



**AGENDA  
REGULAR MEETING  
FREEPORT CITY COUNCIL  
MONDAY, DECEMBER 6, 2021 at 6:00 P.M.**

**Mayor:**  
Brooks Bass

**Council Members:**  
Jeff Pena  
Jerry Cain  
Mario Muraira  
Troy Brimage

**City Manager:**  
Timothy Kelty

**THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, WILL MEET ON MONDAY, THE 6TH DAY OF DECEMBER, 2021, AT 6:00 P.M., AT THE FREEPORT, POLICE DEPARTMENT, MUNICIPAL COURT ROOM, 430 NORTH BRAZOSPORT BOULEVARD FREEPORT TEXAS**

**YOU MAY JOIN THE PUBLIC MEETING REMOTELY BY TELECONFERENCE BY DIALING:**

**(425) 436-6312 AND USING ACCESS CODE 5678901#**

**OR**

**AUDIO VISUAL CONFERENCE CALL USING:  
PCs, Macs®, Chromebooks™, iOS and Android™ phones and tablets.**

International dial-in numbers: [https://fccdl.in/i/council\\_mtg\\_120621](https://fccdl.in/i/council_mtg_120621)

**For users wanting to view and listen to the council meeting via a web browser go to**

[https://join.freeconferencecall.com/council\\_mtg\\_120621](https://join.freeconferencecall.com/council_mtg_120621)

**enter access code 5678901# and the online meeting code is: council\_mtg\_120621.**

**OR**

**Visit the App Store or Google Play to download FreeConferenceCall. Enter the phone number, access code and online code listed above to view the meeting.**

**REMOTE PARTICIPANTS WILL NOT BE ABLE TO ADDRESS COUNCIL DIRECTLY. COMMENTS FROM REMOTE PARTICIPANTS MUST BE SENT VIA EMAIL TO [publiccomments@freeport.tx.us](mailto:publiccomments@freeport.tx.us) ANY TIME PRIOR TO, OR DURING THE MEETING ALL COMMENTS RECEIVED WILL BE READ ALOUD INTO THE RECORD.**

**THE MEETING IS BEING HELD FOR THE FOLLOWING PURPOSES:**

**CALL TO ORDER:** *The Mayor will call the meeting to order, declare a quorum if present, and declare notices legally posted pursuant to Open Meetings Act.*

**INVOCATION AND PLEDGE OF ALLEGIANCE:** (Council Member)

**CITIZENS' COMMENTS:**

Members of the public are allowed to address the City Council at this time, and must include name and address. *Note*, specific factual information or a recitation of existing policy may be furnished in response to an inquiry made, but any deliberation, discussion, or decision with respect to any subject about which the inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting for which notice is provided in compliance with the Texas Open meetings Act unless said notice appears herein. The public is reminded that there is a (4) minute time limit as approved by City Council on June 21, 2010.

**PRESENTATIONS/ANNOUNCEMENTS:** Announcements by Mayor, City Council and/or Staff.

1. Presentation from Brett Bowles with IAD on the façade of the Museum.
2. Public Hearing and Presentation from Kendig Keast Collaborative on Subdivision Control Ordinance revisions. **(Roman)**

**CONSENT AGENDA:**

Consent Agenda items are considered to be routine in nature and may be acted upon in one motion. Any item requiring additional discussion may be withdrawn from the Consent Agenda by the Mayor, Councilmember or City Manager, and acted upon separately

3. Consideration and possible action on the approval of City Council meeting minutes from November 15, 2021. **(Wells)**
4. Consideration and possible action approving Resolution No. 2021-2719 amending errors in Resolution No. 2021-2706 saying "Radio Console Upgrade" to "Portable Radio Upgrade". **(Garivey)**
5. Consideration and possible action on Resolution 2021-2720, approving the Lease Agreement with Amistad for office space a City Hall. **(Kelty)**
6. Consideration and possible action approving Resolution No. 2021-2721 awarding the contract for Janitorial services of city facilities. **(Ezell)**

## **COUNCIL BUSINESS – REGULAR SESSION:**

7. Consideration and possible action on adoption of Zoning Ordinance No. 2021-2653 and Subdivision Control Ordinance No. 2021-2654. **(Roman)**
8. **Public Hearing:** Harrison subdivision replat of Lots 63, 64 and 71, Block 14 of the Las Playas Subdivision Part II of Section 5 Recorded in Volume 15, Pages 81-82 Of the Brazoria County Plat Records Situated in the T. & W. Alley League, Abstract 2, Brazoria County, Texas October 2021.
9. **Public Hearing.** Re-plat on TEXAS GULF FREEPORT MHJB A Subdivision of 1.589 Acres/69,205 SQ FT Situated in the S. T. Angier Survey Abstract No. 8 City of Freeport, Brazoria County, Texas 1 Blocks 2 Lots July 2021 Owner Texas Gulf Bank, N. A., A national banking association P. O. Box 738, Lake Jackson, TX 77566 979-297-7211 Surveyor Windrose Land Surveying/Platting 11111 Richmond Ave, Suite 150 Houston, TX 77082 713-458-2281 Firm Registration No. 10108800.
10. Consideration and possible action approving the Grant Agreement for the GLO \$6. Million Wastewater Treatment Plant. **(Ezell)**
11. Consideration and possible action approving Resolution No. 2021-2722, amending the City of Freeport Policy Handbook Chapter 9- Employee Wage and Benefits 9.18 Assignment Pay. **(Ezell)**
12. Consideration of approving Resolution 2021-2724, to Participate in Texas Cooperative Liquid Assets Securities System Trust (Texas Class) an investment pool administered by Public Trust Advisors, LLC. **(Ezell)**
13. Consideration and possible action on Resolution No. 2021-2725, authorizing the Mayor to sign a contract with AmeriWaste. **(Kelty)**
14. Consideration and possible action to approve Resolution No. 2021-2726, to amend the 380 Cundieff Family Partnership, LTD Agreement with the City of Freeport, originally approved on December 7, 2020. **(Kelty)**
15. Consideration and possible action On Resolution No. 2021-2727, approving Amendment # 1 to the Interlocal Agreement for Animal Control. **(Kelty)**
16. Consideration and possible action on Resolution No. 2021-2728 appointing a member to the Freeport Economic Development Board. **(Kelty)**

## **WORK SESSION:**

17. **The City Council may deliberate and make inquiry into any item listed in the Work Session.**
  - A. Mayor Brooks Bass announcements and comments.

