Seelig, Police Lieutenant
- Braxton Roemer, Police Lieutenant
- Anna Hudson, Interim Director of Development Services
- Chad Lovelady, Detective

- Not in attendance David Kellam, Finance Manager
- Dr. Celia Marrow spoke regarding the program and the benefits for those who attended.

Each graduate then described their class project.

Clinton Bailey, City Manager, stated the following Department Heads will announce their new employees:

- Kris Kneese, Interim Director of Public Works and Utilities, introduced Hermes Holguin, Recycling Center Operator
- Andrea Schmidt, Parks and Recreation Director, introduced Jimmy Moore, Crew Worker and Hailey Olden, Recreation Coordinator
- Eric Whiting, Information Technology Director, introduced Brandon Gold, IT Specialist

5. COUNCIL COMMENTS

Councilmember Watson provided an Airport Commission report:

- Hangers are 100% occupied with 42 people on the waiting list
- Currently, three new hangers will begin construction
- December 17th is Santa Fly In
- May 2023 Airport Anniversary

Councilmember Kirchner thanked everyone who helped coordinate the Christmas Parade and the Light the Nights event.

Councilmember Klein reported on the sale of Hill Country Memorial Hospital to Methodist Hospital. He also spoke to the hard work he and Councilmember Joseph did as Board Members to keep the hospital locally owned.

Councilmember Joseph reported on the upcoming drive through nativity on Saturday, December 10, 2022, at Bethany Church.

6. ORDINANCES, RESOLUTIONS, AND PUBLIC HEARINGS

A. Consider the following actions related to Request #Z-2227 by Sean Smith with Moy Tarin Ramirez Engineers, LLC. for approximately 56.463 acres of land located at 257 Vernon's Lane.

- i. **Hold a public hearing to receive comments for or against the Request #Z-2227**
- ii. **Approve Ordinance 2022-38 adopting a change in the Comprehensive Plan of the City of Fredericksburg, specifically in the Land Use Map, as to approximately 56.462 acres of land, comprised out of outlots 70, 71, 72, 98, and an unnumbered outlot strip, as said outlots and strip are shown on the map of Fredericksburg, Texas and environs by the German Emigration Company, and out of the George Debrant Survey No. 42, Abstract No. 180, located at 257 Vernon's Lane; changing said property from Commercial (C), Mixed Use Corridor (MUC), and High Density Residential (HDR) to Public Facilities (PF); providing that the change become a part of the comprehensive Plan, and providing for an effective date.**
- iii. **Approve Ordinance 2022-39 amending the Zoning Ordinance of the City and changing the Zoning District as to approximately 56.462 acres of land, comprised out of outlots 70, 71, 72, 98, and an unnumbered outlot strip, as said outlots and strip are shown on the map of Fredericksburg, Texas and environs by the German Emigration Company, and out of the George Debrant Survey No. 42, Abstract No. 180, located at 257 Vernon's Lane, situated in the City of Fredericksburg, Texas; changing said property from (C2) Commercial, (R3)**

Multifamily Residential and (C1) Neighborhood Commercial to (PF) Public Facilities; and providing for an effective date.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kirchner, to go out of the Regular Meeting and into the Public Hearing at 9:22 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

Dr. Michelle Williams, FISSD, spoke regarding the FISSD project and the different phases.

Sean Smith, Moy Tarin Ramirez Engineers, LLC., spoke regarding the design plans.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kirchner, to go out of the Public Hearing and into the Regular Meeting at 9:24 a.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Anna Hudson, Interim Development Services Director, reviewed the project and the two Ordinances.

The City Council discussed the following:

- Traffic Lane
- Traffic Light
- Entrances and Exits

Motion: A motion was made by Councilmember Klein, seconded by Councilmember Watson, to approve Ordinance 2022-38 adopting a change in the Comprehensive Plan of the City of Fredericksburg, specifically in the Land Use Map, as to approximately 56.462 acres of land, comprised out of outlots 70, 71, 72, 98, and an unnumbered outlot strip, as said outlots and strip are shown on the map of Fredericksburg, Texas and environs by the German Emigration Company, and out of the George Debrant Survey No. 42, Abstract No. 180, located at 257 Vernon's Lane; changing said property from Commercial (C), Mixed Use Corridor (MUC), and High Density Residential (HDR) to Public Facilities (PF); providing that the change become a part of the comprehensive Plan, and providing for an effective date. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Watson, to approve Ordinance 2022-39 amending the Zoning Ordinance of the City and changing the Zoning District as to approximately 56.462 acres of land, comprised out of outlots 70, 71, 72, 98, and an unnumbered outlot strip, as said outlots and strip are shown on the map of Fredericksburg, Texas and environs by the German Emigration Company, and out of the George Debrant Survey No. 42, Abstract No. 180, located at 257 Vernon's Lane, situated in the City of Fredericksburg, Texas; changing said property from (C2) Commercial, (R3) Multifamily Residential and (C1) Neighborhood Commercial to (PF) Public Facilities; and providing for an effective date. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

B. Consider the following actions related to Request #Z-2226: by Ralph and Kristi Galichet for property located at 405 North Orange.

- i. **Hold a public hearing to receive comments for or against Request #Z-2226**
- ii. **Consider the approval of a Conditional Use Permit per Section 3.110 to operate a STR-Unoccupied in a R2 Zoned area located in the Historic Overlay District.**

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Joseph, to go out of the Regular Meeting and into the Public Hearing at 9:27 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

Kristi Galichet, requestor, spoke regarding the project and meaning this home has to her and her family. She stated approving this request will allow her family to keep this home in their family.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kirchner, to go out of the Public Hearing and into the Regular Meeting at 9:31 a.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Mayor Hoover inquired to why the requestor chose to go the STR route instead of long-term rental.

Kristi Galichet stated making this home a STR instead of a long-term rental, would allow her family to still use the home and choose the weekends to stay there.

The City Council discussed the following:

- 4 required conditions
- Background checks due to the property being within 200' of a school

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Klein, to approve Conditional Use Permit per Section 3.110 to operate a STR-Unoccupied in a R2 Zoned area located in the Historic Overlay District and includes the staff recommendations conditions. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

C. Consider the following actions related to Request #Z-2225: by David Turpin to for property located at 507 Cora Street.

- i. **Hold a public hearing to receive comments for or against Request #Z-2225**
- ii. **Consider the approval of a Conditional Use Permit per Section 3.110 to operate a STR-Facility in a R2 Zoned area located in the Historic Overlay District.**

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Joseph, to go out of the Regular Meeting and into the Public Hearing at 9:37 a.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

Todd Plunk, City resident, spoke in opposition to the request.

Jeffery Morin, City resident, spoke in opposition to the request.

Polly Rickert, resident and member of the Planning and Zoning Commission, reviewed the process and discussion the Planning and Zoning Commission held regarding this request. She encouraged the City Council to review and amend the criteria for CUP.

Tammy Pack, City resident, spoke in opposition to the request.

Liza Smith, City resident, spoke in opposition to the request.

Milton Buckelew, City resident, spoke in opposition to the request.

David Turpin, requestor, spoke regarding his request and the unoccupied Short-Term Rentals in his neighborhood.

Mayor Hoover asked Polly Rickert to review the Planning and Zoning Commission decision process.

Polly Rickert reviewed the Planning and Zoning Commission decision process. She encouraged the City Council to consider amending the Conditional Use Permit process.

Anna Hudson, Interim Development Services, reviewed the Planning and Zoning Commission decision. She also stated there are currently 20 properties identified on the map surrounding this proposed STR, 12 are known STRs, 5 are residences, 2 properties are commercial and 1 is vacant land. The City's Historic Preservation Officer has reviewed the project application and has no objections to the proposed improvements. She also noted public notification, including letters being sent to property owners within 200 feet. One written response was submitted in support. One written response was submitted against. Four citizens spoke against the request at the Planning & Zoning Commission meeting.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Joseph, to go out of the Public Hearing and into the Regular Meeting at 10:03 a.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Daniel Jones, City Attorney, reviewed the process for reviewing Conditional Use Permit and the 5 criteria that need to be met to approve a CUP.

The City Council discussed the CUP process and the need for changes.

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Joseph, to approve a Conditional Use Permit per Section 3.110 to operate a STR-Facility in a R2 Zoned area located in the Historic Overlay District. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

7. ACTION ITEMS AND UPDATES

A. Consider approval of City Council Minutes

i. November 15, 2022, Regular Meeting

ii. November 21, 2022, Special Meeting

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Watson, to approve the 7. A. i. November 15, 2022, Regular Meeting and ii. November 21, 2022, Special Meeting. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

B. Consider an appointment to the Historic Review Board to file an unexpired term ending June 2023

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Joseph, to appoint Robyn Cowsar to the Historic Review Board to fill an unexpired term ending June 2023. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

C. Consider an amendment to the 2023 Employee Holiday Schedule

Shelley Goodwin, City Secretary, reviewed the reason for the request for amendment.

Motion: A motion was made by Councilmember Klein, seconded by Councilmember Joseph, to amendment to the 2023 Employee Holiday Schedule and remove December 30, 2022, scheduled holiday and replace it with Monday, January 2, 2023. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

D. Consider, discuss, and take action on the five-year summary of the performance of Lady Bird Johnson Municipal Golf Course

Clinton Bailey, City Manager, stated Touchstone has done a remarkable job. He also reviewed the changes they have made to the operations and the building.

Chris Meade, Touchstone Golf Regional Manager, provided a PowerPoint regarding the improvements they have made, programs they have developed, and upcoming projects.

The City Council complimented Touchstone and what an amazing job they are doing.

E. Consider, discuss, and take action regarding sports facilities and usage fees.

Andrea Schmidt, Parks & Recreation Director, introduced Trevor Dupuis and Katelyn Brazell. She reviewed the challenges the Parks Department is facing. She reviewed a PowerPoint regarding the facility uses and the items that need to be considered. She reviewed her recommendations. She reviewed the number of members in the different leagues.

The City Council discussed the application process for reservations and facility usages. They inquired to whether FISS has a registration process for field reservations.

Dr. Michelle Williams, FISS, stated they do not at this time.

Daniel Jones, City Attorney, stated the City Council sets rates at what fair market value would be. The City Council can set a rate for tiered approach. He reviewed the Texas Constitution regarding public property for private business.

Joe Alexander, Girls Softball non-profit organization, stated rate increases would hurt their players and families. He noted that when they host a tournament the attendees eat at our restaurants and stay in the hotels.

Sean Heep, resident, spoke regarding the need for fields. Travel is a choice and parents expect to pay extra money. He stated he would be happy to share his recommendations.

Mckaela Crenwelge stated she plays softball for Little League, select, and FHS. She also spoke regarding the Sports Complex Bond, and how it should be reconsidered as County wide vote. She reviewed the benefits of the Sports Complex and the issues with the current scheduling (attached).

Clara Cook read a speech regarding the benefits she has received as a player and how the increases would hurt softball families (attached).

Alissa Contreras, adult softball, stated they host 2 tournaments a year to pay for their insurance. She encouraged the new processes be fair to all the leagues.

Austin Loza, FCA, local minister, and a pickle ball board member, he reviewed the need for reservation and times. He reviewed how the organization works and the benefits. He reviewed the issues he sees when increases and additional fees for tournaments.

Seelye Harrison, Tennis Association, spoke regarding the dedication the association has had with facilities. He also spoke regarding the issues with charging fees for use of the courts and with scheduling. They are non-profit organizations and promote youth tennis.

The City Council discussed the following:

- Whether the Parks should make money or lose money
- Serving community first and give as much break as possible
- Get a breakdown of players and wish list of number of courts needed
- Get input from all organizations and discuss with the County

F. Consider, discuss, and take action regarding Affordable Housing Presentation

Vince Michel, Affordable Housing Coordinator, reviewed his main goals and the comprehensive plan as related to affordable housing. He reviewed the items he has been tracking since March and noted he feels the housing market is changing. He also reviewed several things the City Council can do to incentivize developers; he also encouraged the City Council to reread the Housing Study he provided. Building for your needs-service demands for the right people. He noted that housing is out of control but need foresight to see the future needs.

The City Council discussed the following:

- Growth pattern
- Incentives for developers
- Effects of STRs have on the market
- Turning property into an investment and then impact on elevated price
- Look at multi-family residential units
- Moderative development code and limit STRs in condos

Polly Rickert, Planning and Zoning Commission and Committee of Haus Verein, spoke regarding modular home and manufacture. Target price \$225,000 but priced out of the market. Issue is constructing the house at a 130,000 built but modular 220,000 so out of affordable. As a member of the Planning and Zoning Commission and Comprehensive Plan representative, is looking at what other cities are doing to address their housing issues. She encouraged the City Council to look at STR in R2 and to work on Long Term Rental (LTR) incentives. She also stated she supports 2 homes on one property and allowing one of the homes be a STR and the other a LTR.

Mike Mahoney, City resident, spoke on the impact of STR and R2 STRs. He encouraged the City Council to amend the Zoning requirements related to STRs and R2.

Vince Michel spoke about the benefits and losses with STRs and LTRs.

G. Consider an update regarding Emergency Management Plan and presentation on Winter Storm Uri Response

Lynn Bizzell, Fire Chief, stated the Winter Storm Uri came through February 2021. After the storm event, an After-Action Report was created. TEEEX came across the City's Report. He noted from there TEEEX created a training video from the City of Fredericksburg's experience.

Clinton Bailey, City Manager, stated this storm affected the entire state. He noted the outstanding job that the City employees did during this storm.

George Studor, City resident, stated his request for the Emergency Management Plan discuss was more for getting the residents prepared for the next storm or disaster. He encouraged the City to put information out to residents regarding preparing for storms.

Clinton Bailey, City Manager, stated he and Mr. Studor have met and he will continue to meet and work on getting helpful tips to residents about what to do during a disaster.

Justin Calhoun, Emergency Management Coordinator, showed the video and noted the video will not be streamed live on YouTube due to copyright infringement. Communication, generated power, and more help in Emergency Operations Center. He also reviewed the updates to the three areas. Emergency Operation Plan gives basic information on how to handle situations and then decisions are made on the spot.

8. CITY MANAGER'S REPORT

A. Short Term Rental (STR) Permitting and Code Enforcement Update

Anna Hudson, Interim Development Services Director, provided the following updates:

- **Code Enforcement**

25 total cases over weekend – 15 related to STRs (mostly lighting & trash)

- **Administrative Hearing Process**

1st Round – all 4 citations paid before hearing date

2nd hearing date – 12/9/22 – so far 2 have paid before hearing date.

- **STR Software**

Granicus has new Sr Project Manager with expedited our priorities.

Public hotline and online reporting webpage now available. 830-376-0076

- **STR Permits**

539 approved

512 pending

Vetted hard count of the number of permitted STRs in R-1 - 478

A subcategory list of permitted STRs in R-1 that fit the following criteria

- Absentee-owned (no manager on site) unable to provide
- Permitted for occupancy of 8 and above 140
- Advertising outdoor amenities (realize this may not be part of your data capture) Hot Tubs 225 Pools 47

List of STRs in any residential zone with permit issues, i.e., denied or expired 99

A vetted hard count of the number of permitted STRs in R-2. 168

B. STR Specialist job duties and responsibilities

Anna Hudson, Interim Development Services Director, stated the duties include review of STR applications (new and renewals), assist public with permitting/application through 3rd party software, work with Code Enforcement regarding compliance and enforcement of STR issues, work with new HOT Specialist, issue permits, and schedule STR Inspections

C. Boards and Commissions Update

Shelley Goodwin, City Secretary, provided an update on the recent Board and Commission training held on December 1, 2022. She also provided the City Council a copy of the new Board and Commission application and the Board and Commission Advisory Handbook.

9. ITEMS FOR FUTURE AGENDA

Clinton Bailey, City Manager, reviewed the December 20th meeting agenda items

10. 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).

- Consider and discuss the appointment of a public officer or employee, specifically the City Attorney [Sec. 551.074];**
- Consider and discuss the appointment of a public officer or employee, specifically an individual to fill a vacancy on the Historic Review Board [Sec. 551.074]**
- Consider and discuss the purchase, exchange, lease, or value of real property, located in the vicinity of Lady Bird Johnson Municipal Park [551.072];**
- 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]; and**

E. Consider and discuss preliminary analysis and recommendation to the City Council prepared by legal counsel, regarding pending ethics complaint [Section 551.071 and Section 551.074].

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kirchner, to go out of the Regular Meeting and into the Executive Session. at 1:27 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 Watson, to go out of the Executive Session and into the Regular Meeting at 2:13 p.m. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

11. BUSINESS ITEM

Motion: A motion was made by Councilmember Kirchner, seconded by Councilmember Watson, to deny the enforcement regarding a pending ethics complaint. The City Council voted five (5) for, and none (0) opposed. The motion carried unanimously.