- B. Councilman Pena Ward A announcements and comments.
- C. Councilman Cain Ward B announcements and comments.
- D. Councilman Muraira Ward C announcements and comments.
- E. Councilman Brimage Ward D announcements and comments.
- F. City Manager Tim Kelty announcements and comments.
- G. Updates on current infrastructure.
- H. Update on reports / concerns from Department heads.

**CLOSED SESSION:**

- 18. Executive Session regarding a.) (Potential Litigation) consultation with city attorney, b.) (Deliberations about Real Property), East End, and Brazos Cove, in accordance with Vernon's Texas Government Code Annotated, Chapter 551, Sections 551.071, 551.072.

**COUNCIL BUSINESS – REGULAR SESSION:**

**ADJOURNMENT:**

- 19. Adjourn.

Items not necessarily discussed in the order they appear on the agenda. The Council at its discretion may take action on any or all of the items as listed. This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code).

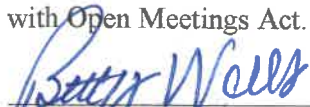
The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

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**ACCESSIBILITY STATEMENT** This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (979) 233-3526.

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**CERTIFICATE** I certify the foregoing notice was posted in the official glass case at the rear door of the City Hall, with 24 hours a day public access, 200 West 2<sup>nd</sup> Street, Freeport Texas, before 6:00 p.m. in accordance with Open Meetings Act.

  
Betty Wells, City Secretary,  
City of Freeport, Texas



State of Texas

County of Brazoria

City of Freeport

BE IT REMEMBERED, that the City Council of Freeport, Texas met on Monday, November 15, 2021 at 6:00 p.m. at the Freeport Police Department, Municipal Court Room, 430 North Brazosport Boulevard, Freeport Texas for the purpose of considering the following agenda items:

City Council:

- Mayor Brooks Bass
- Councilman Jeff Pena
- Councilman Jerry Cain
- Councilman Mario Muraira
- Councilman Troy Brimage

Staff:

- Tim Kelty, City Manager
- Betty Wells, City Secretary
- Cathy Ezell, Finance Director
- Chris Duncan, City Attorney
- Lance Petty, Public Works Director
- Chris Motley, Fire Chief
- Kacey Roman, Building Official
- LeAnn Strahan, Destinations Director
- Ray Garivey, Freeport Police Chief
- Clarisa Molina, Administrative Assistant
- Giselle Hernandez, Financial Analyst
- Yvette Ruiz, Planning and Zoning Coordinator
- Brian Dybala, Municipal Golf Course Director
- Hope Bullman, Code Officer

Visitors:

George Matamoras	Stoney Burke
David McGinty	Sam Reyna
Nicole Mireles	Ruben Renobato
Lorenzo Gomez	Gary Guerrier
Kenny Hayes	Con Mcleaster
Margaret Bachman	Ron Bachman
Helen Harris	Julieta Medina
Lesa Girouard	Dania Moreno
Landis Adams	Gina Adams
Bob Brooks	Keith Stumbaugh
Ed Garcia	Pam Dancy
Marinel Music	Sabrina Brimage
Sandra Barnett	Jim Barnett
Ken Tyner	Gordo Campbell
Janell Marin	Jaclyn Hildreath

Jimmy Hildreath  
Larry Fansher  
Ty Morrow

Kerin Hathcoat  
Andy Dill  
Raven Wuebker

Visitors, Via Teleconference:

Laura Tolar  
Vander Williams  
George Hawkins  
Yvette Ruiz  
Lauralee Ellis  
Eddie Saucedo  
Desiree Pearson  
George Hawkins  
Lauralee Ellis  
Kevin Harris  
Paul Crow

Robert Cramer  
Amanda Petty  
Tyler Lowe  
Lila Diehl  
Jen Hawkins  
Robert Cramer  
Jerry Meeks  
Mary Garcia  
Cody Hayes  
Craig Graham  
Kristy Mercado

**Call to order.**

Mayor Bass called the meeting to order at 6:00 p.m.

**INVOCATION AND PLEDGE OF ALLEGIANCE:**

Invocation was led by Pastor Andy Dill, Pledge was led by City Manager Tim Kelty.

**CITIZENS' COMMENTS:**

Keith Stumbaugh said he has lived in the City for 56 years. Mr. Stumbaugh said he has previously served on the Freeport Beautification Committee, the Historical Board, Main Street Committee, and recently he has served on the Planning Committee, and the BOA. He spoke of the last city council meeting and two members being removed by council from the Freeport EDC, and one from the Planning and Zoning Commission. He said on October 3 the Facts Newspaper reported on the allegations the members were being accused of, he said all of this without any specific details being provided, as both members denied the accusations. He said this is disturbing these actions were made without any attempt being made in good faith to resolve these issues among their boards and commissions. Mr. Stumbaugh said "Mayor Bass hit it right on the head, with his comment that these issues should have been handled and worked out amongst themselves, before being brought to council". Mr. Stumbaugh said he loves Freeport, but he refuses to serve a city government that targets city committees because there are opinions on certain issues, differ from others. He said he refuses to stay in his positions where he could be targeted if he expresses an opinion that differs from certain City Council Members. He is resigning from all City Boards he is serving on, effective immediately.

Sam Reyna 2002 North Ave G, spoke to council about the removal of Nicole Mireles from the Planning and Zoning Commission, he said city council can and will do this, but there has to be a reason as to why. Melanie Oldham filed a complaint that the meetings were not being properly conducted. Mr. Reyna said Melanie Oldham wanted to table an item until the next meeting, because she wanted to nominate Andrew Dill as the chairperson. City Council members did not contact Ms. Mireles or any of the Planning Board Members, to verify this complaint. None except for Troy Brimage. Mr. Reyna spoke of Councilman Muraira contacting Nicole Mireles, and Ed Garcia after the October 18, city council meeting. He wanted their support of the Multi-Cultural Event Center. Ed and Nicole told him this is a nonprofit organization,

on prime real estate. Councilman Muraira voted to remove Mr. Garcia and Ms. Mireles from the EDC at the next city council meeting.

**PRESENTATIONS/ANNOUNCEMENTS:** Announcements by Mayor, City Council and/or Staff.

Presentation of Employee of the Month, for the month of October.

City Manager Tim Kelty, presented a certificate for Employee of the Month of October to Yvette Ruiz.

Mayor Bass announced that Councilman Jerry Cain lost his father last week. Mayor Bass said he got to meet Mr. Cain on Councilman Cain's last campaign, he said they shared stories of his Longhorns and Mayor Bass's Aggies. He said he did not know Mr. Cain, he knows his son, and he believes that children can be mirrors of their parents. He knows he had to have been a good man, because Councilman Cain is such a good man. Mayor Bass said we are praying for your family.

**CONSENT AGENDA:**

Consideration and possible action on the approval of City Council meeting minutes from November 15, 2021.

Consideration for road closure for MLK Parade on January 17, 2022.

Consideration and possible action approving the Brazoria County Firefighters Association Annual Fire Protection Agreement.

Consideration and possible action approving the Mayor to sign the annual Storm Water Report.

On a motion by Councilman Brimage, seconded by Councilman Cain, with all voting "Aye" 5-0 Council unanimously approved item numbers 2-5 on the Consent Agenda.

**COUNCIL REGULAR AGENDA:**

Consideration and possible action on Ordinance No. 2021-2651, to authorize the placement of speedbumps in certain segments of streets in Downtown, and an Ordinance No. 2021-2652 reducing speeds limits for certain segments of 2<sup>nd</sup> Street, Broad, Park Ave. and Nat Hickey Lane.

Nicole Mireles asked do we have enough traffic in downtown to justify speedbumps? She said, she feels this will be a waste of money. She asked if a study was done? Mr. Kelty said there was no study done.

Councilman Pena presented to council Ordinance No. 2021-2651, to authorize the placement of speedbumps in certain segments of streets in Downtown, and an Ordinance No. 2021-2652 reducing speeds limits for certain segments of 2<sup>nd</sup> Street, Broad, Park Ave. and Nat Hickey Lane. He said downtown is designated as a park, Memorial Park. He said traffic has been neglected, there is speeding, running stop signs and this has been brought to council several times. He said the PD has a patrol unit parked to help curb some of this. He said pedestrian traffic is increasing downtown. He said Mr. Kelty suggested reducing the speed limit.

Chris Duncan said that legally the speed limit can only be reduced to 25 MPH in city limits, and it is less than four lanes. He said the current speed limit is 30 MPH. He said this does not require a traffic study. Another option would be to make East and West Park Streets, to pedestrian only streets.

Mayor Bass asked if this went to Planning and Zoning, and what was their opinion? Mr. Kelty said the Planning Commission discussed this, and the reduction of speed. He said there was some opposition to speedbumps, but they did vote to recommend reducing the speed. Councilman Pena said Planning and Zoning wanted prices, before they consider the speedbumps. Mr. Kelty said yes, they want more information, and did not vote on it.

Councilman Cain said he does not spend a lot of time in downtown. He asked if speed is an issue in this area, and if in fact it is an issue, changing the speed limit from 30 to 25 is not going to do anything.

Councilman Brimage said when events are held downtown, there are road closures for these events. He said he cannot see spending \$10,000.00 for speedbumps. He said he disagrees.

Pam Dancy opposes the speedbumps, she said she does not see the traffic in downtown.

No action was taken on this item.

Consideration and possible action approving Ordinance No. 2021-2647 for Budget Amendment #1 for FY 2021-2022.

Finance Director Cathy Ezell presented to council Ordinance No. 2021-2647 for Budget Amendment #1 for FY 2021-2022. Ms. Ezell said these are the projects and purchase orders that did not get completed from 2020-2021. She said she needs to roll the funds from 2020-2021, into this year's budget.

Mayor Bass said there is no financial impact to this FY? Ms. Ezell said "no". Mayor Bass asked do we have a projected time on the integration of the Technology? Ms. Ezell said the utility billing will be December and January going live in February/March.

On a motion by Councilman Brimage, seconded by Councilman Cain, with all voting "Aye" 5-0 Council unanimously approved Ordinance No. 2021-2647 for Budget Amendment #1 for FY 2021-2022.

Consideration and possible approving Ordinance No. 2021-2640 approving Short-Term Rentals.

Diane McCleaster, 97 Dolphin Lane asked that council adopt the ordinance that is before them tonight. She said there are friends and neighbors here, to help support this item. She said other cities are acting to help their residents. She spoke of action that Galveston has taken. She said our city needs to act now. She said this ordinance will help keep the family atmosphere in Bridge Harbor.