The City Council then moved back to Agenda Item 10. B

12. ADJOURN

Motion: A motion was made by Councilmember Joseph, seconded by Councilmember Klein, to adjourn the Tuesday, December 6, 2022, City Council Regular Meeting at 2:16 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: Development Services

TO: Mayor and City Council

FROM: Anna Hudson - Interim Director of Development Services

MEETING DATE: Dec. 20, 2022

CATEGORY: Ordinance

CAPTION: CONSIDER PROPOSED TEXT AMENDMENTS TO THE CITY'S ZONING CODE REGARDING SHORT-TERM RENTAL DEFINITIONS. THE PROPOSED TEXT AMENDMENTS ARE FOR THE FOLLOWING SECTIONS OF THE CITY'S ZONING CODE: SEC. 2.100. DEFINITIONS (#Z2231)

- i. Hold a public hearing to receive comments for or against the proposed amendments.
- ii. Presentation
- iii. Consider the approval of Ordinance 2022-40 amending Section 2.100 - Definitions, of Appendix B - Zoning Ordinance, of the Code of Ordinances, to amend the residency requirement for operation of Short-Term Rental, accessory units and Short-Term Rental, B&B Units; and providing for an effective date.

PRESENTATION: Anna Hudson, Interim Director of Development Services

SUMMARY: The U.S. Court of Appeals for the Fifth Circuit recently issued an opinion in the case of Hignell-Stark v. City of New Orleans, striking down portions of the New Orleans short term rental (STR) ordinance as unconstitutional. Because Texas is one of three states included in the Fifth Circuit's jurisdiction, the Court's opinion is binding on Texas cities.

In 2019, the City of New Orleans city council adopted a residency requirement for STRs in residential neighborhoods. Under the ordinance, a person could only receive an STR license if the STR is located on the same lot as the owner's primary residence for which they claim a homestead property tax exemption. Following the ordinance revisions, a group of property owners sued the city, claiming that the STR residency requirement violated their constitutional rights.

One of the property owners' claims was that the city's residency requirement violated the "dormant" Commerce Clause by discriminating against interstate commerce. The Court agreed with the

property owners' argument, holding that the ordinance precluded out-of-state property owners from participating in the STR market in New Orleans altogether. Further, the Court held that there are other nondiscriminatory alternatives the city could have used to achieve its policy goals of preventing nuisances, promoting affordable housing, and protecting neighborhoods' residential character. According to the Court, the same goals could be achieved by increased enforcement, increased local taxes on STRs, a requirement that STR owners have a non-resident operator stay on the property during the night, or by capping the number of STR licenses available for any given neighborhood. In the Court's words: "The City has many options to address the problems caused by STRs in residential neighborhoods. But it chose the one the Constitution forbids."

BACKGROUND: STR Ordinance "Ordinance 2022-13", has two STR definitions, STR-Accessory and STR B&B, that require Owner Occupancy. The intent was to have on-site supervision of short term tenants.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: Planning and Zoning met on December 7, 2022, and recommended denial unanimously. The proposed text amendment modifies the residency requirement definitions of STR-B&B and STR-Accessory to allow for a second option, residency of the Local Contact, to conform with the Court's opinion. At the time of agenda publishing 85 written comments had been received.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS: 1. Proposed text amendment - red line version
2. relevant zoning definitions for reference

APPROVAL/REVIEW:



DEPARTMENT NAME: Dev Serv

CREATED: 12/14/2022

FINANCE NAME: Laura Holmbeck

REVIEWED: 12/15/22

CITY ATTORNEY NAME:

APPROVED:

CITY MANAGER NAME: 

APPROVED: 12/15/22

SHORT-TERM RENTAL, ACCESSORY

A short-term rental providing transient or guest lodging accommodations for compensation within a lawful Guest House on the same lot as the primary structure which is the ~~property owner's~~ principal residence of the owner (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District) or the Local Contact Person (as evidenced by a sworn affidavit of principal residency). The Guest House shall not exceed the size of the primary structure. For purposes of this definition, the term "principal residence" refers to a person's primary or chief residence that the person actually occupies on a regular basis.

SHORT-TERM RENTAL. B&B

A short-term rental providing transient or guest lodging accommodations for compensation within the rooms of the primary structure which is the ~~property owner's~~ principal residence of the owner (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District) or the Local Contact Person (as evidenced by a sworn affidavit of principal residency). Separate short-term rental permits shall be required for each separate bedroom unit within a Short-Term Rental. B&B which may be rented. For purposes of this definition, the term "principal residence" refers to a person's primary or chief residence that the person actually occupies on a regular basis.

Sec. 2.100. DEFINITIONS.

For the purpose of this ordinance, certain numbers, abbreviations, terms and words used herein shall be used, interpreted, and defined as set forth in this Section. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the plural number include the singular; the word "herein" means "in these regulations"; and the word "regulations" means "these regulations."

- A. "Person" includes a corporation, a partnership, and an incorporated association of persons such as a club. "Shall" and "will" are always mandatory. The term "building" includes a "structure"; a "building" or "structure" includes any part thereof; and "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- B. Words not herein defined but defined in any chapter of the City of Fredericksburg Codes shall conform to the definitions used in said code.

ACCESSORY STRUCTURE/USES

A structure which is on the same lot as a principal structure, and the use of which is incidental to the use of the principal structure Accessory structures include, but are not limited to. detached garage, storage shed, guest house, and other similar structures.

AGENT OF OWNER

Any person showing written verification that he or she is acting for, and with the knowledge and consent of, a property owner.

APARTMENT

A building or group of buildings which contain multiple dwelling units for rent to multiple families or individuals. These facilities are prohibited from receiving STR permits.

CO-OWNERSHIP/FRACTIONAL OWNERSHIP, RESIDENTIAL

Properties where the ownership of a property is split among a group of owners, each owner holding a fractional ownership interest in the property that allows for shared personal use of the property, and when the property is rented out for a profit by a fractional owner, it serves as a form of investment property.

CORPORATE HOUSING

Housing of a transient nature, provided by a business, corporation, or similar other entities, to employees, affiliates associated with the business, or other guests. Housing may be provided by the business for team building, corporate events, employee awards or as part of a benefits package, and may not result in payment by occupants for the duration of the stay. Limited to one dwelling unit per lot.

DUPLEX RESIDENTIAL

The use of a site for two dwelling units, within a single building, other than a manufactured home.

DWELLING UNIT

A residential unit other than a manufactured home providing complete, independent living facility for one family, including permanent provisions for living, sleeping, eating and cooking.

Efficiency Dwelling Unit. A dwelling unit containing not more than 400 square feet of floor area and not having a separate bedroom or sleeping area independent of the principal living area.

FAMILY

Any number of individuals living together as a single housekeeping unit in which not more than two individuals are unrelated by blood, legal adoption or marriage.

GROUP RESIDENTIAL

The use of a site for residential occupancy of living accommodations by groups of more than six persons not defined as a family, on a weekly or longer basis. Typical uses include occupancy of fraternity or sorority houses, dormitories, residence halls or boarding houses or assisted living facilities.

GUEST

Any Occupants, who are 18 years of age or older, renting temporary transient lodging for a specified period of time, and any persons visiting the Occupants at the location of the temporary transient lodging.

GUEST HOUSE

An accessory building containing a lodging unit with or without kitchen facilities, and used to house occasional visitors or guests of the occupants of a dwelling unit on the same site. Where permitted, paying guests shall be subject to the provisions of Hotel Tax Ordinance. See Section 8.220.G.

HOME OCCUPATION

An accessory occupational use conducted entirely within a dwelling unit by the inhabitants thereof, which is clearly incidental to the use of the structure for residential purposes and does not change the residential character of the site. See Section 8.300, Home Occupation. This definition does not include short-term rentals.

treatment, diagnostic services, training, administration and services to out-patients, employees or visitors.

HOTEL-MOTEL

Temporary, transient lodging services involving the provision of room and/or board containing more than eight rental units.

LOCAL CONTACT PERSON

The Owner, Operator, or person designated by the Owner or the Operator, who shall be available 24 hours per day for the purpose of responding to concerns or requests for assistance related to the Owner's Short-term Rental.

LODGING UNIT

A room or group of rooms in a dwelling unit or a group residential use, for overnight occupancy on a transient or residential occupancy basis. Where designed or used for occupancy by more than two persons, each two person capacity shall be deemed a separate lodging unit.

MULTIPLE FAMILY RESIDENTIAL

The use of a site for three or more dwelling units, within one or more buildings. These facilities are prohibited from obtaining STR permits.

NONCONFORMING STRUCTURE OR BUILDING

A structure or building, the size, dimension, or location of which was lawful prior to the adoption, revision, or amendment to the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONFORMING USE

A lawful use of any land, building or structure, other than a sign or PUD, which does not conform with currently applicable use regulations, but which complies with use regulations in effect at the time the use was established. See Section 6.100.

OCCUPANT

Any person, who is 18 years of age or older, renting temporary transient lodging for a specified period of occupancy.

OPERATOR

The Owner or the Owner's authorized representative who is responsible for advertising and/or operating a Short-term Rental.

OWNER

The person or entity that holds legal or equitable title to a property.

RESIDENCE

A building occupied as the abiding place of one or more persons in which the use and management of sleeping quarters, and all appliances for cooling, ventilating, heating, or lighting are under one control, including but not limited to one-family and two-family dwellings, duplexes, townhouses, condominiums, apartment houses and boarding houses, and which shall be the principal building or use on any lot in R-1, R-2, R-3, R-4 or R-5 residence districts.

SEPARATE LODGING UNIT

Short-term rental or hotel-motel lodging in a stand-alone structure with only one structure per lot.

SHORT-TERM RENTAL (STR)

Any structure used for transient or guest lodging accommodations, rented for compensation of a dwelling unit, which includes but is not limited to a single-family residence, townhouses, and other residential use real estate improvements, in which the public may obtain sleeping accommodations for a period less than 30 consecutive days. This term applies regardless of whether the dwelling was originally constructed or zoned as a residential dwelling. This term does not apply to multi-family projects or apartment complexes. This term is a general definition and the various types of STRs are further defined in this Section 2.100.

SHORT-TERM RENTAL, ACCESSORY

A short-term rental providing transient or guest lodging accommodations for compensation within a lawful guest house on the same lot as the property owner's principal residence (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District). The guest house shall not exceed the size of the primary structure.

SHORT-TERM RENTAL, B&B

A short-term rental providing transient or guest lodging accommodations for compensation within the rooms of the property owner's principal residence (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District). Separate short-term rental permits shall be required for each separate bedroom unit within a Short-Term Rental, B&B which may be rented.

SHORT-TERM RENTAL, BEDROOM

A short-term rental bedroom shall be defined as a room within a structure used for Short-Term Rental purposes, with a minimum size of 70 square feet, plus a closet directly accessible from the room, that meets all the minimum international building code and fire code regulations regarding bedroom sizes, ingress, and egress.

SHORT-TERM RENTAL, CONDOMINIUM

Short-term rental located in a complex or housing group that is part of a declared and recorded condominium regime.

SHORT-TERM RENTAL, DWELLING UNIT

A structure or room that is rented separately from other rental units on the property, for the purpose of transient or guest lodging. Each individual short-term rental dwelling unit shall be required to obtain a separate short-term rental permit.

SHORT-TERM RENTAL, FACILITY

A facility or complex containing multiple short-term rental dwelling units (up to eight units) on a single lot, for transient or guest lodging where sleeping accommodations are provided for compensation. Any facility or complex, located in a commercial zoning district, containing multiple short-term rental dwelling units on a single lot, shall be developed in accordance with the multi-family regulations of the base zoning district.

SHORT-TERM RENTAL PERMIT

A permit issued by the City authorizing the use of a privately owned dwelling as a Short-term Rental.

SHORT-TERM RENTAL, UNOCCUPIED

A short-term rental providing transient or guest lodging accommodations for compensation within a lawful structure, that is not located on the same lot as the property owner's principal residence, and which includes, but is not limited to, a single-family residence, townhouses, duplexes, and other residential real estate improvements.

SINGLE FAMILY RESIDENTIAL

The use of a site for only one dwelling unit, other than a manufactured home.

SINGLE FAMILY RESIDENTIAL (ATTACHED)

A single family dwelling constructed as part of a series of dwellings, all of which are either attached to the adjacent dwelling or dwellings by party walls or are located immediately adjacent thereto with no visible separation. Included under this use category is townhouse and condominium.

SINGLE FAMILY (DETACHED)

The use of a site for only one dwelling unit, other than a manufactured home. This use also includes Short-term Rental, Accessory and Short-term Rental, B&B.

STRUCTURE

That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

TIMESHARE

Any property ownership arrangement whereby two or more owners share ownership or other interest in real property in time allotments of usage and have the right to use the property under a time-sharing agreement. Types of timeshares include, but are not limited to:

1. Shared deeds. Ownership divided into smaller parts that reflect how much time each owner can use said property.
2. Shared leases. Similar to "shared deeds" except there is no ownership of the property and access to the property is granted via lease agreements.

TOWNHOUSE GROUP

Two or more contiguous townhouses having common or abutting walls.

USE

The conduct of an activity, or the performance of a function or operation, on a site or in a building or facility.

Accessory Use. A use or activity which is incidental to and customarily associated with a specific principal use on the same site, including parking for the principal use.

Principal Use. A use listed by the regulations for any particular district as a permitted use within that zone and permitted, therein, as a matter of right when conducted in accordance with the regulations established by this ordinance.

Conditional Use. A use listed by the regulations for any particular district as a conditional use within that district and allowable therein, solely on a discretionary and conditional basis subject to a Conditional Use Permit, and to all other regulations established by this ordinance.

ORDINANCE NO. 2022-40

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS, AMENDING SEC. 2.100 - DEFINITIONS, OF APPENDIX B - ZONING ORDINANCE, OF THE CODE OF ORDINANCES; TO AMEND THE RESIDENCY REQUIREMENT FOR OPERATION OF SHORT-TERM RENTAL, ACCESSORY UNITS AND SHORT-TERM RENTAL, B&B UNITS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, an application for a text amendment of the Zoning Ordinance, related to the clarification of the measurement of building height within the City, has been initiated by motion of the City Council; and

WHEREAS, public hearings before the Planning and Zoning Commission and the City Council of the City of Fredericksburg have been duly noticed and held regarding such application, as required by the City of Fredericksburg Zoning Ordinance; and

WHEREAS, the Planning and Zoning Commission has determined that such text amendment is in conformity with the uses established by the Comprehensive Land Use Plan of the City of Fredericksburg and is consistent with the objectives of the City of Fredericksburg Zoning Ordinance, and has recommended to the City Council of the City of Fredericksburg, based upon positive findings under the review and evaluation criteria established by such ordinance, that the text amendment be approved; and

WHEREAS, the City Council has specifically found, following public hearing, that such text amendment is consistent with the objectives of the City of Fredericksburg Zoning Ordinance and Comprehensive Land Use Plan of the City of Fredericksburg and there has not been a protest against rezoning signed by owners of twenty per cent (20%) or more either of the area of the property included in the zoning text amendment, or of the area of the property immediately adjoining the same and extending two hundred feet (200') therefrom.

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

Section 1. That the definitions of the terms “Short-Term Rental, Accessory” and “Short-Term Rental, B&B”, as set forth in Section 2.100 – Definitions, of Appendix B - Zoning Ordinance, of the Code of Ordinances, are hereby amended to read as follows:

Sec. 2.100. – Definitions.

SHORT-TERM RENTAL, ACCESSORY

A short-term rental providing transient or guest lodging accommodations for compensation within a lawful Guest House on the same lot as the ~~primary structure which is the property owner's~~ principal residence of the Owner (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District) or the Local Contact Person (as evidenced by a sworn affidavit of principal residency). The ~~Guest House~~ shall not exceed the size of the primary structure. For purposes of this definition, the term "principal residence" refers to a person's primary or chief residence that the person actually occupies on a regular basis.

SHORT-TERM RENTAL. B&B

A short-term rental providing transient or guest lodging accommodations for compensation within the rooms of the ~~primary structure which is the property owner's~~ principal residence of the Owner (as evidenced by a current residence homestead exemption filed with the Gillespie Central Appraisal District) or the Local Contact Person (as evidenced by a sworn affidavit of principal residency). Separate short-term rental permits shall be required for each separate bedroom unit within a Short-Term Rental. B&B which may be rented. For purposes of this definition, the term "principal residence" refers to a person's primary or chief residence that the person actually occupies on a regular basis.

{End of code text}

Section 2. That the City Council hereby adopts and approves the use of the Affidavit of Principal Residency, in the form attached hereto as Exhibit "A".