Helen Harris said she and her husband have lived in Bridge Harbor since 2020. She said they retired last year. She said they built their home in 2007, she said during that time the neighborhood was mainly single-family homes. She said today the number of uncontrolled STR property, has changed the tranquility of the peaceful fishing harbor. She said renters' trespass on their property, and tie their boats to her dock. She said the owners of these properties do not maintain the property, nor their bulkheads. She said she asking that council please understand and adopt this ordinance.

Gary Guerrieri, said he has been a resident in Bridge Harbor for 21 years. He said the change over time, has caused Bridge Harbor to lose the home feel. He said renters will walk their dogs on his property as well as tying their dogs under his property. He said renters are also jumping off of his bulkhead. He said a lot of these units are not up to fire code. He said the city needs to look at the possible liability if

someone gets hurts. He said the Police are called a lot because of the loud noise in the early morning hours.

On a motion by Councilman Brimage to approve Ordinance No. 2021-2640 approving Short-Term Rentals, seconded by Councilman Cain, with discussion that followed.

Councilman Muraira asked if this ordinance will interfere with the noise ordinance that is already in place? Chris Duncan said you can have more than one rule for noise ordinance. He said this will not conflict with our existing noise ordinance.

Councilman Pena said at the last meeting a resident made the comment that "he is a STR owner, and he had tabled the ordinance out of self-interest". Councilman Pena said this is completely untrue. He said he wanted to put his eyes on it. He said the truth of the matter is we need additional information from Mr. Kelty, he said he would like a percentage of primary residence, private residence, and investor residence. Councilman Pena asked this be moved to the next meeting.

Councilman Brimage said we have heard from the local residents, from the tax payers, from people that shop in our grocery stores. We have not heard anything from the owner of these houses, because they are not here.

Mayor Bass called the motion for a vote, with a 4-1 vote, council approved Ordinance No. 2021-2640 approving Short-Term Rentals. Councilman Pena voted "Nay"

Consideration and possible action approving Resolution No. 2021-2712 amending the Master Fee Schedule for Short Term Rentals.

Mayor Bass presented to council Resolution No. 2021-2712 amending the Master Fee Schedule for Short Term Rentals. He said this is so we can collect fees, and take care of this administratively.

On a motion by Councilman Brimage to approve Resolution No. 2021-2712 amending the Master Fee Schedule for Short Term Rentals, seconded by Councilman Cain, with a 4-1 vote council approved Resolution No. 2021-2712 amending the Master Fee Schedule for Short Term Rentals. Councilman Pena voted "Nay."

Consideration and possible action on Resolution No. 2021-2718 accepting proposal for solid waste service and giving notice of award.

City Manager Tim Kelty presented to council Resolution No. 2021-2718 accepting proposal for solid waste service and giving notice of award. He said currently our service is being provided by Waste Connections, currently they only provide residential pickup. The city published a request for proposals for Solid Waste Services earlier this year but only one proposal. At that point, staff went out and looked for more providers, and found Ameriwaste who subsequently submitted an alternate proposal. In Ameriwaste's alternate proposal, they included changing bulk waste, to 5.0 cubic yards once a month, instead of 2.0 cubic yard weekly, but proposed a semi-annual community clean up to be held at a centralized location. There will be household pickup twice a week with the 65-gallon totes plus up to 6 additional items. There is also a savings of 20% to our residents for the solid waste service. There was also the inclusion of rates for all commercial and roll-off solid waste service in the city with the exception of Industrial customers.

Larry Fansher, West 10<sup>th</sup> Street, spoke to council about the once a month bulk trash pickup. He asked how this will help with the beautification of Freeport. He said there is weekly bulk pickup now, and there is trash everywhere in the city. He said it is a better rate, with less service. He asked how can we approve anything, that will not improve the service that we have right now?

Ms. Janell with Ameriwaste, explained the pickup and the service that the company will provide to the city.

Mayor Bass said West 10<sup>th</sup> is in bad shape. Mayor Bass said proper notice needs to be given out of when bulk trash can be set out. Mr. Kelty and a Councilmember went through this contract. He said customer service is important, that was one of the problems we have had with the other company.

Councilman Brimage said Janell is a stand-up lady. Superior customer service. He said the company just bought brand new garbage trucks. He said the cans are dumped by men, not a machine, less trash on the streets. Councilman Brimage said the city will have an inventory of totes, that the city will deliver as the residents are needing them. He said they are all numbered and logged.

Kenny Hayes asked the size of the new totes. Janell said they are 65 gallons, with six additional items that can also be picked up, as long as the tote is out with the trash.

Councilman Cain said the issue with Waste Connections is the bulk trash pickup. Will bulk trash be picked up? He said if not we need to go to twice a month, if that is possible. Mr. Kelty said the difference is the additional trash that will be picked up twice a week. Councilman Cain said, "what I am understanding is the limbs that are wrapped up, and the Halloween costume that has been on his curb for two weeks will be picked up.

On a motion by Councilman Brimage to approve Resolution No. 2021-2718 accepting proposal for solid waste service and giving notice of award, seconded by Councilman Cain, with discussion that followed.

Councilman Pena asked for the current size of the totes, he also asked about the bulk service going from weekly to monthly. Mr. Kelty said the old totes are 95 gallons, the new ones will be 65 gallons. Councilman Pena said this is a 1/3 reduction for 20 percent discount. Mr. Kelty explained you can place six additional items out with your tote. Janell explained how the service will work with the additional bags placed out with the tote.

City Manager Tim Kelty said that the bulk pickup will be done by quadrants, each week a certain area will have the bulk pickup.

Councilman Cain asked if the second can will be an increase or decrease? It is a decrease; the second can will be \$7.10. Currently is \$11 and some change.

Mayor Bass called the motion for a vote, with all present voting "Aye" 5-0 Council unanimously approved Resolution No. 2021-2718 accepting proposal for solid waste service and giving notice of award.

#### Consideration and possible action approving the Grant Agreement for the GLO \$5.93 Million 2016 Flood HUD Mitigation, for I & I.

Finance Director, Cathy Ezell presented to council Grant Agreement for the GLO \$5.93 Million 2016 Flood HUD Mitigation, for I & I. She said this is the first of the two grants which was awarded to the

City of Freeport. This one for the I & I. Ms. Ezell said the city will have to match these funds in the amount of \$59,316.26.

Mayor Bass said he has the documents to sign if this is approved tonight, so we can start the process to get these funds.

On a motion by Councilman Pena, to approve the Grant Agreement for the GLO \$5.93 Million 2016 Flood HUD Mitigation, for I & I, seconded by Councilman Muraira, with all present voting "Aye" 5-0 Council unanimously approved the Grant Agreement for the GLO \$5.93 Million 2016 Flood HUD Mitigation, for I & I.

#### Discussion and guidance on the levee walk trail.

Public Works Director, Lance Petty presented to council for discussion and guidance on the levee walk trail. He said he has bid documents ready to go for crushed granite, and asphalt. He said he got some quotes on the concrete and it is not in the budget. He also checked into the rubberized material, and this is not in the budget. Mr. Petty said he will add to the bid documents for asphalt the ribbon curbs, he said this will help keep the asphalt in place.

Councilman Muraira said he had a survey on Face Book, he said they were split almost evenly between the three. Councilman Muraira said he would like to have crushed granite. He said it is easier on the joints. He said asphalt would be his least to request. He also said he would like to make sure there is maintenance on the crushed granite.

Councilman Brimage said he agrees with the crushed granite. He asked if the concrete will be removed? Mr. Petty said yes.

Mayor Bass asked what is the length of the levee trail? Mr. Petty said it is 1.8 miles. It starts at Riverplace and ends at Velasco.

Councilman Pena asked if there is map of this route? Mr. Petty said yes and he would send it to him. Councilman Pena said that he is confused, he sees 1.1 miles and wants to know where the 1.8 miles comes in. Mr. Petty said the .7 miles is the extension to Velasco. Councilman Pena asked how the material will be decided on. Will it be with council decision or will there be a social media informal polling?

Mayor Bass said this is just discussion and guidance for Mr. Petty.

#### Consideration and possible action to remove Board Members from the Freeport Economic Development Corporation Board.

Councilman Pena asked if we can table this into executive session? Mayor Bass said no, it will stay in Open Session.

Mayor Bass said that he does not believe that these items should come to council, until they have gone through the committees.

Leas Girouard spoke to council, she said that she is a former member of the EDC. She said that she resigned in February of this year. She said she does ask council to act to remove Jeff Pena from the Freeport EDC Board. She said perception is everything.

George Matamoras read some press clippings from the Facts Newspaper. He says this is negative on our city. He said he chooses to live in Freeport, at 1722 North O. Mr. Matamoras said seeing the removal of Board Members is very concerning. He said he believes that Mr. Pena and Mr. Marquez need to be removed from the Freeport EDC. He spoke of the lawsuit with his father and the EDC, he said there was a settlement offered, but Mr. Pena wanted to go forward with the lawsuit, he said that it cost the city more money, because they lost. Mr. Matamoras said it is disconcerting to hear the impartial City Attorney doing the investigation on Mr. Pena, and the Boys and Girls Club. He said he comes to city council asking to remove Mr. Pena and Mr. Marquez, he said the other members are fairly new, and he thinks they need a chance. He said he would like to volunteer, but he does not want to volunteer with petty politics.

Mayor Bass told Mr. Matamoras to remember, to change the process, you have to be part of the process. He said he really wishes he would reconsider.

Nicole Mireles spoke to council of her concern of all the allegations she was accused of. Ms. Mireles said she has requested open records, and she wants the information. She said she wants proof of what Mr. Pena accused her of. Ms. Mireles said she does not know what it is going to take, to make everyone understand, the problem on the EDC is Jeff Pena. She said this is embarrassing, and he will not get away with this. Ms. Mireles said she wants the information and the proof he has of the wrong doings, she was accused of. She said it is horrible what he did, and you all allowed him to do this, shame on y'all.

Mr. Cundieff asked "What has the EDC done for Freeport lately"? He said there is money and things to do. He said all new members may get it done.

Councilman Cain said as the liaison to the EDC, he is going to stand firm on his decision to remove Nicole Mireles and Ed Garcia, he said it is nothing personal nor political. In his opinion they were holding the EDC back. The rest of the members of the EDC has the city's best interest at heart without underlying agendas. He said there were more than one member who has come to him on the removal of these two, and if this continues, and others start to hold back the movement of the EDC, then he will stand up and vote for them to come off as well. He said at this moment he thinks we need to move forward with what we have, add a couple more members and move on.