Section 3. That all references in City of Fredericksburg Code of Ordinances to the Zoning Ordinance shall henceforth refer to such as is amended hereby.

Section 4. Severability or Invalidity. If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 5. Repealer. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect upon the date of its passage.

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

Jeryl Hoover, Mayor
City of Fredericksburg, Texas

ATTEST:

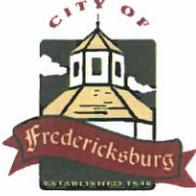
Shelley Goodwin, City Secretary, TRMC/CMC

APPROVED AS TO FORM:

Daniel Jones, City Attorney



| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------|
| Sworn Statement – Notary Required | | |
| Applicant Information | | |
| Applicant Name: | Co-Applicant Name (if applicable): | |
| Mailing Address: | | |
| City: | State: Texas | Zip code: |
| Statement of Facts | | |
| By completing this Affidavit, I/we hereby affirm that my/our principal residence was or is _____ (physical address) for the date range of _____ to _____. | | |
| My/our principal residence at the above physical address is evidenced by one of the documents from the list below (must present copy): | | |
| Utility or residential service bill | | <input checked="" type="checkbox"/> |
| Driver’s License or Voter’s Registration Card | | <input checked="" type="checkbox"/> |
| Other documents (residential rental/lease agreement, income tax return, renter’s insurance policy, automobile insurance policy, or other acceptable documents as approved by the City Council) | | <input checked="" type="checkbox"/> |
| Signatures (Notarization required) | | |
| Under penalties of perjury, I/we certify that the information presented in this Affidavit is true and accurate to the best of my/our knowledge and belief. | | |
| Applicant Signature: | Co-Applicant Signature (if applicable): | |
| Before me personally appeared the person(s), whose signature(s) appears above, who by being sworn, upon oath say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____, 20____. | | |
| Signature of Notary | | |
| Notary Public State of Texas – Printed Name | | NOTARY SEAL |
| Date Notary’s Commission Expires | | |



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Development Services

TO: Mayor and City Council

FROM: Anna Hudson - Interim Director of Development Services

MEETING DATE: Dec. 20, 2022

CATEGORY: Approve

CAPTION: Consider the following actions related to a Conditional Use Permit requested by Bethany McCullough for property located at 511 W. San Antonio Street (#Z-2228)

- i. Hold a public hearing to receive comments for or against the request.
- ii. Presentation
- iii. Consider the approval of a Conditional Use Permit per Section 6.110 to expand the use of a non-conforming property.

PRESENTATION: Anna Hudson, Interim Director of Development Services

SUMMARY: The property is zoned R2 and within the Historic District. The Applicant is requesting a Conditional Use Permit per Sec. 6.110 of the Zoning Ordinance to expand the use of STR-Nonconforming units (Ranch Haus and Stone Haus) located at 511 W. San Antonio St. The property currently has 3 units, Stone Haus, Ranch Haus and Cottage with a total combined occupancy of 10. The requested combined occupancy is 15.

BACKGROUND: The property is zoned R2 and within the Historic District. The Applicant is requesting a Conditional Use Permit per Sec. 6.110 of the Zoning Ordinance to expand the use of STR-Nonconforming units (Ranch Haus and Stone Haus) located at 511 W. San Antonio St. The property currently has 3 units, Stone Haus, Ranch Haus and Cottage with a total combined occupancy of 10. The requested combined occupancy is 15.

When the applicant first submitted their STR Applications on 10/20/21 they requested an occupancy of 2 for Ranch Haus and an occupancy of 4 for Stone Haus. The applicant has now requested that

they be allowed to entertain guests to the max allowable amount per Ordinance Number 28-001 (2018 STR Ordinance) which allowed for an occupancy of 1 guest per 200 sq ft of living space.

Currently, Stone Haus (1881 sq ft) has an occupancy of 4 and the applicant is requesting an occupancy of 8 and Ranch Haus (668 sq ft) has an occupancy of 2 and the applicant is requesting an occupancy of 3. Cottage has an occupancy of 4 and the applicant is not requesting a change of occupancy for this unit.

The subject tract is bordered by residences to the west and east with a 1 unit STR to the south that has an occupancy of 2. Across West San Antonio Street to the North is a mix of residential and STR properties. 514 W. San Antonio has 2 units that have a combined occupancy of 8 and 512 W. San Antonio is a 1 unit STR with an occupancy of 4.

The existing layout provides 4 parking spaces. 1 parking space per unit was required per Ordinance Number 28-001 (2018 STR Ordinance), however, Sec. 6.110 requires the increase in occupancy provide 1 parking space per 2 occupants resulting in the need for a total of 6 spaces, 2 more than currently provided. The applicant provided an updated site plan at the P&Z meeting showing 6 on-site spaces as required by Sec. 5.460 – Adequate off-street parking and Sec. 7.863 – Off Street Parking. In addition, the property is located in a neighborhood that possesses an even mix of residences and STR’s, however this property is the only property on the block that is operating 3 STR Units which currently have a combined occupancy of 10 and to further increase that occupancy would create potentially unfavorable affects or impacts on other permitted uses in the neighborhood Item 11 of Sec. 5.460 as the average occupancy per unit is 5. In addition, all but 1 property of the 16 properties in this neighborhood operate with fewer than 10 occupants.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: Planning and Zoning met on December 7, 2022, and recommended denial unanimously. Five written comment cards have been received in opposition to the request.

As presented, the proposed occupancy is greater than other STR properties and the block still has 8 non-STR properties. As presented, the proposed expansion of the occupancy does not meet the requirements necessary to obtain a conditional use permit Sec. 5.460. Given the surrounding uses and the low occupancy average of 5 per unit an increase in occupancy that would result in 15 guests on site is not compatible with this neighborhood. Staff does not recommend approval of the increase in occupancy.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS: 1. Public Hearing Map

2. Location/Zoning Map
3. Surrounding Use Map
4. Street photos
5. Project Application Including Site & Floor Plans and CUP Narrative
6. City Review Comments and Responses
7. Written comments: support/protest

APPROVAL/REVIEW: 

DEPARTMENT NAME: Dev Serv

CREATED: 12/14/2022

FINANCE NAME: 

REVIEWED: 12/15/22

CITY ATTORNEY NAME:

APPROVED:

CITY MANAGER NAME: 

APPROVED: 12/15/22



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Parks & Recreation

TO: Mayor and City Council

FROM: Andrea Schmidt, Parks & Recreation Director

MEETING DATE: Dec. 20, 2022

CATEGORY: Approve

CAPTION: Consider the approval of a lease agreement with the Fredericksburg Convention and Visitor Bureau (CVB) property located at 302 E. Austin for an annual amount of \$550.00 for the period of January 1, 2023 and ending on December 31, 2043.

PRESENTATION: Andrea Schmidt, Parks and Recreation Director

SUMMARY: Discuss new lease agreement with the Fredericksburg Convention and Visitor Bureau (CVB). In 2003, a lease agreement was approved between the City, the Chamber of Commerce and the CVB. In 2014, this lease was terminated when the Chamber of Commerce moved to a new location. A new lease was not signed with the CVB. This lease will remedy this error.

BACKGROUND: The new lease will take effect on January 1, 2023, and end on December 31, 2043. A lease payment of \$550.00 will be due to the City each year. The lease agreement is similar to the existing lease agreement the City has for the Art Guild building.

FUNDING SOURCE: N/A

FINANCIAL IMPACT:

STAFF RECOMMENDATION: Consider approving new lease agreement for the Fredericksburg Convention and Visitor Bureau building.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS: Lease agreement for the Fredericksburg Convention and Visitor Bureau building

APPROVAL/REVIEW: *Andrea Schmidt*

DEPARTMENT NAME: PARD

CREATED: 12/14/2022

FINANCE NAME: *Rauna Hollenback*

REVIEWED: *12/15/2022*

CITY ATTORNEY NAME:

APPROVED:

CITY MANAGER NAME: *Chris Pyle,*

APPROVED: *12/15/22*

LEASE AGREEMENT
for the
FREDERICKSBURG CONVENTION AND VISITOR BUREAU BUILDING

This Lease Agreement is made and entered into this 20th day of December, 2022, by and between the City of Fredericksburg, Texas (“Lessor”), and the Fredericksburg Convention and Visitor Bureau, Inc. (“Lessee”), a Texas non-profit corporation.

ARTICLE 1. DEMISE, DESCRIPTION, USE AND TERM

1.01. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain property situated in the City of Fredericksburg, Gillespie County, Texas, located at 302 East Austin Street (the “Leased Premises”), commonly known as the Visitor’s Center building and parking lot, consisting of approximately 8,587 square feet of office building space, and approximately 68,250 square feet of parking lot space, but excluding the single building with a street address of 308 E. Austin Street located upon the same tract as the Leased Premises.

1.02 The Leased Premises are to be used by Lessee as a visitor’s center and visitor parking lot, to conduct a continuing program of advertising and promotion for the purpose of attracting visitors, tourists, and conventions to the local area and to the City of Fredericksburg, enhancing and promoting tourism and the convention and hotel industry within the City, as well as office space, meeting space, and employee parking related to the operation of the visitor’s center. Lessee may not sublease space upon the Leased Premises without the prior written consent of Lessor, and then only for the uses set forth in this Lease, and for no other uses.

1.03 The term of this Lease commences on January 1, 2023, and ends on December 31, 2043, unless sooner terminated, as hereinafter provided.

ARTICLE 2. RENT

General Rent

2.01. Lessee agrees to and shall pay to Lessor, at 126 W. Main Street, Fredericksburg, Gillespie County, Texas, or at such other place as the Lessor shall designate from time to time in writing, as rent for the Leased Premises, an annual rent payment of FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS, due on or before January 10th of each calendar year.

2.02. Lessee agrees that Lessee shall pay to Lessor a late charge of five (5.0%) percent of the past due amount for each installment of rent which is not actually received by Lessor within five (5) calendar days of the due date.

ARTICLE 3. HOLDOVER

3.01. If Lessee, holds over and continues in possession of the Leased Premises after expiration of the term of this lease or any extension of that term, Lessee will be deemed to be occupying the premises on the basis of a month-to-month tenancy, subject to all of the terms and conditions of this lease.

ARTICLE 4. TAXES AND ASSESSMENTS

4.01. Lessee shall pay and discharge all taxes, general and special assessments, and other charges of every description if any which during the term of this lease may be levied on or assessed against the portion of the Leased, and any of Lessee's personal property and all improvements and other property thereon.

ARTICLE 5. INSURANCE

5.01. Lessor shall provide no insurance which shall benefit Lessee, including general public liability insurance, tort coverage, insurance against theft, destruction of Lessee's contents, fixtures or works. **LESSOR SHALL NOT BE LIABLE TO LESSEE OR ANY OF LESSEE'S GUESTS, INVITEES, MEMBERS, EMPLOYEES, OR THE LIKE FOR ANY OF SUCH LOSSES, INCLUDING THOSE WHICH RESULT FROM LESSOR'S NEGLIGENCE, EVEN ORDINARY NEGLIGENCE.** Lessee shall, at its sole cost and expense, keep and maintain insurance on the improvements located upon or hereafter constructed upon the Leased Premises, insuring against loss or damage by fire and any other risk, in amounts sufficient to provide coverage for the full insurable value of the improvements; "full insurable value" shall mean actual replacement value (exclusive of cost of excavation, foundations, and footings below the surface of the ground or below the lowest basement level). Lessee shall, at its sole cost and expense, keep and maintain in force commercial general liability insurance, with a combined single limit of not less than ONE MILLION DOLLARS AND NO/100 (\$1,000,000.00), such limit to be increased if requested by Lessor (but no more frequently than once every three (3) years) by an amount which may be commercially reasonable at the time, taking into account the height and type of the improvements, their construction, location, use and occupancy.

5.02. If the building on the Leased Premises should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice thereof to Lessor.

5.03. If the building on the Leased Premises should be totally destroyed by fire, tornado, or other casualty, or if it should be so damaged that rebuilding or repairs cannot reasonably be completed within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this Lease shall terminate and rent shall be abated for the unexpired portion of this Lease, effective as of the date of said written notification.

5.04. If the building or other improvements on the Leased Premises should be damaged by fire, tornado, or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this Lease shall not terminate, but Lessor shall, if the casualty has occurred prior to the final ninety (90) working days of the Lease term, at Lessor's sole cost and risk, proceed forthwith to rebuild or repair such building and other improvements to substantially the condition in which they existed prior to such damage. If the casualty occurs during the final ninety (90) working days of the Lease term, Lessor shall not be required to rebuild or repair such damage. If the building and other improvements are to be rebuilt or repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted equitably. In the event that Lessor should fail to complete such rebuilding or repairs within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may at Lessee's option terminate this lease by written notification at such time to Lessor, whereon all rights and obligations hereunder shall cease.

5.05. Lessee shall not commit or permit any act or acts in or on the Leased Premises or use them or suffer them to be used in any manner that will increase the existing fire, liability and other insurance rates on either the Leased Premises or the building in which the Leased Premises are situated, or that will cause a cancellation of any insurance policy covering the premises or any part of them. Lessee will not keep, hold, store, use, or sell in or on the Leased Premises any product or article prohibited by the standard fire-insurance policy, as it now exists or may later provide, covering the premises or permit or suffer any such product or article to be kept, held, stored, used or sold in or on the Leased Premises, and Lessee will, at its sole expense, comply with all requirements of Lessor's insurance carriers pertaining to the Leased Premises necessary for the continued maintenance of reasonable fire and liability insurance of the premises and appurtenances.

ARTICLE 6.
UTILITIES

6.01. Lessee shall during the term hereof procure and pay all charges for telephone, gas, internet and information technology services, electricity, water, trash collection, and all other utilities used in or on the Leased Premises.

6.02 Except as expressly provided in this Lease or in a separate written agreement between the Parties, Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the maintenance, operation, or repair of the Leased Premises.

ARTICLE 7. WASTE AND NUISANCE

7.01. Lessee shall not commit, or suffer to be committed, any waste on the Leased Premises, nor shall Lessee maintain, commit, or permit the maintenance or commission of any nuisance on the Leased Premises or use the Leased Premises for any unlawful purpose.

ARTICLE 8. IMPROVEMENTS, REPAIRS AND MAINTENANCE

8.01. Lessor shall repair and maintain, at Lessor's expense, the:

- (A) Foundation, exterior walls, roof, and other structural components, except that Lessor shall have no duty of mold remediation;
- (B) Exterior glass and windows;
- (C) Exterior doors;
- (D) Exterior concrete walkways;
- (E) Plumbing systems, drainage systems, electrical systems, and mechanical systems, except systems or items specifically designated otherwise in Paragraph 8.02 below; and
- (F) Heating, Ventilation and Air Conditioning (HVAC) systems, excluding air filters.

8.02. Lessee shall, at Lessee's expense:

- (A) keep the Leased Premises as clean and sanitary as the condition of the premises permits, including routine and customary janitorial services for the Leased Premises;

- (B) dispose from the Leased Premises all rubbish, garbage, and other waste, in a clean and sanitary manner;
- (C) properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits;
- (D) not permit any person on the premises, with Lessee's permission, to willfully or wantonly destroy, deface, damage, impair, or remove any part of the Leased Premises or the facilities, equipment, or appurtenances thereto;
- (E) abide by all laws, regulations and ordinances of any governmental authority having jurisdiction over the Leased Premises;
- (F) perform all routine repairs and all routine maintenance to the Leased Premises, including but not limited to grounds maintenance and landscaping, minor plumbing repairs such as clogs or leaks, interior light fixtures, interior walls, ceilings, rain gutters and roof drainage systems, floors, interior windows, interior doors, skylights, and signs, located in or on the Leased Premises, excepting those expressly imposed on Lessor in Paragraph 8.01 herein, with all repairs and maintenance performed by Lessee or Lessee's contractors that are trained and experienced in the needed repair or maintenance item;
- (G) not permit the keeping or storage of hazardous materials as defined by federal statutes on the Leased Premises provided, however, that Lessee shall be permitted to keep and store art materials and supplies except that flammable materials shall be kept only in small, limited quantities; and
- (H) not permit smoking or the use of gas fired equipment inside the Leased Premises.

8.03. Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that any repair or maintenance imposed on Lessor in Paragraph 8.01 herein is needed, Lessee shall immediately give written notice of such fact to Lessor.

ARTICLE 9. ALTERATIONS, IMPROVEMENTS AND FIXTURES

9.01. Lessee shall not make any alterations, including locks or other security devices, to the Leased Premises without the prior written consent of Lessor to do so. Any and all alterations, additions, improvements, and fixtures (except trade fixtures which Lessee shall be permitted to remove from the Leased Premises at any time during the term hereof or upon expiration or sooner termination of this lease and not otherwise if such removal can be effected without injury to the Leased Premises and if any such fixture shall not have become, by the manner in which it is affixed, an integral part of the Leased Premises), made or placed in or on the Leased Premises shall on expiration or sooner termination of this lease belong to Lessor without compensation

to Lessee; provided, however, that Lessor shall have the option, to be exercised on expiration or sooner termination of this lease, to require Lessee to remove any or all of such additions, improvements or fixtures. Before installing any fixtures in or on the Leased Premises, Lessee shall submit plans and designs therefor to Lessor for Lessor's approval, and in the event that the plans and designs are not approved by Lessor, such fixtures shall not be installed until any changes required by Lessor are made. Lessor agrees not to unreasonably withhold consent under this Section 9.01.

ARTICLE 10. COVENANTS

10.01. Lessor shall on the commencement date of the term of this lease as hereinabove set forth, place Lessee in quiet possession of the Leased Premises and shall secure Lessee in the quiet possession thereof.

10.02. Lessee may not do anything that will cause the Leased Premises to be encumbered in any way.

ARTICLE 11. SURRENDER OF PREMISES

11.01. Lessee shall, at Lessee's own cost and expense within three (3) calendar days after expiration or sooner termination of the term hereof or of any extended term hereof, remove all property belonging to Lessee and all alterations, additions or improvements, and fixtures which by the terms hereof Lessee is permitted to remove, repair all damage to the Leased Premises caused by such removal, and restore the Leased Premises to the condition they were in prior to the installation of the property so removed. Any property not so removed shall be deemed to have been abandoned by Lessee and may be retained or disposed of by Lessor.

11.02. Lessee agrees to and shall, on expiration or sooner termination of the term hereof or of any extended term hereof, promptly surrender and deliver the Leased Premises to Lessor in good condition, ordinary wear and tear and damage by the elements, fire, or act of God, or by other cause beyond the reasonable control of Lessee, excepted.

ARTICLE 12. TERMINATION AND CONDEMNATION

12.01. In the event the Leased Premises is to be utilized by Lessor for a governmental function, this lease may be terminated by Lessor prior to the expiration of the lease term, after providing Lessee a one-year notice of termination.

12.02. If during the term of this lease or any extension or renewal thereof, all or part of the Leased Premises should be taken for any public or quasi-public use earlier by any condemning authority other than Lessor under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority (except Lessor) under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the taking of said premises by the condemning authority.

ARTICLE 13. DEFAULT

13.01. If Lessee shall remain in default under any condition of this lease for a period of ten (10) calendar days after written notice from Lessor to Lessee, or if the default is of such a nature as to be incapable of cure within ten (10) days and same has not been cured within a reasonable time after written notice from Lessor to Lessee, or should any person other than Lessee secure possession of the premises, or any part thereof, by reason of any assignment, dissolution, receivership or bankruptcy proceedings, Lessor may, at Lessor's option and without notice to Lessee, terminate this lease, or in the alternative, Lessor may re-enter and take possession of said premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof.

The following provisions shall override and control, to the extent allowed by law, any conflicting provisions of the Texas Property Code, as well as any successor statute governing the right of a Lessor to change the door locks of commercial Lessees. In the event a default occurs, Lessor is entitled and is hereby authorized, without any further notice to Lessee whatsoever, to enter upon the Leased Premises by use of a master key, a duplicate key, or other peaceable means, and to change, alter, and/or modify the door locks on all entry doors of the Leased Premises, thereby permanently excluding Lessee and its officers, principals, agents, employees and representatives therefrom. In the event that Lessor has either permanently repossessed the Leased Premises pursuant to the foregoing provisions of this Lease, or has terminated this lease, Lessor shall not thereafter be obligated to provide Lessee with a key to the Leased Premises at any time, regardless of any amounts subsequently paid by Lessee; provided, however, that in any such instance, during Lessor's normal business hours and at the convenience of Lessor, and upon receipt of written request from Lessee accompanied by such written waivers and releases as the Lessor may require, Lessor may (at Lessor's option) either (1) escort Lessee or its authorized personnel to the Leased Premises to retrieve any personal belongings or other property of Lessee, or (2) obtain a list from Lessee of such personal property as Lessee intends to remove, whereupon, Lessor shall

remove such property and make it available to Lessee at a time and place designated by Lessor. However, if Lessor elects option (2), Lessee shall pay, in certified funds in advance, all costs and expenses estimated by Lessor to be incurred in removing such property and making it available to Lessee and all moving and/or storage charges theretofore incurred by Lessor with respect to such property. If Lessor elects to exclude Lessee from the Leased Premises without permanently repossessing or terminating pursuant to the foregoing provisions of this Lease, then Lessor shall not be obligated to provide Lessee a key to re-enter the Leased Premises until such time as all delinquent rent and other amounts due under this Lease have been paid in full and all other defaults, if any, have been completely cured to Lessor's satisfaction (if such cure occurs prior to any actual permanent repossession or termination), and Lessor has been given assurance reasonably satisfactory to Lessor evidencing Lessee's ability to satisfy its remaining obligations under this Lease. During any such temporary period of exclusion, Lessor will, during Lessor's regular business hours and at Lessor's convenience, upon receipt of written request from Lessee (accompanied by such written waivers and releases as Lessor may require), escort Lessee or its authorized personnel to the Leased Premises to retrieve personal belongings of Lessee or its employees, and such other property of Lessee.

All rights and remedies of Lessor under this lease shall be cumulative, and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

13.02. If Lessor defaults in the performance of any term, covenant, or condition required to be performed by him under this agreement, Lessee may elect to: (1) terminate this agreement on giving at least thirty (30) days' notice to Lessor of such intention, thereby terminating this agreement on the date designated in such notice, unless Lessor shall have cured such default prior to expiration of the thirty (30) day period; or (2) remedy such default at Lessee's expense.

ARTICLE 14. INSPECTION BY LESSOR

14.01. Lessee shall permit Lessor and Lessor's agents to enter into and upon the Leased Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations to the building.

ARTICLE 15. ASSIGNMENT AND SUBLEASE

15.01. Lessee shall not assign this lease nor sublet all or a portion of the Leased Premises without the prior written consent of Lessor.

15.02. Lessor is expressly given the right to assign any or all of Lessor's interest under the terms of this lease.

ARTICLE 16.
INDEMNITY

16.01. LESSEE AGREES TO INDEMNIFY LESSOR AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES FOR THE DEFENSE THEREOF, ARISING FROM THE LESSEE'S OCCUPANCY OF THE LEASED PREMISES, OR LESSEE'S CONDUCT OR MANAGEMENT OF LESSEE'S BUSINESS IN THE LEASED PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY CONDITIONS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OR FAILURE OF SECURITY OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, INVITEES, OR LICENSEES IN OR ABOUT THE LEASED PREMISES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON NOTICE FROM LESSOR, COVENANTS TO DEFEND SUCH ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR. NOTHING HEREIN SHALL BE CONSTRUED TO INDEMNIFY LESSOR FROM LESSOR'S OWN GROSS NEGLIGENCE.

16.02. The relationship between Lessor and Lessee shall at all times remain solely that of the Lessor and Lessee, and shall not be deemed a partnership or joint venture.

16.03. Lessor shall not be responsible or liable to Lessee, Lessee's invitees, or members of the public for losses of any kind, including personal injury or loss of merchandise or any personal property.

16.04. Lessee shall be responsible for security in and about the premises with regard to Lessee's own property, employees, agents, customers, and members of the public. Lessee understands the general level of crime in and about Fredericksburg and Gillespie County and understands that Lessor cannot and will not guarantee safety or security with regard to the Leased Premises. Lessee specifically disclaims any duty of protection by Lessor.

ARTICLE 17. MISCELLANEOUS

17.01. Any notice or communication hereunder must be in writing, and may be given by registered or certified mail, shall be deemed to have been given and received when a registered or certified letter containing such notice, properly wrapped and addressed, with postage prepaid, is deposited in Texas, in the United States mail; and if given otherwise than by registered or certified mail, it shall be deemed to have been given when delivered to and actually received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at the following addresses:

LESSOR:

City of Fredericksburg
Attention: City Manager
126 W. Main Street
Fredericksburg, Texas 78624

LESSEE:

Fredericksburg Convention
and Visitor Bureau, Inc.
Attention: President/CEO
302 E. Austin Street
Fredericksburg, Texas 78624

Such addresses may be changed at any time by either party upon earlier notice given as herein set forth.

17.02. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors, and assigns where permitted by this agreement.

17.03. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gillespie County.

17.04. This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

17.05. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

17.06. In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder, and prevails, then the defaulting party agrees to pay the other party's reasonable attorney fees so incurred by such other party.

17.07. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

17.08. Time is of the essence of this agreement.

*Remainder of this page intentionally blank
Signatures on following page*

IN WITNESS WHEREOF, each of the parties hereto has executed this LEASE AGREEMENT, or caused the same to be executed by its duly authorized representative.

FREDERICKSBURG CONVENTION AND VISITOR BUREAU, INC.

By: _____ Date: _____

Printed Name and Title: _____

CITY OF FREDERICKSBURG, TEXAS

By: _____ Date: _____
Clinton Bailey, City Manager



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: December 20, 2022

CATEGORY: Approval

CAPTION: Consider awarding a Construction Contract for the East Main Street Waterline Rehabilitation Project to QRO MEX Construction Company for \$1,790,655.00.

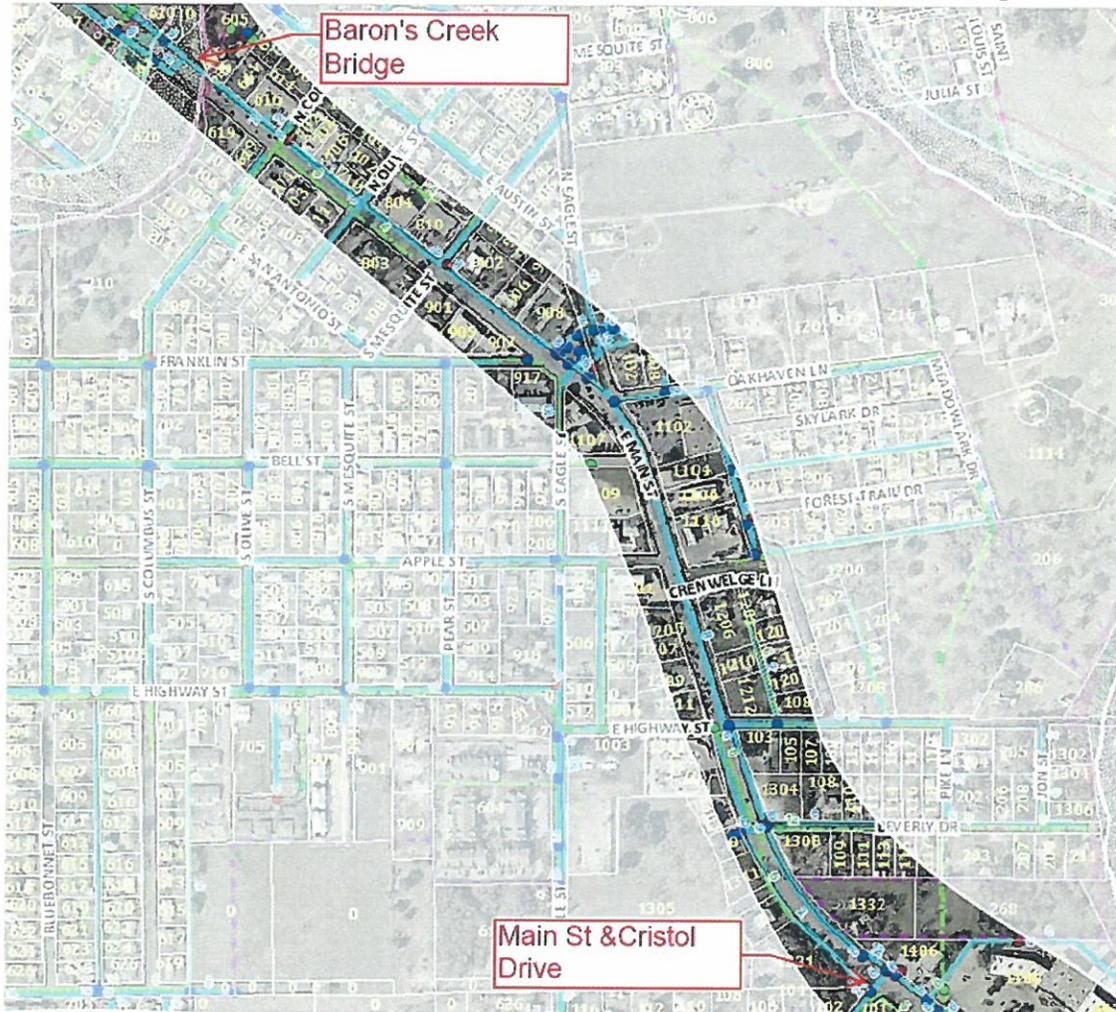
PRESENTATION: Kris Kneese, Interim Director of Public Works and Utilities

SUMMARY: Received construction bids for the East Main Street Waterline Rehab Project.

BACKGROUND: In 2017, the City completed a Water Master Plan which included a detailed analysis of the City's water distribution system infrastructure and recommendations for a number of capital improvements projects including the East Main Street Water Rehabilitation Project.

The East Main Street Water Line Rehabilitation Project includes rehabilitating the existing water line along Main Street from the Baron's Creek Bridge (by McDonald's) east to Cristol Drive. A map of the project area is included below. This project is recommended to replace aging water distribution pipe infrastructure, which has seen an increase in water main breaks and leaks. Additionally, the water line is within TXDOT right-of-way, most of which is under pavement and City Staff is currently working with TxDOT on an asphalt mill and overlay project along this section of roadway. The goal is to get this waterline replaced prior to the TXDOT's mill and overlay project.

Image 1: East Main Street Water Line Project Area Map



In February 2022, the City hired HDR Engineering to complete the professional design and bid documents for the project. The project bid documents publicly advertised for 3 weeks starting on October 26, 2022, and bids were publicly opened and read aloud on November 17, 2022. A total of seven (7) bids were received, with the low bid of \$1,790,655.00 submitted by QRO MEX Construction Company. The engineers opinion of cost for the project was \$3,334,000.00. The bids ranged from \$1,790,655.00 to \$3,632,563.00 with an average of \$2,844,922.37.

The City's budget for the project is \$3,000,000.00, so the project will realize a savings of around \$1,200,000.00. With the project saving, City Staff is currently evaluating other waterline rehabilitation projects for Council to consider in the future, as part of mid-year budget discussion.

FUNDING SOURCE: Water Department

FINANCIAL IMPACT: \$1,790,655.00

STAFF RECOMMENDATION: City staff recommends awarding the construction contract for the East Main Street Waterline Rehabilitation Project to QRO MEX Construction Company for \$1,790,655.00.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Government Vision

ATTACHMENTS:

Recommendation of Award Letter from HDR Engineering

APPROVAL/REVIEW:



DEPARTMENT NAME: Public Works Department

CREATED: 12/14/2022

FINANCE NAME: *Sawna Hollenback*

REVIEWED: *12/15/2022*

CITY ATTORNEY NAME:

APPROVED:

CITY MANAGER NAME



APPROVED: *12/15/22*



December 2, 2022

Mr. Kris Kneese, P.E.
Interim Director of Public Works and Utilities
126 W. Main Street
Fredericksburg, Texas 78624

RE: City of Fredericksburg East Main Street Waterline Replacement
Recommendation of Award

Dear Mr. Kneese,

Bids were received for the City of Fredericksburg East Main Street Waterline Replacement project on Thursday, November 17, 2022. A total of seven (7) bids were received, with the apparent low bidder being QRO Mex Construction Company, of Granite Shoals, Texas.

The engineer's opinion of probable construction cost (OPCC) was \$3,334,000.00. Five of the bids were below the engineer's OPCC and two of the bids were above the engineer's OPCC. See the attached bid tabulation for a summary of the bids received.

The lowest bid of \$1,790,655.00 was 13% percent lower than the next highest bid of \$2,073,025.00. The average bid was \$2,844,922.37, which was 58% percent higher than the lowest bid. The average bid was 14% percent lower than the engineer's OPCC. The highest bid was \$3,632,563.00 which was 8% percent higher than the engineer's OPCC.

Communication with QRO Mex Construction Company confirmed their confidence in the bid prices as submitted and their availability to perform the work. There are no noted irregularities in the bid as submitted by QRO Mex Construction Company. A Bid Bond for five (5) percent of the total amount bid was provided with the bid package. Addendum No. 1 was acknowledged on the Bid Form.