Councilman Brimage told Councilman Cain that he respects him very much. Councilman Brimage said that he can add some light to this issue, he told the Mayor that he hopes he does not call him down. Councilman Brimage said the research that has been done is from talking to people. He said these are issues the people want addressed. They are issues the people need to be aware of, and are issues that Council needs to be aware of. Mayor Bass asked if this information was provided to Mr. Kelty, Councilman Brimage said no it was not. He spoke of individuals that have served on the EDC Board, and have resigned because of Jeff Pena. He spoke of issues such as Councilman Pena's own real estate company managing and selling EDC Properties. Some members felt this was unethical. Councilman Pena also applied for three \$10,000.00 grants, one in his name Jeff Pena, and two in his LLC Names, this was \$30,000.00 in grants that he applied for, this is unethical. Pop Boxes were purchased and presented to the EDC by the President Jeff Pena, and City Attorney Chris Duncan. Councilman Brimage said originally, they wanted to purchase three boxes, but there is a threshold for the EDC, and the cost of \$30,000.00 would have to go before council. Mayor Bass asked if this is based on fact or his opinion? Councilman Brimage said this is from the EDC Board Members that were present at this meeting. City Attorney advised to purchase one box at a time to keep it under the threshold. He spoke of the investigation; the purpose was to determine if any ethical violations had been done by Mr. Pena, with the purchase of the Boys and Girls Club. He said he wants to know what "Joint investigation with TML,



means". He asked what the relationship is with the City Attorney and Councilman Pena? He said this is important for the people to know. He asked about the 500 emails that were reviewed, he asked whose emails? He stated the report states that he interviewed the Director and Members of the Boys and Girls Club, Councilman Brimage asked if he interviewed Donald Sisk? He also asked if he interviewed the Director of the EDC, Courtland Holman, Marinel Music, City Manager, Tim Kelty that was present in the EDC meetings, Mayor Bass, or himself Troy Brimage? Once the investigation was complete did you share the information with Mr. Pena, before the rest of the City Council? He said that he would rather have no EDC than for them to continue operating the way we are right now.

Mayor Bass commended Councilman Brimage temperament on this item, he told the audience that these are very serious statements made, and he expects, and demands the audience to be attentive and not responsive.

Councilman Pena said he was disappointed this item was on the agenda, and disappointed by the citizens comments. He said that he volunteers, to be apart of the community, and he feels pretty beat up. He said that he will defend himself. He said that he got to know Lesa Girouard, and she came to him and said she felt uncomfortable on the vote to allow Jeff Pena, to list the properties and sell the properties of the EDC. She said she felt this was unethical and she was resigning. He said since her resignation, because of her concerns, he has not listed any properties, for the EDC. Councilman Pena said he did not review the investigation report before any other Council Person. He said he knew the truth. He said there has been a lot of money spent on deals throughout the city, before his time. He said these deals set the City and the EDC back five to six years. He said if he would have been here, he would have policed it. Councilman Pena said Mr. Matamoros made comments about the bad news for the City of Freeport he read in the paper. He said he is going to make every effort he can to clear his name. He said there were bad contracts made before he came on the EDC Board, and contracts that lost money. He said there were backroom deals, and now a lawsuit. He said he was signaled by the City Manager Tim Kelty, to keep quiet during meeting regarding Realty World. He spoke of the Waterstone deal. He spoke about the 8.8 acres of the Marina Property that was suggested to sell at \$400,000.00. He said this would have caused the city to lose \$2.5 Million. He said most people that serve on these boards are nice people. He said he is not a "yes" man, and he will always tell the truth. He said he does not bully anyone. Councilman Pena spoke of the EDC Grants. He was told by then President Ed Garcia, EDC Director Courtland Holman, and the EDC Attorney, Chris Duncan that he could apply for these Grants. He said he is not passionate of Freeport, but he is very deliberate of Freeport. He has a vision of Freeport. He said he is for the river development. Councilman Pena said he wants to be clear, about not getting get rid of the EDC Board. He said let's be clear on what is happening tonight, the personal attacks, and it's a slippery slope. Councilman Pena spoke of the Pop Box that was set on the Levee Southside of the River, he asked where is the box now? He said it was removed because Councilman Brimage demanded that it be removed. Councilman Pena said he was not in favor of the idea of these boxes, then he saw the value and he suggested just one, the sub-committee, which was Ms. Music, Lesa Girouard, and Chris Duncan suggested that they purchase six.

Councilman Brimage asked why the City/EDC Attorney is on a sub-committee?

Councilman Brimage said that perception is the key. He said perception is what we should see tonight. He said unethical is unethical. Councilman Brimage asked to play a video. Mayor Bass, said I am asking you not to play this. But it is your choice.

A motion was made by Councilman Brimage, to approve the removal of Board Members from the Freeport Economic Development Corporation Board. There was no second. No action was taken.

Mayor Bass said that he was always raised with, there is right and there is wrong. He said there is a famous Senator Patrick Moynihan who said "Everybody is entitled to their own opinion, but they are not entitled to their own facts." The facts are what you believe them to be". If we want this city to continue doing the things that are positive in regards to infrastructure, in regards to changing Waste Connections trash pickup, recognizing the streets that need to be done, recognizing the things we are doing for our kids, we have to work together. He said I don't know if we will fix this divide or not. He said he considers Troy Brimage a dear friend, and he has a great heart. And he considers Jeff Pena a good friend, and he thinks that he has great ideas, but he does not know how to bring the two folks together. He said we have to get to one voice. We don't necessarily have to agree all the time. But we have to stand together. He said if we don't stop beating our heads against the wall, we aren't ever going to get outside of these walls.

Discussion and possible action regarding transferring land from Texas Parks and Wildlife Parkland Protection Program.

Kenny Hayes said if we transfer the property, it should be up to the citizens to decide.

Ruben Renobato spoke of the Brazoria County Hispanic Chambers 2019 tax return and the finances of the organization. He said this organization is a 501c 6 organization. He said they have no land, no buildings and no other assets.

Sam Reyna said he has been a resident of Freeport since 1943. He spoke to council about the property at 1300 West 2<sup>nd</sup> Street, the Community House. He said this is protected by development restrictions by the Texas Parks and Wildlife Parkland Protection Program. He said the Freeport Community House created a balance between the three other rental properties in Freeport. He said Mayor Brimage said it would be better to tear it down and build a new one. It was demoed, with the expectation to build a new one, he said he hopes this is still the expectation.