QRO Mex Construction Company provided qualification materials with their bid, including:

- Reference information for similar projects
- Proposed Project Manager, Project Superintendent, and resumes of each
- Financial statements

HDR reviewed the financial statements provided by QRO Mex Construction Company and feels the company is in good financial shape and as such, is not concerned with awarding the contract to them.

HDR contacted the references provided for similar projects completed and was able to speak with four of them. The references were quick to praise QRO Mex Construction Company on the project work they performed. They completed projects on time, on budget, and with minimal change orders. When change orders happened, they were due to unforeseen conditions or suggested improvements to the project accepted by the Owner. There was good communication during the projects, and the references said they would work with QRO Mex Construction Company again.

Based on the information available to us for review, HDR would recommend an award for construction be made to QRO Mex Construction Company. Based on the City's budget availability, it is recommended to award the total lump sum bid plus allowance of \$1,790,655.00.

If you have any questions or need any information, please feel free to contact me at 210-841-2826.

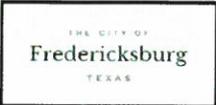
Sincerely,
HDR Engineering, Inc.

A handwritten signature in black ink that reads "Heather Lindner". The signature is written in a cursive, flowing style.

Heather Lindner, P.E.
Project Manager

Enclosure – Bid Tabulation

cc: HDR File



City of Fredericksburg, Texas
 East Main Street Waterline Replacement
 Bids Opened November 17, 2022 @ 11:00 AM



| Bidder | | QRO Mex Construction, Inc. | | JM Pipeline, LLC | | M & C Fonseca Construction Co., Inc. | | | |
|--------------------------------------------------------------|--------------------------------------------------------------------------------------|----------------------------|-------|------------------|------------------------|--------------------------------------|------------------------|---------------|------------------------|
| Attachments: | | | | | | | | | |
| Required Bid Security | | ✓ | | ✓ | | ✓ | | | |
| Acknowledgement of Addenda | | ✓ | | ✓ | | ✓ | | | |
| List of Proposed Subcontractors | | ✓ | | Not Included | | Not Included | | | |
| List of Proposed Suppliers | | ✓ | | Not Included | | Not Included | | | |
| Required Bidder Qualification Statement with Supporting Data | | ✓ | | ✓ | | Not Included | | | |
| Vendor Compliance to State Law | | ✓ | | ✓ | | Not Included | | | |
| LIFT STATION PACKAGE BASE BID | | | | | | | | | |
| Bid Item # | Description | Quantity | Units | Unit Price | Total Price | Unit Price | Total Price | Unit Price | Total Price |
| 1 | Mobilization & Demobilization | 1 | LS | \$ 125,000.00 | \$ 125,000.00 | \$ 50,000.00 | \$ 50,000.00 | \$ 132,500.00 | \$ 132,500.00 |
| 2 | Erosion & Sediment Control | 1 | LS | \$ 30,000.00 | \$ 30,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 50,000.00 | \$ 50,000.00 |
| 3 | Abandon Existing Water Line & Fill with Flowable Fill | 60 | CY | \$ 250.00 | \$ 15,000.00 | \$ 325.00 | \$ 19,500.00 | \$ 220.00 | \$ 13,200.00 |
| 4 | Connecting to Existing Water Lines | 8 | EA | \$ 4,500.00 | \$ 36,000.00 | \$ 6,500.00 | \$ 52,000.00 | \$ 8,000.00 | \$ 64,000.00 |
| 5 | Trench Safety Protection | 3,785 | LF | \$ 3.00 | \$ 11,355.00 | \$ 5.00 | \$ 18,925.00 | \$ 5.00 | \$ 18,925.00 |
| 6 | Buried Waterline, 12-IN Diameter PVC Pipe, all Depths, Installed by Direct Bury | 3785 | LF | \$ 110.00 | \$ 416,350.00 | \$ 120.00 | \$ 454,200.00 | \$ 145.00 | \$ 548,825.00 |
| 7 | Buried Waterline, 16-IN Diameter HDPE Pipe, Installed by Horizontal Direction Drill | 464 | LF | \$ 400.00 | \$ 185,600.00 | \$ 375.00 | \$ 174,000.00 | \$ 700.00 | \$ 324,800.00 |
| 8 | Flowable Fill Trench Backfill | 3500 | CY | \$ 165.00 | \$ 577,500.00 | \$ 180.00 | \$ 630,000.00 | \$ 220.00 | \$ 770,000.00 |
| 9 | Concrete Pipe Encasement | 2 | CY | \$ 500.00 | \$ 1,000.00 | \$ 300.00 | \$ 600.00 | \$ 225.00 | \$ 450.00 |
| 10 | 8-IN Gate Valve with Traffic Rated Valve Box | 4 | EA | \$ 1,500.00 | \$ 6,000.00 | \$ 1,800.00 | \$ 7,200.00 | \$ 3,000.00 | \$ 12,000.00 |
| 11 | 8-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 2,300.00 | \$ 2,300.00 | \$ 2,500.00 | \$ 2,500.00 | \$ 3,500.00 | \$ 3,500.00 |
| 12 | 10-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 3,400.00 | \$ 3,400.00 | \$ 3,700.00 | \$ 3,700.00 | \$ 5,000.00 | \$ 5,000.00 |
| 13 | 12-IN Gate Valve with Traffic Rated Valve Box | 14 | EA | \$ 1,750.00 | \$ 24,500.00 | \$ 4,500.00 | \$ 63,000.00 | \$ 5,250.00 | \$ 73,500.00 |
| 14 | 16-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 12,000.00 | \$ 12,000.00 | \$ 13,400.00 | \$ 13,400.00 | \$ 17,500.00 | \$ 17,500.00 |
| 15 | 2-IN Air/Vacuum Release Valve Assembly and Traffic-Related Valve Vault | 1 | EA | \$ 12,000.00 | \$ 12,000.00 | \$ 16,300.00 | \$ 16,300.00 | \$ 18,000.00 | \$ 18,000.00 |
| 16 | Fire Hydrant Assembly | 11 | EA | \$ 6,000.00 | \$ 66,000.00 | \$ 9,200.00 | \$ 101,200.00 | \$ 7,750.00 | \$ 85,250.00 |
| 17 | Ductile Iron Fittings for Buried Waterline | 5.5 | TONS | \$ 12,500.00 | \$ 68,750.00 | \$ 11,000.00 | \$ 60,500.00 | \$ 20,000.00 | \$ 110,000.00 |
| 18 | Customer Service Connections (Connections on same side of road as the Waterline) | 9 | EA | \$ 1,600.00 | \$ 14,400.00 | \$ 3,000.00 | \$ 27,000.00 | \$ 2,750.00 | \$ 24,750.00 |
| 19 | Customer Service Connections (Connections on opposite side of road as the Waterline) | 10 | EA | \$ 4,500.00 | \$ 45,000.00 | \$ 5,000.00 | \$ 50,000.00 | \$ 3,750.00 | \$ 37,500.00 |
| 20 | Pavement Repair | 2000 | SY | \$ 30.00 | \$ 60,000.00 | \$ 120.00 | \$ 240,000.00 | \$ 95.00 | \$ 190,000.00 |
| 21 | Traffic Control | 1 | LS | \$ 65,000.00 | \$ 65,000.00 | \$ 75,000.00 | \$ 75,000.00 | \$ 175,000.00 | \$ 175,000.00 |
| 22 | Disinfection & Testing | 1 | LS | \$ 12,000.00 | \$ 12,000.00 | \$ 6,000.00 | \$ 6,000.00 | \$ 25,000.00 | \$ 25,000.00 |
| 23 | As-Built Drawings & Record Drawings | 1 | LS | \$ 1,500.00 | \$ 1,500.00 | \$ 5,000.00 | \$ 5,000.00 | \$ 7,500.00 | \$ 7,500.00 |
| TOTAL BID | | | | | \$ 1,790,655.00 | | \$ 2,073,025.00 | | \$ 2,707,200.00 |

11/18/2022



City of Fredericksburg, Texas
 East Main Street Waterline Replacement
 Bids Opened November 17, 2022 @ 11:00 AM



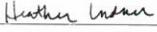
| Bidder | | | | Aguijo Utility Services, LLC | Austin Engineering Co., Inc. | Vaca Underground Utilities, Inc. | | | |
|--------------------------------------------------------------|--------------------------------------------------------------------------------------|----------|-------|------------------------------|------------------------------|----------------------------------|------------------------|---------------|------------------------|
| Attachments: | | | | | | | | | |
| Required Bid Security | | | | ✓ | ✓ | ✓ | | | |
| Acknowledgement of Addenda | | | | Not Included | ✓ | ✓ | | | |
| List of Proposed Subcontractors | | | | Not Included | | Not Included | | | |
| List of Proposed Suppliers | | | | Not Included | | Not Included | | | |
| Required Bidder Qualification Statement with Supporting Data | | | | Not Included | | Not Included | | | |
| Vendor Compliance to State Law | | | | ✓ | ✓ | ✓ | | | |
| BID ITEMS | | | | | | | | | |
| Bid Item # | Description | Quantity | Units | Unit Price | Total Price | Unit Price | Total Price | Unit Price | Total Price |
| 1 | Mobilization & Demobilization | 1 | LS | \$ 109,989.23 | \$ 109,989.23 | \$ 120,000.00 | \$ 120,000.00 | \$ 155,765.00 | \$ 155,765.00 |
| 2 | Erosion & Sediment Control | 1 | LS | \$ 28,053.00 | \$ 28,053.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 15,000.00 | \$ 15,000.00 |
| 3 | Abandon Existing Water Line & Fill with Flowable Fill | 60 | CY | \$ 300.29 | \$ 18,017.40 | \$ 330.00 | \$ 19,800.00 | \$ 250.00 | \$ 15,000.00 |
| 4 | Connecting to Existing Water Lines | 8 | EA | \$ 5,790.38 | \$ 46,323.04 | \$ 6,100.00 | \$ 48,800.00 | \$ 4,500.00 | \$ 36,000.00 |
| 5 | Trench Safety Protection | 3,785 | LF | \$ 3.06 | \$ 11,582.10 | \$ 1.00 | \$ 3,785.00 | \$ 10.00 | \$ 37,850.00 |
| 6 | Buried Waterline, 12-IN Diameter PVC Pipe, all Depths, Installed by Direct Bury | 3785 | LF | \$ 187.09 | \$ 708,135.65 | \$ 264.00 | \$ 999,240.00 | \$ 264.00 | \$ 999,240.00 |
| 7 | Buried Waterline, 16-IN Diameter HDPE Pipe, Installed by Horizontal Direction Drill | 464 | LF | \$ 470.19 | \$ 218,168.16 | \$ 570.00 | \$ 264,480.00 | \$ 330.00 | \$ 153,120.00 |
| 8 | Flowable Fill Trench Backfill | 3500 | CY | \$ 349.83 | \$ 1,224,405.00 | \$ 212.00 | \$ 742,000.00 | \$ 250.00 | \$ 875,000.00 |
| 9 | Concrete Pipe Encasement | 2 | CY | \$ 213.94 | \$ 427.88 | \$ 300.00 | \$ 600.00 | \$ 500.00 | \$ 1,000.00 |
| 10 | 6-IN Gate Valve with Traffic Rated Valve Box | 4 | EA | \$ 3,640.85 | \$ 14,563.40 | \$ 2,500.00 | \$ 10,000.00 | \$ 3,225.00 | \$ 12,900.00 |
| 11 | 8-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 4,655.67 | \$ 4,655.67 | \$ 3,500.00 | \$ 3,500.00 | \$ 4,225.00 | \$ 4,225.00 |
| 12 | 10-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 6,264.55 | \$ 6,264.55 | \$ 4,500.00 | \$ 4,500.00 | \$ 5,500.00 | \$ 5,500.00 |
| 13 | 12-IN Gate Valve with Traffic Rated Valve Box | 14 | EA | \$ 7,298.80 | \$ 102,183.20 | \$ 5,300.00 | \$ 74,200.00 | \$ 6,735.00 | \$ 94,290.00 |
| 14 | 16-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 23,888.84 | \$ 23,888.84 | \$ 12,500.00 | \$ 12,500.00 | \$ 17,775.00 | \$ 17,775.00 |
| 15 | 2-IN Air/Vacuum Release Valve Assembly and Traffic-Related Valve Vault | 1 | EA | \$ 8,315.75 | \$ 8,315.75 | \$ 6,500.00 | \$ 6,500.00 | \$ 7,965.00 | \$ 7,965.00 |
| 16 | Fire Hydrant Assembly | 11 | EA | \$ 12,882.25 | \$ 141,704.75 | \$ 8,700.00 | \$ 95,700.00 | \$ 9,610.00 | \$ 105,710.00 |
| 17 | Ductile Iron Fittings for Buried Waterline | 5.5 | TONS | \$ 26,805.05 | \$ 147,427.78 | \$ 14,000.00 | \$ 77,000.00 | \$ 8,800.00 | \$ 48,400.00 |
| 18 | Customer Service Connections (Connections on same side of road as the Waterline) | 9 | EA | \$ 4,765.76 | \$ 42,891.84 | \$ 3,000.00 | \$ 27,000.00 | \$ 2,000.00 | \$ 18,000.00 |
| 19 | Customer Service Connections (Connections on opposite side of road as the Waterline) | 10 | EA | \$ 16,374.81 | \$ 163,748.10 | \$ 14,000.00 | \$ 140,000.00 | \$ 3,080.00 | \$ 30,800.00 |
| 20 | Pavement Repair | 2000 | SY | \$ 55.08 | \$ 110,160.00 | \$ 200.00 | \$ 400,000.00 | \$ 245.00 | \$ 490,000.00 |
| 21 | Traffic Control | 1 | LS | \$ 192,077.81 | \$ 192,077.81 | \$ 95,000.00 | \$ 95,000.00 | \$ 45,000.00 | \$ 45,000.00 |
| 22 | Disinfection & Testing | 1 | LS | \$ 32,835.42 | \$ 32,835.42 | \$ 9,300.00 | \$ 9,300.00 | \$ 20,000.00 | \$ 20,000.00 |
| 23 | As-Built Drawings & Record Drawings | 1 | LS | \$ 4,250.00 | \$ 4,250.00 | \$ 500.00 | \$ 500.00 | \$ 5,000.00 | \$ 5,000.00 |
| TOTAL BID | | | | | \$ 3,360,068.57 | | \$ 3,157,405.00 | | \$ 3,193,540.00 |

11/16/2022



City of Fredericksburg, Texas
 East Main Street Waterline Replacement
 Bids Opened November 17, 2022 @ 11:00 AM



| Bidder | | Blackrock Construction | | | |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------|---------------|------------------------|
| Attachments: | | | | | |
| Required Bid Security | | | | | ✓ |
| Acknowledgement of Addenda | | | | | ✓ |
| List of Proposed Subcontractors | | | | | Not Included |
| List of Proposed Suppliers | | | | | Not Included |
| Required Bidder Qualification Statement with Supporting Data | | | | | ✓ |
| Vendor Compliance to State Law | | | | | ✓ |
| LIFT STATION PACKAGE BASE BID | | | | | |
| Bid Item # | Description | Quantity | Units | Unit Price | Total Price |
| 1 | Mobilization & Demobilization | 1 | LS | \$ 238,000.50 | \$ 238,000.50 |
| 2 | Erosion & Sediment Control | 1 | LS | \$ 35,000.00 | \$ 35,000.00 |
| 3 | Abandon Existing Water Line & Fill with Flowable Fill | 60 | CY | \$ 300.00 | \$ 18,000.00 |
| 4 | Connecting to Existing Water Lines | 8 | EA | \$ 7,435.00 | \$ 59,480.00 |
| 5 | Trench Safety Protection | 3,785 | LF | \$ 2.00 | \$ 7,570.00 |
| 6 | Buried Waterline, 12-IN Diameter PVC Pipe, all Depths, Installed by Direct Bury | 3785 | LF | \$ 395.00 | \$ 1,495,075.00 |
| 7 | Buried Waterline, 16-IN Diameter HDPE Pipe, Installed by Horizontal Direction Drill | 464 | LF | \$ 285.00 | \$ 132,240.00 |
| 8 | Flowable Fill Trench Backfill | 3500 | CY | \$ 165.00 | \$ 577,500.00 |
| 9 | Concrete Pipe Encasement | 2 | CY | \$ 500.00 | \$ 1,000.00 |
| 10 | 6-IN Gate Valve wth Traffic Rated Valve Box | 4 | EA | \$ 2,600.00 | \$ 10,400.00 |
| 11 | 8-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 3,275.00 | \$ 3,275.00 |
| 12 | 10-IN Gate Valve wth Traffic Rated Valve Box | 1 | EA | \$ 4,340.00 | \$ 4,340.00 |
| 13 | 12-IN Gate Valve with Traffic Rated Valve Box | 14 | EA | \$ 5,200.00 | \$ 72,800.00 |
| 14 | 16-IN Gate Valve with Traffic Rated Valve Box | 1 | EA | \$ 16,425.00 | \$ 16,425.00 |
| 15 | 2-IN Air/Vacuum Release Valve Assembly and Traffic-Related Valve Vault | 1 | EA | \$ 15,250.00 | \$ 15,250.00 |
| 16 | Fire Hydrant Assembly | 11 | EA | \$ 11,190.00 | \$ 123,090.00 |
| 17 | Ductile Iron Fittings for Buried Waterline | 5.5 | TONS | \$ 19,935.00 | \$ 109,642.50 |
| 18 | Customer Service Connections (Connections on same side of road as the Waterline) | 9 | EA | \$ 2,775.00 | \$ 24,975.00 |
| 19 | Customer Service Connections (Connections on opposite side of road as the Waterline) | 10 | EA | \$ 7,500.00 | \$ 75,000.00 |
| 20 | Pavement Repair | 2000 | SY | \$ 235.00 | \$ 470,000.00 |
| 21 | Traffic Control | 1 | LS | \$ 125,000.00 | \$ 125,000.00 |
| 22 | Disinfection & Testing | 1 | LS | \$ 15,000.00 | \$ 15,000.00 |
| 23 | As-Built Drawings & Record Drawings | 1 | LS | \$ 3,500.00 | \$ 3,500.00 |
| TOTAL BID | | | | | \$ 3,632,563.00 |
| | |  | | | |
| Heather R. Lindner, Texas P.E. #105055, do hereby certify this bid tabulation is accurate and true. | | Bidder did not account for increase in bid quantity | | | |

11/18/2022



CITY COUNCIL AGENDA MEMO

DEPARTMENT: City Manager

TO: Mayor and City Council

FROM: Clinton Bailey, City Manager

MEETING DATE: Dec. 20, 2022

CATEGORY: Approval

CAPTION: Consider, discuss, and take action on the Golf Course Facility Management Agreement with Touchtone Golf, LLC

PRESENTATION: Clinton Bailey, City Manager

SUMMARY: This item is for the consideration, discussion and possible approval of a Golf Course Facility Management Agreement renewal with Touchstone Golf, LLC (Touchstone) for management of Lady Bird Johnson Municipal Golf Course.