Ed Garcia 1924 North Ave G said he hoped that Council and Mayor had given him the privilege of an investigation before they removed him from the Freeport EDC Board. He said you gave Mr. Pena a good amount of time to get his cleared up. Mr. Garcia spoke of the removal of the restrictions from the park. He said he is not against any nonprofit organization. He said that our Jr. Councilman and Mr. Pena decided that they did not like his stance on this position of removing the restrictions. He said that he is against any organization, that ask the city to give them the most valuable property of the city. He said he is asking council to not remove the restrictions.

Lesla Girouard said her opinion is, this is the most beautiful property in Freeport. She said it is on the river, with boat access. She said to give the land to an entity where we will get no tax revenue she does not agree with.

Larry Fansher said he gives his condolences to Councilman Cain. He said at the October 18 regular city council meeting there was a presentation made of development of a Hispanic Cultural and Event Center located on 2<sup>nd</sup> Street. He said the Facts published on the front page of the paper the talk of building a Multi-Cultural Center off of 2<sup>nd</sup> Street. Mr. Fansher said this raises many questions, why is there such a rush to take action, to remove development restrictions on City Park Property, to facilitate a project which has no specific plans or budget? Why has there been no discussion to rebuild the Freeport Community House as originally discussed? He said this should be decided by City of Freeport tax payers.

Gina Adams CEO of the Brazoria County Hispanic Chamber said that she appreciates the concerns. She said she was hit hard due to COVID in 2019. She said she has applied for a 501-C-3. She said she thinks

this Multi-Cultural Center will benefit this city. She said Freeport needs this. Ms. Adams said this will include a grocery store, she said a community center will be included in this. She said we should let the community vote on this, she said I want what the community wants. She thanked council for allowing her to speak.

City Manager Tim Kelty presented to council the possible action regarding transferring land from Texas Parks and Wildlife Parkland Protection Program. He said the city received grant funding from the Texas Parks and Wildlife Parkland Program. He said this was for park improvement around the river. He said in doing this the Freeport Park Land shall forever remain dedicated as recreational land. He said recently the city council approved an agreement with the ISD to swap the land that was involved in the 50-year lease agreement with the city and ISD. This is where their baseball and softball diamonds are, East of the school property. He said in doing this we agreed to take that piece of property out of this program. Mr. Kelty said what he is asking for tonight, is action to take land out of the Texas Parks and Wildlife Parkland Protection Program.

Councilman Pena said he wants to let the public know this particular agenda item was never intended to be for any specific developer. He said this is the opportunity to allow for many developers.

Mayor Bass said his concern has always been the levee to the river.

Mr. Elliot Cundieff said this is a valuable boat ramp, he said a lot of people use this.

Ms. Dancy said a community center will be nice, she feels the community needs to vote on this.

Mayor Bass said we have to proceed with a part of this, for a contractual duty with the land swap with the BISD. He said some action has to be taken, and we have 270 days to make the contractual transfer of the baseball property.

Councilman Brimage made a motion for partial removal of property allocated with the ISD, seconded by Councilman Cain, with discussion that followed.

Councilman Pena said the council and public need to know there is a timetable with the school board, but if we are going to delay the open land space, these developers are not to going to act, to present to the city, and we may lose them.

Councilman Brimage asked why not use the eight acres that the EDC owns? Councilman Pena said this property is better, he said the eight acres was offered, but developers say this property is better.

Mayor Bass called the motion for a vote, with a 4-1 vote council approved for partial removal of property allocated with the ISD. Councilman Pena voted "Nay"

Discussion and possible action regarding an Ordinance establishing procedures and deadlines for items requested by one or more Council Members to be placed on the City Council Agenda.

Councilman Pena presented to council regarding an Ordinance establishing procedures and deadlines for items requested by one or more Council Members to be placed on the City Council Agenda. He said this is just to give a procedure for council, to be allowed to put items on the agenda. He said right now there is no procedure.

Mayor Bass said that the Home Rule Charter had no guidelines on this issue, and it has been this way for years. He said the Mayor has always listened to council or the citizens of Freeport, and the items requested were put on the agenda. By Mr. Kelty, or City Managers before him. He said Mr. Pena is correct and we can no longer have a process where Thursday before the meeting, a councilman request that an item be placed on the agenda. And administration or Betty to come up with memos for agenda. He said in the ordinance there will be a timeline established, it must be submitted in writing to the City Manager on or before Tuesday by noon prior to the meeting. In addition, the Mayor is requesting that a Councilman with a co-sponsor, may put an item on the agenda.

Mayor Bass made a motion to approve Ordinance No. 2021-2650 Version # 2 with corrections by Chris Duncan regarding special meetings. With discussion that followed.

Councilman Brimage said that he is voting against this, because it's obvious he has no allies on this Council.

Councilman Cain told Councilman Brimage not to sell himself short.

Mayor Bass called a second to the motion, seconded by Councilman Cain, with discussion that follows.

Councilman Pena asked if this will cause the risk of a walking quorum?

City Attorney, Chris Duncan said it will take three or more people to make a quorum, he said do not discuss the merits of the item.

Mayor Bass called the motion for a vote, with a 4-1 vote council approved Ordinance No. 2021-2650 Version # 2 with corrections by Chris Duncan. Councilman Brimage voted "Nay".

Consideration and possible action approving the full compliance review of all current 380 Agreements through the City and EDC.

Councilman Pena presented to council the possible action approving the full compliance review of all current 380 Agreements through the City and EDC. He said he wants to public to know we have true transparency.