BACKGROUND: Touchstone began managing the golf course under a 5-year lease agreement with the City on January 1, 2018. The current lease expires at the end of December, 2022. Over the past 5 years Touchstone has done an excellent job turning the golf course around financially. By increasing revenues and lowering operating costs, Touchstone has been able to overcome a roughly \$700,000 golf course deficit and invest several hundred thousand dollars back into the course and its facilities at no cost to the citizens of Fredericksburg. Additionally, Touchstone has transformed local junior golf resulting in record participation levels.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: It is recommended the City Council approve the renewal of the Golf Course Facility Management Agreement with Touchstone Golf, LLC for management of Lady Bird Johnson Municipal Golf Course as presented.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS: Golf Course Facility Management Agreement

APPROVAL/REVIEW:

DEPARTMENT NAME: City Manager

CREATED: 12/14/2022

FINANCE NAME: *Laura Hollenbeck*

REVIEWED: *12/15/2022*

CITY ATTORNEY NAME:

APPROVED:

CITY MANAGER NAME: *Chris Taylor*

APPROVED: *12/15/22*

GOLF COURSE FACILITY MANAGEMENT AGREEMENT

This Agreement (as amended, "Agreement") is made this 1st day of January, 2023, between Touchstone Golf, LLC ("TOUCHSTONE"), a Delaware limited liability company and the City of Fredericksburg, Texas ("OWNER").

A. OWNER holds title to an 18 hole golf course facility and other amenities known as Lady Bird Johnson Municipal Golf Course, including clubhouse, food and beverage operations, and all improvements and business operations thereof or in connection therewith ("Golf Course Facility").

B. OWNER is in need of a professional manager of the complete operation of the Golf Course Facility, including, but not limited to, administration of all receipts and disbursements, operation and maintenance of the golf course, clubhouse, related facilities and equipment golf course, marketing, sales and membership development.

C. OWNER desires that TOUCHSTONE provide the management and other services which are necessary for the operations of the Golf Course Facility in a professional manner with budgets and operations structured to attempt to accomplish OWNER's financial needs.

D. TOUCHSTONE has agreed to provide such services on the terms and conditions herein contained.

I. BASIC TERMS

E. Basic Terms:

1. Contract Term: Ten (10) years, beginning January 1, 2023 and ending December 31, 2032 (the "Initial Term") unless extended as provided.

2. Extension: Two (2) automatic four (4) year extensions of the Initial Term (each a "Renewal Term") unless either party gives written notice to the other party at least one hundred twenty (120) days prior to the end of the applicable Contract Term.

3. Base Management Fee: \$7,000 per month. The Base Management Fee shall increase by ten percent (10%) for each 4 year renewal term.

4. Incentive Management Fee: In addition to the Base Management Fee as provided for above, TOUCHSTONE shall be paid an incentive management fee (the "Incentive Management Fee") based on increases/improvements in Earnings Before Taxes, Depreciation and Amortization ("EBITDA") as such figure is calculated pursuant to Exhibit B (Sample Management Incentive Fee Calculation). The incentive management fee for each Incentive Fee Period shall equal fifteen (15%) of the improvement in EBITDA over the EBITDA for the preceding Incentive Fee Period. As used herein, "Incentive Fee Period" shall mean the calendar year unless the OWNER operates the Golf Course Facility on the basis of a fiscal year, in which case the Incentive Fee Period will be the fiscal year. In the event of a sale and the subsequent termination

of this Agreement (other than a termination by "for cause", in which event no Incentive Management Fee shall be due) that occurs prior to end of the end of the Incentive Fee Period of any year this Agreement is in effect, the Incentive Management Fee to be paid shall be based on the increase/improvement in EBITDA for the interim period compared to the EBITDA for the comparable interim period in the Incentive Fee Period preceding the sale. If the initial Incentive Fee Period is less than a full 12 month period, the improvement shall be calculated based on comparable periods. For each calculation of the Incentive Management Fee, any amount paid or accrued shall be excluded from the calculation in order to determine the absolute improvement in EBITDA.

5. Facility Description: 18 hole golf course and clubhouse, with driving range and practice facilities.

6. Delivery Date for initial operating budget, business plan and facility improvement plan: August 1, 2023.

7. Delivery Date for subsequent annual operating budgets, business plans and facility improvement plans (as applicable): On or before August 1st of each year.

8. Special Provisions:

(a) Intentionally Left Blank.

(b) Liquor License: Owned by OWNER.

9. Intentionally Left Blank.

10. Addresses for Notices:

IF TO TOUCHSTONE: Mr. Stephen T. Harker
CEO
Touchstone Golf, LLC
1052 Overlook Rd.
Berkeley, California 94708
email: sharker@touchstonegolf.com

and, Mr. Douglas J. Harker
Executive Vice President
Touchstone Golf, LLC
11612 Bee Cave Road, Suite 150
Austin, Texas 78738
email: dharker@touchstonegolf.com

IF TO OWNER: The City of Fredericksburg
Attention: Mayor
126 West Main Street
Fredericksburg, TX 78624
Email: _____

Copy to:

The City of Fredericksburg
Attention: City Manager
126 West Main Street
Fredericksburg, TX 78624
Email: cbailey@fbgtx.org

F. The singular includes the plural and words importing one gender include the other gender.

G. The headings in this Agreement are for convenience only and shall not affect its interpretation.

II. REPRESENTATIONS AND RESPONSIBILITIES

Each party hereby warrants and represents that it has full authority to enter into this Agreement and to perform hereunder. Each party agrees to cooperate with the other and its officers, employees, agents and contractors in connection with this Agreement.

III. POWERS AND RESPONSIBILITIES OF TOUCHSTONE

A. OWNER hereby appoints TOUCHSTONE to manage the Golf Course Facility and TOUCHSTONE hereby accepts such appointment on the terms and conditions herein contained. Without limiting the generality of the foregoing, TOUCHSTONE shall provide to OWNER the management services more particularly set out in this Section III.

B. TOUCHSTONE will operate the Golf Course Facility in a good, workmanlike and professional manner by:

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;
2. Arranging for the employment of competent management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;
3. Arranging for the employment of a competent staff and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility;
4. Managing all hiring, training and termination of all Golf Course Facility management and personnel, including administering all labor relations. The general manager shall be subject to the approval of OWNER. All personnel of the Golf Course Facility shall be employees of TOUCHSTONE or its affiliate;
5. Oversee the accounting process including planning and budgeting; daily and monthly sales reporting, producing monthly financial statements; processing all expenses for payment; reviewing monthly cash flow statements; bank account reconciliations, and processing payroll;

6. Preparing and maintaining accurately in all material respects the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;

7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan (including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;

8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility;

9. Maintaining the golf course and all of its facilities in a condition consistent with quality levels defined in the calendar year budget, business plan, and facility improvement plan;

10. Coordinating with OWNER to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;

11. Overseeing all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility;

12. Implementation of Touchstone Golf's national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility; and

13. Implementation of the Touchstone Golf Foundation to enhance guest service and community outreach.

C. Subject to any provisions to the contrary herein contained, TOUCHSTONE may subcontract the whole or any part of the performance of its obligations and duties herein described to any wholly-owned subsidiary of TOUCHSTONE, or to any other person, firm or corporation approved by OWNER. The subcontracting of the whole or any part of its obligations and duties as aforesaid shall not relieve TOUCHSTONE from liability for the performance of such obligations and duties before or after such contracting.

D. For the term of this Agreement, OWNER will carry reasonable amounts of liability and property and contents insurance insuring all Golf Course Facility assets and operations, including improvements now or hereafter located on the Golf Course Facility real estate, against loss or damage by fire and other casualty, including theft, vandalism and malicious mischief, and such other risks common to Golf Course Facility properties. OWNER will also provide other insurance coverage as it considers necessary and normal for the operation of the Golf Course Facility, including but not limited to automobile liability and liquor liability insurance/DRAM shop insurance. OWNER at its discretion may provide crime and business interruption coverage. To the extent available, all of the foregoing insurance policies, shall include waivers of subrogation and shall provide coverage from cross liability among co-insureds and shall name TOUCHSTONE as an additional insured.

TOUCHSTONE shall provide workers compensation insurance for all of its employees working at the Golf Course Facility and the expense for such insurance shall be for the account of the OWNER. TOUCHSTONE shall also maintain employment practices liability insurance, crime/fiduciary coverage and liability coverage for its non-Golf Course Facility corporate employees that may visit the golf course, the expense of which shall be for the account of TOUCHSTONE.

E. Unless otherwise directed by OWNER all contracts and agreements which relate specifically to the Golf Course Facility shall be entered into by and in the name of OWNER. No contract or agreement shall be entered into without OWNER approval unless in accordance with the budget and terminable on 30-days notice. TOUCHSTONE shall provide OWNER copies of all such contracts and agreements which are binding upon or obligate OWNER within ten (10) business days of their execution.

F. TOUCHSTONE shall pay promptly all operating expenses of the Golf Course Facility unless the amounts thereof are in dispute. In addition, TOUCHSTONE will calculate any moneys or fees due TOUCHSTONE in accordance with this Agreement. TOUCHSTONE is authorized to pay its fees and expenses owing under this Agreement from the bank account utilized to pay operating expenses for the Golf Course Facility. No director or officer of TOUCHSTONE shall have any interest in any concession at the Golf Course Facility nor in any contract for the Golf Course Facility without approval by the OWNER or his designee. OWNER shall designate bank account(s) necessary to fulfill the payment of expenses and shall authorize TOUCHSTONE and Golf Course Facility employees, as necessary, to make deposits and authorize disbursements from such accounts which authorization shall be presumed for individuals named on bank resolutions and/or signature cards. OWNER shall approve the individuals authorized to make such disbursements in writing upon submission of a request for designees by TOUCHSTONE.

G. TOUCHSTONE does not give any general or specific guarantee as to the profitability of the Golf Course Facility, the attendance thereat or the revenues therefrom.

H. Upon expiration of the term of this Agreement, or upon the prior termination of this Agreement, and in any year prior to such expiration or termination, TOUCHSTONE agrees and covenants to cooperate fully with OWNER or OWNER's designated successor manager (subject to compliance with the restrictions elsewhere in this Agreement) in the smooth and businesslike transfer of the operations of Golf Course Facility including but not limited to assignment of accounts, contracts, policies, licenses, permits and improvements in connection with the Golf Course Facility to OWNER or OWNER's designees, except such proprietary rights as to which TOUCHSTONE has the sole or exclusive rights, and TOUCHSTONE agrees and covenants to execute all documents required or convenient to accomplish any such transfer in a timely, effective and efficient manner. On the expiration or on the termination of this Agreement for any reason, all Golf Course Facility property and interests therein, including cash, accounts, books, records, contracts; policies; licenses, permits and improvements in the Golf Course Facility property, except proprietary rights as to which TOUCHSTONE has the sole and exclusive rights and property as to which the parties have agreed shall be the property of TOUCHSTONE, will be promptly turned over to OWNER and be the property of OWNER. OWNER shall assume the leases of all equipment located at the Golf Course Facility unless

TOUCHSTONE elects otherwise in writing. TOUCHSTONE shall execute and deliver to OWNER all documents necessary to legally effectuate each of the transactions. Unless otherwise agreed in writing by the parties hereto, TOUCHSTONE shall remove its personnel and personal property from the Golf Course Facility upon such expiration or termination. Upon such expiration or termination, TOUCHSTONE shall surrender to OWNER all cash and other assets of the Golf Course Facility. The duties of TOUCHSTONE set forth in this Section are expressly conditioned upon OWNER'S full payment of the Base Management Fee, any Incentive Management Fee and any fee due upon termination as set forth in this Agreement.

I. TOUCHSTONE shall not make, or suffer to be made, any alterations of the Golf Course Facility or any part thereof if the cost of such alteration in the aggregate would be in excess of \$2,500 unless already included within the then approved budget (either operating or capital) for the Golf Course Facility without the prior written consent of OWNER. TOUCHSTONE shall use its best efforts to keep the Golf Course Facility premises and OWNER's property in which such premises are situated free from any liens arising out of any work performed or material furnished to the property, subject only to the right to diligently contest such liens.

J. TOUCHSTONE shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, national origin or non-disqualifying handicap. TOUCHSTONE shall not discriminate because of race, religion, color, ancestry, sex, national origin or non-disqualifying handicap against any person by refusing to furnish such person any service or privilege offered to or enjoyed by the general public, nor shall TOUCHSTONE or its employees publicize the Golf Course Facility in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, national origin or non-disqualifying handicap, nor shall the Golf Course Facility be so used.

IV. MANAGEMENT COMPENSATION

The following payments and consideration shall be made to TOUCHSTONE for the services to be provided by TOUCHSTONE under this Agreement:

A. The Base Management Fee set forth in Section I to be paid to TOUCHSTONE, with the first payment of the Base Management Fee payable within five (5) days of the execution of this Agreement and thereafter payable monthly in advance during the Contract Term.

B. In addition to the Base Management Fee, TOUCHSTONE will receive the Incentive Management Fee described in Section I, payable within thirty (30) days following delivery of the financial information related to the applicable incentive period and TOUCHSTONE'S calculation of such Incentive Management Fee. OWNER shall have the right to contest such calculation, but shall be required to resolve such calculation within 30 days of notice of such contest and if not resolved, make the payment based on TOUCHSTONE'S calculation with reservation of the right to contest.

C. TOUCHSTONE shall be reimbursed for reasonable out-of-pocket expenses, reasonable travel lodging expenses as provided for in the applicable budget or as otherwise

approved by OWNER. Such expenses shall be paid from the bank account utilized to pay operating expenses upon presentation of reasonable documentation of such expense.

V. PLANNING AND BUDGETS

On or before the dates set forth in Section I, TOUCHSTONE and OWNER shall have prepared and received OWNER's approval of an annual operating and capital budget for the remaining months of the current calendar year and no later than the dates set out in Section I for the subsequent calendar year(s). Until such time that the annual operating budget is complete and approved by OWNER, TOUCHSTONE shall use its best commercially reasonable efforts to operate the Golf Course Facility under the existing budget framework provided to TOUCHSTONE by OWNER or in a manner consistent with the current market position of the Golf Course Facility.

VI. RECORDS, ACCOUNTS AND REPORTS

A. TOUCHSTONE shall maintain books, accounts and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility accurate in all material respects with periodic reporting to the OWNER as may be available utilizing current accounting systems maintained by the Golf Course Facility or its affiliates.

B. TOUCHSTONE shall provide monthly financial statements including a balance sheet, income statement, statement of cash flows, cash flow projection and other financial data reasonably requested by OWNER readily available from TOUCHSTONE's accounting systems no later than twenty-five (25) days following the end of each month. TOUCHSTONE is not responsible for the preparation of any state or federal income tax returns of the OWNER for the Golf Course Facility. Any financial reports requested beyond TOUCHSTONE's standard reporting package will be invoiced at \$150 per hour of work performed.

C. OWNER shall have the right, upon request, to examine all books and records and to, at OWNER's expense, request an audit.

VII. RESPONSIBILITY FOR EXPENSES

A. Everything done by TOUCHSTONE pursuant to and in the performance of this Agreement and all expenses incurred by it under this Agreement shall be for and on behalf of OWNER. OWNER shall pay and be responsible for all costs and expenses of maintaining, operating and supervising the operation of the Golf Course Facility, provided they are in accordance with the contracts and consistent with the approved budget or within permitted variances provided for elsewhere in this Agreement, to include, but not limited to the following:

1. The salaries, wages, health related benefits, other fringe benefits, workers compensation insurance and expenses of employees;
2. All costs and expenses of any advertising or business promotion;
3. Costs of goods sold, including inventory and supplies necessary to conduct the business of the Golf Course Facility;

4. All expenditures for capital expenditures, repairs and maintenance, equipment and supplies;
5. Premiums for insurance maintained;
6. All expenses of regulatory compliance, permits, etc., it being specifically agreed that (i) legal fees incurred in connection with regulatory compliance for such liquor licenses, food service, etc. are approved, and (ii) reasonable and necessary legal fees of attorney's retained by OWNER or otherwise approved by OWNER in advance, directly related to the operation and protection of the Golf Course Facility and OWNER's and TOUCHSTONE'S liability are approved;
7. Cost and expenses of utilities;
8. General and administrative and accounting costs, including forms and checks;
9. If included within the budget, consulting fees for certain expertise (e.g., agronomy) needed to address specific needs of the Golf Course Facility or if not included in the budget, if approved by OWNER and
10. Management Fees and reimbursable expenses of TOUCHSTONE as set forth herein.

TOUCHSTONE acknowledges that expenditures by OWNER as required by this Agreement beyond the current fiscal year are subject to budget approval and appropriations by OWNER in accordance with applicable law.

B. OWNER is responsible for providing sufficient funds to cover the operating expenses for the Golf Course Facility. TOUCHSTONE, acting as authorized independent contractor for OWNER, will deposit all revenues of the Golf Course Facility into an operating account or accounts for the Golf Course Facility and TOUCHSTONE will have authority to draw upon the funds in the account to cover operating expenses. In the event that funds in an account are not sufficient to cover operating expenses, TOUCHSTONE shall advise OWNER of the shortfall or potential shortfall and OWNER shall deposit additional funds into the appropriate account in a timely manner in order to ensure that sufficient funds are available to meet the operational requirements, including the Base Management Fee, of the Golf Course Facility. Touchstone will have no obligation to contribute funds to the accounts of the Golf Course Facility.

C. TOUCHSTONE may cause the Golf Course Facility to incur any expense (i) that is included in the approved annual operating budget; (ii) that is needed to remedy any emergency situation that, in TOUCHSTONE'S professional judgment, is potentially hazardous, unsafe or damaging to the Golf Course Facility or to persons reasonably expected to be present at the Golf Course Facility (e.g., employees, patrons, authorized visitors) ("Emergency Expenditure"), as more particularly set forth hereinabove; or (iii) as otherwise expressly approved by OWNER. TOUCHSTONE shall not incur any expense that is not consistent with the annual operating budget without the prior written consent of the OWNER, except in the case of an emergency (as

elsewhere provided in this Agreement) or as otherwise provided in this Agreement. TOUCHSTONE shall not enter into any contract, even if otherwise authorized hereunder, which binds or purports to bind OWNER or the Golf Course Facility without the prior written approval of OWNER if the term of such contract exceeds the Contract Period unless such contract is terminable on 30-days' notice. Excepting only Emergency Expenditures or expenditures included in the approved budget, TOUCHSTONE shall not incur any single expense, even if otherwise authorized hereunder, which is chargeable to OWNER or to the Golf Course Facility if the amount equals or exceeds five thousand dollars (\$5,000).

D. The annual operating budget may contain a "contingency" line item in an amount not to exceed three percent (3%) of the total annual operating budget. TOUCHSTONE may reallocate portions of the contingency to other items in the annual operating budget. TOUCHSTONE may also reallocate among line items, provided the total expenses to be incurred do not increase. No other reallocations of line items may be made by TOUCHSTONE without the prior written consent of OWNER. Unbudgeted minor expenditures unforeseen at the time of preparation of the annual operating budget, and reasonably deemed necessary by TOUCHSTONE, may be made without OWNER's authorization except that unbudgeted expenditures in excess of five percent (5%) of any major subtotaled line item's budget may not be made without OWNER's written approval in advance. In the event such request is submitted and OWNER does not respond within five (5) business days of receipt of the request, OWNER shall be deemed to have consented to such unbudgeted expenditures.

E. To the extent employees remain employed by an affiliate of OWNER, the Golf Course Facility will also be responsible for reimbursing such affiliate for all costs of such employees, including but not limited to salaries, wages, benefits, taxes, insurance and payroll processing costs, as applicable.

VIII. TERMINATION

A. The term of this Agreement shall be for the Initial Term plus Renewal Terms, if applicable.

B. This Agreement may sooner be terminated:

1. At any time by mutual agreement between TOUCHSTONE and OWNER or as set forth in Article I in the event of a sale of the Golf Course Facility.

2. Except as to matters subject to subsection 4 below as to which there is no cure period, upon the failure of the defaulting party to correct a material breach of this Agreement after the non-defaulting party has given not less than fifteen (15) days written notice of the default in writing to the defaulting party. In the event the material breach is of a type that requires longer than fifteen (15) days to cure, the defaulting has taken steps before the end of the fifteen (15) day period to remedy the breach as are proper and diligent in all the circumstances and the defaulting party is diligently pursuing such cure. Any notice given pursuant to this subsection shall specify the full particulars of the default alleged.

3. In the event of gross negligence in the operation of the Golf Course Facility by TOUCHSTONE, upon written notice from OWNER.

4. Immediately upon written notice from TOUCHSTONE to OWNER in the event OWNER fails to make any required deposit to pay expenses of the Golf Course Facility (including the Base Management Fee) as required by this Agreement.

C. In the event of termination of this Agreement, except pursuant to paragraphs B2 or B3, OWNER agrees OWNER shall not hire, for a period of one (1) year following such termination, any general manager or golf course superintendent placed at the Golf Course Facility by TOUCHSTONE, without the express written consent of TOUCHSTONE which may be granted or withheld in TOUCHSTONE'S sole and absolute discretion.

IX. INDEMNITY

TOUCHSTONE shall not be liable to the OWNER for any loss or damage other than to the extent caused by TOUCHSTONE'S gross negligence or willful misconduct or TOUCHSTONE'S material breach of this Agreement and the OWNER both waives and releases TOUCHSTONE, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("damages") arising from any cause whatsoever arising out of or resulting from TOUCHSTONE actions under this Agreement, except to the extent such damages shall be caused by TOUCHSTONE'S own gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement. OWNER, to the extent permitted by applicable law, does hereby indemnify and save harmless TOUCHSTONE, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("damages") arising from any cause or condition related to the Golf Course Facility, whatsoever arising out of or resulting from TOUCHSTONE undertaking its duties under this Agreement, except to the extent such damages shall be caused by TOUCHSTONE'S gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement. TOUCHSTONE hereby agrees to indemnify and save harmless OWNER, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("damages") to the extent such damages shall be caused by TOUCHSTONE'S own gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement.

Notwithstanding any other provision herein, OWNER, to the extent permitted by applicable law, shall indemnify, defend and hold TOUCHSTONE harmless from any and all cost, expense, liability, or obligation that may arise, or be imposed on the OWNER, TOUCHSTONE, or the Golf Course Facility under the Americans with Disabilities Act of 1990, as now in effect or hereafter amended, and all rules and regulations issued under that law (collectively referred to as the "ADA"). Without limitation of the foregoing, OWNER shall be solely responsible for compliance with any of the following requirements of the ADA, and all cost and expense related thereto: barrier removal to ensure that members of the public with disabilities have access to the Golf Course Facility and all goods and services provided at the Golf Course Facility; providing auxiliary aids and services when necessary to remove communication barriers for members of the public with disabilities; compliance with the ADA

Accessibility Guidelines when performing any alterations, renovations, or remodels, or when otherwise required by local, state or federal authorities; and providing reasonable accommodations for all employees and employment applicants with disabilities. This indemnification shall include the defense of any action or proceeding (including the payment of attorney's fees and court costs) brought against TOUCHSTONE by the U.S. Department of Justice, or any individual or class of individuals, alleging violation or non-compliance with the ADA, and payment of any liability arising out of such actions or proceedings.

X. REPRESENTATIONS AND WARRANTIES

A. OWNER represents and warrants to TOUCHSTONE as follows:

1. OWNER is duly organized and validly existing under the laws of the state of its creation and is qualified to do business and is in good standing in the state in which the Golf Course Facility is located, with full power and authority to enter into and execute this Agreement and to consummate the transactions contemplated hereby. OWNER has received all requisite partner or corporate approvals necessary for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and this Agreement constitutes the legal, valid and binding obligation of OWNER, enforceable against OWNER in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

2. Except as disclosed in writing to TOUCHSTONE prior to the execution hereof or disclosed on Exhibit A, to the best of OWNER's knowledge, OWNER has not received written notice from any governmental authority that the existing use, maintenance and operation of the Golf Course Facility or any portion thereof violates any law or ordinance which has not been cured and to the best of OWNER'S knowledge, the Golf Course Facility is currently in compliance with applicable laws and ordinances, including without limitation, applicable liquor license rules and regulations. OWNER has not received any written notice from any mortgagee, insurance company, fire marshal or building inspector requiring or requesting the performance of any work or alterations to the Improvements which has not been performed.

3. OWNER has filed all federal, state, county, municipal and city income and other tax returns and reports required to have been filed by OWNER with respect to the Golf Course Facility, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by OWNER or is contesting such taxes in accordance with the requirements of applicable law.

4. There are no actions, suits, or proceedings pending or, to the best of OWNER's knowledge, threatened in any court or before or by any governmental authority against or affecting OWNER and related to the Golf Course Facility, except as disclosed in Exhibit A attached hereto and made a part hereof.

5. There is no pending eminent domain or condemnation proceedings against the Golf Course Facility or any part thereof and to the best of OWNER's knowledge, no such proceedings are presently threatened or contemplated by any authority with the power of eminent domain.

6. The OWNER is not aware of any contracts or other obligations outstanding for the sale, exchange or transfer of the Golf Course Facility or any portion thereof.

B. TOUCHSTONE represents and warrants to OWNER as follows:

1. TOUCHSTONE is duly organized and validly existing under the laws of the state of its creation as a Delaware limited liability company, and is qualified to do business and is in good standing in the state in which the Golf Course Facility is located, with full power and authority to enter into and execute this Agreement and to consummate the transactions contemplated hereby. TOUCHSTONE has received all requisite partner or corporate approvals necessary for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and this Agreement constitutes the legal, valid and binding obligation of TOUCHSTONE, enforceable against TOUCHSTONE in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

XI. CONFIDENTIALITY

A. Each party at all times hereafter shall attempt to preserve the secrecy and confidentiality of all the other party's confidential information (as defined hereafter) as it relates to the operation of other party's golf facilities, shall not attempt to use or in any way appropriate the same for its own use or benefit and shall not knowingly disclose or knowingly permit to be disclosed to any person (other than employees of OWNER and TOUCHSTONE) confidential information without the prior written consent of the applicable party, except as required by law. Nothing contained in this Agreement shall obligate either party to transfer to the other party any confidential information at any time, including, upon termination of this Agreement. "Confidential information" means all information and data related to TOUCHSTONE, used by TOUCHSTONE in connection with TOUCHSTONE'S obligations hereunder and related to other Golf Course Facilities of TOUCHSTONE, which information and data relates to TOUCHSTONE trade secrets, ideas, know-how, improvements, inventions, technologies or internal business facts (including financial and operating information), except such information or data which is generally available to the public without OWNER's fault or is acquired in good faith by OWNER from a third party who OWNER has no reason to believe acquired the same in other than good faith and who is not under any obligation to TOUCHSTONE in respect thereof.

B. TOUCHSTONE is permitted to identify its relationship with the Golf Course Facility in its advertising and marketing literature and website, including a photograph of the Golf Course Facility acceptable to OWNER, with a generic reference stating that the Golf

Course Facility, is a client (or upon expiration of the Contract Period, was a client) of TOUCHSTONE.

XII. FORCE MAJEURE

A. For the purposes of this Section XII, "force majeure" shall mean an act of God, strike, lockout or other industrial disturbance, act of a public enemy, war blockade, public riot, lightning, fire, storm, earthquake, flood, explosion, governmental restraint, breakage or accidents to equipment and any other cause, whether of the kind specifically enumerated above or otherwise, which shall not reasonably be within the control of the party claiming suspension. Force Majeure does not include any financial incapacity.

B. If TOUCHSTONE or OWNER is unable, wholly or in part, by reason of force majeure (as herein defined) to carry out an obligation under this Agreement, such obligation shall be suspended so far as it is affected by such force majeure during the continuance thereof. The party unable to perform shall give the other party prompt notice of such force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing such obligation. The party unable to perform shall use all possible diligence to remove such force majeure as quickly as possible.

C. The requirement that any "force majeure" shall be removed with all possible diligence shall not require the settlement by the party unable to perform due to strikes, lockouts or other labor disputes or the meeting of any claims of or demands by any supplier or government entity contrary to the wishes of TOUCHSTONE or OWNER or which may be harmful to OWNER or to TOUCHSTONE.

XIII. NO WAIVER

No delay or failure on the part of any party in exercising any right hereunder shall impair any such right or any remedy of the party so delaying or failing, nor shall it be construed to be a waiver of any continuing breach or default hereunder or any acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default hereunder be deemed a waiver of any other breach or default theretofore or thereafter occurring.

XIV. AMENDMENTS

This Agreement can be changed, waived, released or discharged only by written amendment executed by the parties hereto.

XV. SEVERABILITY

- A. If it is held by a court of competent jurisdiction that:
1. any part of this Agreement is void, voidable, illegal or unenforceable; or
 2. this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement were severed from this Agreement;

3. that part shall be severable from and shall not affect the continued operation of the rest of this Agreement.

B. The provisions of Section XV(A) shall not apply if the part of the Agreement affected is a substantive part in which event the parties shall in good faith renegotiate the provisions of the part so affected.

XVI. ASSIGNMENT

A. This Agreement shall be binding on all parties hereto and their respective successors and assigns.

B. A party shall not assign its rights and shall not be (except as provided herein) released from its obligations in, to, or under, this Agreement.

XVII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and such counterparts shall together constitute an agreement.

XVIII. NOTICES

Any notice, document or other item to be given delivered, furnished or received under this Agreement shall be deemed given, delivered, furnished or received when given in writing and personally delivered to an officer of the applicable party, sent by e-mail, receipt of which is confirmed, or upon delivery by a national overnight courier service to the addresses set forth in this Agreement or such other address as the party has notified the other party is their current delivery address.

XIX. MISCELLANEOUS

A. The relationship between OWNER and TOUCHSTONE is that of independent contractors, and except as herein expressly provided, neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever.

B. This Agreement constitutes the entire agreement between the parties as to the management of the Golf Course Facility, and all prior or contemporaneous, oral or written agreements or instruments are merged herein.

C. The remedies provided herein for breach of this Agreement are not exclusive; and, in event of breach, the parties hereto have all the remedies provided by law.

D. This Agreement is not intended and does not create any rights or interest in persons not a party hereto.

E. In those circumstances provided herein in which approval by a party is required, such approval shall not be unreasonably withheld, conditioned or delayed.

XX. APPLICABLE LAW

This Agreement is subject to the law of the state in which the Golf Course Facility is located, and the parties submit to the jurisdiction of the courts of that State.

IN WITNESS WHEREOF, the parties, have signed this agreement on the date first hereinbefore written.

TOUCHSTONE GOLF, LLC, a Delaware limited liability company

By: _____

Name: Stephen T. Harker

Title: Chief Executive Officer

THE CITY OF FREDERICKSBURG, a

By: _____

Name: _____

Title: _____

**GOLF COURSE FACILITY MANAGEMENT AGREEMENT
LIST OF EXHIBITS**

- Exhibit A Known Litigation and Other Matters
- Exhibit B Sample Incentive Management Fee Calculation

EXHIBIT A

KNOWN LITIGATION AND OTHER MATTERS

EXHIBIT B

SAMPLE INCENTIVE MANAGEMENT FEE CALCULATION

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------|
| <u>Incentive Calculation</u> | | |
| Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") | Current Year | 250,000 |
| | | |
| Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") | Prior Year | 150,000 |
| | | |
| Improvement | | \$100,000 |
| | | |
| Incentive Percentage | 15% | |
| | | |
| Incentive to Touchstone Golf | | \$15,000 |
| | | |
| <i>Not actual numbers, example only.</i> | | |
| | | |
| Note: For purposes of the annual calculation, any incentive fee paid in the prior period shall be excluded as an operating cost. Gross profits from the sale of alcoholic beverages shall be excluded from the calculation of EBITDA for purposes of the incentive. | | |



CITY COUNCIL AGENDA MEMO

DEPARTMENT: Engineer Department

TO: Mayor and City Council

FROM: Evan Williamson, P.E., CFM - Staff Engineer

MEETING DATE: Dec. 20, 2022

CATEGORY: Approval

CAPTION: Consider the approval of the proposed performance agreement and associated financial security for 110 percent of the cost of the remaining public improvements required for completion of the subdivision.

PRESENTATION: Evan Williamson, P.E., CFM - Staff Engineer

SUMMARY: This item is for the consideration and possible acceptance of a performance agreement and associated financial security for the Alstadt Village Phase 1 Subdivision.

BACKGROUND: Alstadt Village Phase 1 is a 10-acre subdivision located at east end E. Centre Street that includes twenty-three R1 zoned residential lots (see attached map and plat). Section 5.05 of the City of Fredericksburg Subdivision Ordinance provides an option for developers to pursue the approval and recordation of the final plat for a subdivision prior to the completion of the public improvements required in connection with the approval of the subdivision plat. This option requires the execution of a Performance Agreement and providing an associated security in the amount of 110% of the cost to construct and complete the remaining public improvements. The developer request to pursue this option was initiated by their obligation to convey Lot 1 shown in the attached preliminary plat back to the seller at the end of 2022. The public improvements associated with the Alstadt Village Phase 1 include water, wastewater, stormwater, and street infrastructure. Most of the construction for the project has been completed aside from . To minimize damage to the pavement surface during home construction and ensure the roadway is in good condition at the completion of the two-year warranty period, the second course of paving will be deferred to the end of the warranty period. The estimate for completing the remaining public improvements including the second course of paving, plus 10%, is \$95,944.00. All public improvements will be completed and accepted prior to issuance of a building permit in the subdivision excepting the second course of pavement. The second course of pavement will be completed prior to the end of the two-year warranty period. This will preserve the final course of pavement until after much of the initial building activity has taken place.

FUNDING SOURCE: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION:

Recommendation: To approved the performance ~~ag~~reement to receive financial security in the amount of \$94,944.00 (110% of the costs of remaining public improvements) to allow the recordation of the Alstadt Phase 1 Final Plat.

COMMUNITY VISIONING/STRATEGIC INITIATIVES: Quality of Life

ATTACHMENTS: Location Map & Plat

Performance Agreement for Alstadt Village Phase 1 Subdivision

APPROVAL/REVIEW: *Ever Withamson*

DEPARTMENT NAME: Engineer Department
12/14/2022

CREATED:

FINANCE NAME: *Raura Hollenbeck*

REVIEWED: 12/15/2022

CITY ATTORNEY NAME:

APPROVED: 12/15/2022

CITY MANAGER NAME: *Art Galy*

APPROVED: 12/15/2022

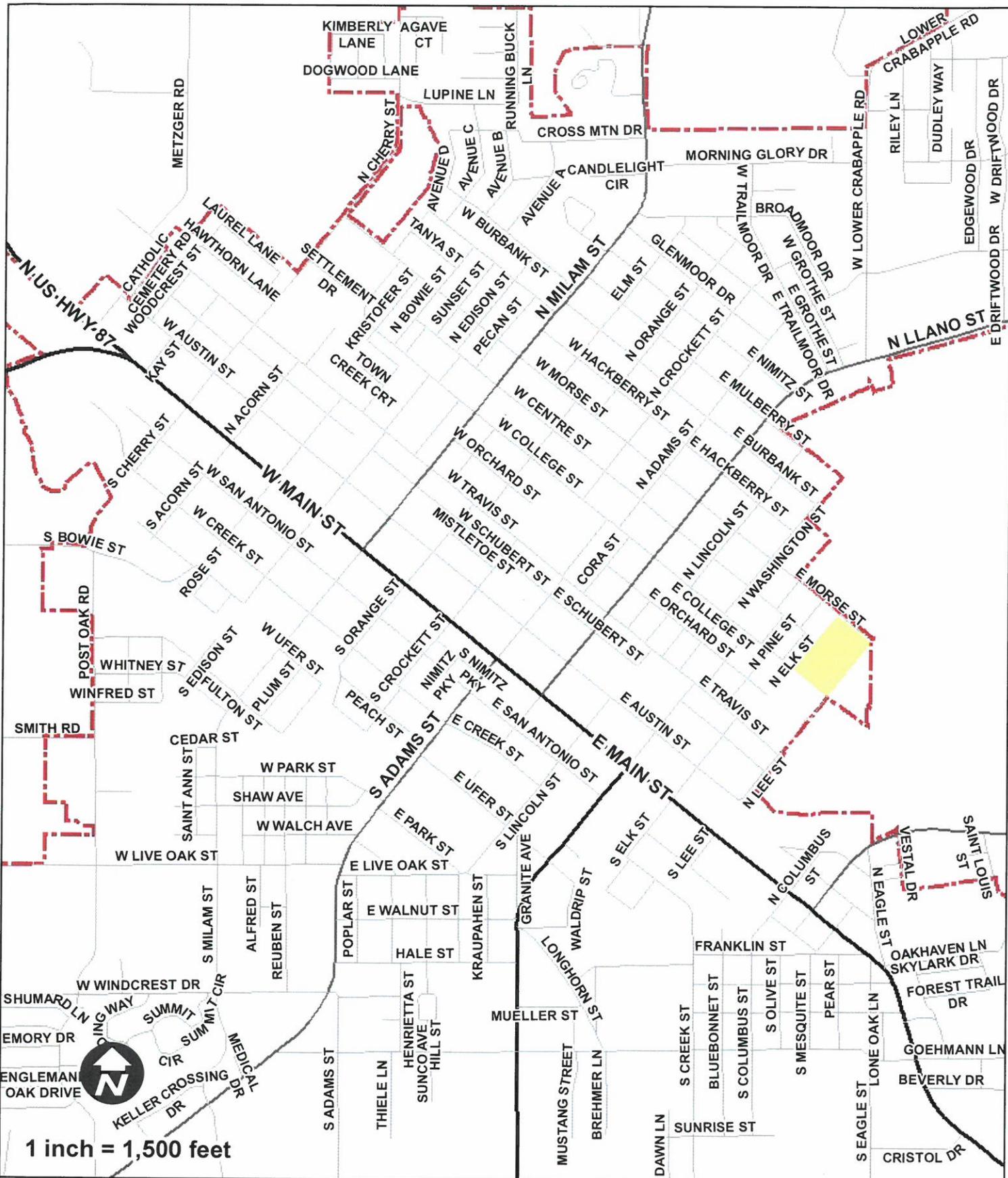


FIGURE 1
City of Fredericksburg
Alstadt Village Location Map

- LEGEND**
- City Limit Boundary
 - Alstadt Village Unit 1
 - 1-Mile ETJ Boundary



PERFORMANCE AGREEMENT

That, Luis Zaragoza of Paradise Homes, LLC, being duly authorized to act on behalf of said entity, (hereinafter referred to as Developer and Owner), does hereby agree with the City of Fredericksburg (hereinafter called City) that the final plat of Altstadt Village Phase 1 Subdivision (“Subdivision”), has been approved by the Planning Commission of the City of Fredericksburg, Texas, and that in order to permit the approval and recordation of the Final Plat prior to the completion of the Public Improvements required in connection with the approval of said subdivision plat, this Performance agreement (“Agreement”) is entered into pursuant to Section 5.05 of the Subdivision Ordinance of the City of Fredericksburg.

NOW, THEREFORE, the City and Developer hereby agree to the terms of this Agreement as follows:

1. Developer agrees that Developer shall complete construction of all public improvements required in connection with the approval of said Subdivision plat within (4) months from the date of recordation of the Final Plat of said Subdivision, excluding the final (second) course of pavement referenced in Paragraph 2 of this Agreement.
2. The final (second) course of pavement shall be completed by the Developer within the maintenance bond period. Developer is responsible for maintenance and repair of first course of pavement prior to the final (second) course of pavement being completed.
3. Developer shall provide a maintenance bond in the amount of ten percent (10%) of the costs of all of the public improvements for a period of two (2) years following the City’s final acceptance of the improvements (excluding second course of pavement) to ensure to the City the repair and replacement of all defects due to faulty materials and workmanship that appear within the two-year period following date of acceptance.
4. The performance and payment bonds, and/or irrevocable letter of credit, and/or

Escrow agreement for securing the completion of the public improvement construction obligations in this Agreement (known collectively as “Performance Security”, as provided for in Section 5.05.D (entitled “Security for Completion of Improvements”) of the Subdivision Ordinance of the City of Fredericksburg, shall be issued for one hundred ten percent (110%) of the cost to construct and complete the outstanding required public improvements as estimated by the Developer's professional engineer, and as approved by the Director of Public Works and Utilities. Attachment “A” sets forth the anticipated required Subdivision public improvements that will remain outstanding at the time of recordation of the Final Plat.

- a. Such bonds and/or letter of credit shall guarantee proper construction of such postponed and outstanding public improvements, and payment of all claimants supplying labor and materials for the construction of the public improvements, on or before the date stated herein.
5. This Agreement and the covenants and other items of agreement contained herein, and which are set forth in the Subdivision Ordinance of the City of Fredericksburg, whether set out herein or not, shall run with the land and shall bind all successors, heirs and assignees of the owner(s) of the Subdivision Property and the Developer.
6. Any Performance Security posted by the Developer under this Agreement, or portion thereof remaining, shall be forfeited to the City should Developer cease to do business in this state, or if Developer files a petition in bankruptcy, or otherwise repudiates this agreement.
7. Developer agrees that, in addition to the requirements for posting Performance Security under this Agreement, shall be liable to the City of Fredericksburg for timely completion of all public improvements and acceptance by the City within the time provided herein; except, however, that should the completion of such site improvements be delayed by reason of strikes, riots, acts of God, acts of the public enemy, injunction or other court action, or any other cause similar to those

enumerated beyond Developer's reasonable control, Developer shall be entitled to an extension of time equal to the time of such delay, which extension of time is to be fixed finally by written certificate made by the Director of Public Works and Utilities, it being expressly declared that no such allowance of time will be made unless claimed by the Developer and allowed and certified in writing by the Director of Public Works and Utilities at the end of each period of such delay.

8. If, at any time, construction of such public improvements has not been completed and accepted by the City and the amount provided by the Performance Security is no longer sufficient to cover the cost of completion of the public improvements, upon written notification of same to Developer by the Director of Public Works and Utilities, the Developer shall immediately file with the Director of Public Works and Utilities additional Performance Security, in an amount equal to the cost estimate of completing such site improvements, and shall complete construction of such site improvements within the time provided herein.
9. Until such time as the public improvements have been satisfactorily completed and accepted or such additional Performance Security as required by the City have been provided, the Director of Public Works and Utilities shall refuse to accept any further Performance Security, under any form, which is related to the plat of a subdivision subsequently filed with the Planning Commission in which Developer has a principal or subsidiary interest.

This Agreement and any subsequent agreement covering one or more of the forms of guarantee of performance shall be interpreted under the laws of the State of Texas

EXECUTED this _____ day of _____, 2022.

Paradisa Homes, LLC, as DEVELOPER and OWNER:

BY: _____ TITLE: _____
Luis Zaragoza

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared Luis Zaragoza, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ___ day of _____, 20__.

(Name)

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires _____

REVIEWED AND APPROVED BY THE DIRECTOR OF PUBLIC WORKS:

_____ Date: _____

By:

APPROVED BY THE CITY:

_____ Date: _____

By: Clinton Bailey, City Manager

ATTACHMENT A

TO PERFORMANCE AGREEMENT

COVERING Altstadt Village Phase 1 Subdivision

Items of work remaining after completion of base and curbs.

TYPE OF SITE IMPROVEMENTS: ESTIMATED
COST

- 1) Water: (substantially complete) \$
- 2) Sewer: (substantially complete) \$
- 3) Streets: 1st course Grade 4 Surface Treatment \$ 32,222
 2nd course of Grade 5 Surface Treatment \$ 30,000
- 4) Storm Drainage:_(substantially complete)_____ \$
- 6) Other: _(Warm season seeding) \$ 25,000

TOTAL \$ 87,222

110% Performance Amt \$95,944

Developer's Professional Engineer: _____

Date: _____

Director of Public Works and Utilities: _____

Date: _____

LEINHOLDER'S CONSENT TO THE PERFORMANCE AGREEMENT for the Altstadt Village Phase 1 SUBDIVISION OF GILLESPIE COUNTY, TEXAS AND TO THE COVENANTS CONTAINED THEREIN.

STATE OF TEXAS §
COUNTY OF GILLESPIE §

The undersigned, _____ (hereinafter, "Lienholder") being the sole owner and holder of an existing mortgage and lien recorded in Volume _____, Page _____, and Volume _____, Page _____, of the real property records of Gillespie County, Texas, upon and against the real property described in Volume _____, Page _____ (et seq.) of the Deed Records of Gillespie County, Texas, or as shown on the exhibit attached hereto, which is known (or is to be known as the Post Oak Village, and as such, mortgagee and lienholder, does hereby consent to and join in said Agreement and to the covenants and agreements contained therein.

The undersigned hereby executes this instrument for the sole purpose of subordinating the liens held by the undersigned to all of the provisions of the said Agreement. All parties to the Agreement specifically acknowledge that Lienholder is not a party to the said Agreement except for the sole purpose of consenting there to and subordinating the Lien(s) as set out above, and all parties to the Agreement hereby specifically and unconditionally release and discharge said Lienholder from any claims or liability with respect to, or arising out of the Agreement, except as to actions which may hereafter be taken by Lienholder as a successor to the interest of the Owner or Developer.

DATE: _____, 202____, Lender

By: _____,

(Printed Name and Title)

THE STATE OF TEXAS §
COUNTY OF GILLESPIE §

BEFORE ME, the undersigned authority, a Notary Public for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 20____.

(Name)
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My Commission Expires _____

Future Agenda Worksheet

| | CITY COUNCIL MEETING DATES & FUTURE AGENDA ITEMS | ACTION | PRESENTER |
|----|-----------------------------------------------------------------------------|-------------------------------|------------------|
| | Tuesday, January 3, 2023 (Special Meeting) | | |
| | | | |
| 1 | December 20, 2022, Minutes | Approval | Shelley |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| | | | |
| | Tuesday, January 17, 2023 (Regular Meeting) | | |
| | | | |
| 1 | January 3, 2023, Minutes | Approval | Shelley |
| 2 | Z-2232 Land use and Zoning Change | Public Hearing and Ordinances | Anna |
| 3 | Z-2230 CUP STR-Unoccupied | Public Hearing and approval | Anna |
| 4 | | | |
| 5 | | | |
| | | | |
| | FUTURE AGENDA ITEMS | | |
| | | | |
| 1 | Capital Improvement Fund in General Fund (postponed from 5-16-2022) | Resolution | Laura |
| 2 | Naming rights for Market Square | Approval | Andrea |
| 3 | Boards and Commissions (1 Market Square Redevelopment vacancy) | Appoint | Shelley |
| 4 | W. Live Oak Zoning & Land Use Change | Public Hearing & Approval | Anna |
| 5 | Intersection Traffic Control Device Modifications | Public Hearing/Approval | Garret |
| 6 | Soccer Fields | Update | Andrea |
| 7 | Events - mass event rentals and fees at Market Square (January 2023) | Discussion | Andrea |
| 8 | N. Llano Storm Sewer Project Design Contract | Award | Garret |
| 9 | Performance Agreement - Friendship Oaks Phase I | Approval | Evan |
| 10 | Purchasing Policy | Approval | Laura |
| 11 | Ordinance for collection of debits on City Admin Hearing items | Approval | Joe M |
| 12 | Ordinance calling the Election, appointing the judges, and polling location | Approval | Shelley |
| 13 | | | |