City Manager Tim Kelty said we have four active 380 Agreements in the city, one is with Mr. Wong, he said this agreement will be hard to enforce because there is no specific time guideline. Second is with Realty World, this agreement is not in compliance and nothing has been paid out but land had been transferred, and is actually in litigation. Third is Elliot Cundieff. Mr. Kelty said this one is currently developing, but he wants to bring up tonight, that he had met with Mr. Cundieff today, and Mr. Cundieff asked for an extension for 90 days. He is having issues with getting the lighting in because of delivery, and he is having some issues with the sidewalks as well. Mr. Kelty said he will be bringing this before council at the next meeting for their consideration. Fourth Agreement is with the Freeport EDC, this is active and will be complete by the end of this fiscal year.

Councilman Pena asked Mr. Kelty if he contacted the City Attorney to be aware of all the EDC active 380 Agreements as well? Mr. Kelty said that he did not talk to Mr. Duncan.

Mayor Bass asked Mr. Kelty if the four 380's are the ones of which he is aware? Mr. Kelty said 'yes sir'.

Councilman Pena made a motion for the City to review these agreements and make sure they comply, and have a report at the next council meeting.

Mayor Bass asked if there are any other 380 agreements. Councilman Pena said he is not sure yet. Mayor Bass asked if anyone is aware of any other 380 agreements?

Mayor Bass said he believes Mr. Kelty has answered the question of the 380 Agreements of which he is aware, that are active.

No action taken.

Discussion regarding an Ordinance No. 2021-2648 to require all City Council and Public Board Members to disclose: All current Real Estate Assets in Brazoria County held in their personal name, immediate family's name, business name. All Business Entities owned or partnered in Texas. Any and all business agreements with any other Board or Council member. Any and all agreements or contracts with the city.

Councilman Brimage said that he can save a lot of time, he said he will get his attorney to get all of his information put together for Mr. Pena. He said he will submit it to the council, because he has nothing to hide. He said do not run off other board members to just attack him. He told Mr. Duncan if you know of any 380 Agreements, I have open, just say it now, don't wait until next week. Mayor Bass said he thought all of Councilman Brimage's 380 Agreements were complete, Councilman Brimage said they are.

After an exchange between Mayor Bass and Councilman Brimage, Councilman Brimage left the meeting.

Mayor Bass said right now he has a good friend that is very angry with him.

Adjourn

On a motion by Mayor Bass, seconded by Councilman Cain, with all present voting "Aye", Mayor Bass adjourned the meeting at 9:41 P.M.

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Mayor Brooks Bass  
City of Freeport, Texas

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City Secretary, Betty Wells  
City of Freeport, Texas



## City Council Agenda Item # 4

**Title:** Consideration approving Resolution No. 2021-2719, amending the errors in previous Resolution No. 2021-2706 for Grant Application for the Freeport Portable Radio Upgrade Grant.

**Date:** December 2, 2021

**From:** Chief Raymond Garivey

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**Staff Recommendation:** Staff recommends the approval of the amended resolution for the FY22 – Edward Byrne Memorial Justice Assistance Grant Program titled Portable Radio Upgrade Grant# 4265301 and approving the City Manager as the grantee’s authorized official.

**Item Summary:** This resolution amends resolution 2021-2706 which was adopted on September 7 2021, in support of the approval of grant to fully fund the purchase, configuration and replacement of end of life portable radios used by officers of the Freeport Police Department. This amended resolution has been requested by the Public Safety office of the Governor which administers this grant program. This grant has been awarded pending the adoption and submission of this amended resolution.

**Background Information:** This grant proposal is for funding to purchase 33 portable radios to replace currently used Motorola APX6000 radios. These radios are over eight years old and this particular model of radio has been listed as end of life by the manufacturer as of December 31, 2019. Due to their age and heavy use many of these radios are beginning to fail and need constant repairs and service. Further, the extended support period offered by the manufacturer for these radios expires December 31, 2023. After this extended support period ends these radios will no longer be repaired or supported by the manufacturer.

**Special Considerations:**

**Financial Impact:** Total cost of this project is \$124,989.51 and is within the allowable grant funding limit for this Justice Assistance Grant. Project starts October 1<sup>st</sup> 2021 and is budget neutral, funds are reimbursed by the State after project completion.

**Board or 3<sup>rd</sup> Party recommendation:** Public Safety office of the Governor

**Supporting Documentation:** Resolution

**RESOLUTION NO. 2021-2719**

**A RESOLUTION OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; MAKING FINDINGS OF FACT; AUTHORIZING THE CITY MANAGER TO APPLY TO THE OFFICE OF THE GOVERNOR, FOR THE GRANT FOR PORTABLE RADIO UPGRADE, AND AGREEING TO CERTAIN CONDITIONS IN CONNECTION WITH SUCH GRANT; CONTAINING A SEVERANCE CLAUSE; PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION; AND PROVIDING THAT THE ORIGINAL OF THIS RESOLUTION SHALL BE MAINTAINED BY THE CITY SECRETARY IN THE PERMANENT RECORDS OF SAID CITY.**

**WHEREAS**, the City of Freeport, Texas, hereinafter "the City," is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

**WHEREAS**, the Local Government Code and the Home Rule Charter of the City authorize the City Council thereof to adopt the provisions of this Resolution; and,

**WHEREAS**, the City Council of the City of Freeport finds it in the best interest of and to benefit the health, safety, and welfare of the citizens of Freeport, that the city submit an application to the Office of the Governor of the State of Texas to receive a grant for a Portable Radio Upgrade and comply with all the conditions contained therein.

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

First, that the City Council of the City approves submission of an application to the Office of the Governor, for a Grant for the Portable Radio Upgrade.

Second, that the City Council of the City designates The Freeport City Manager as the grantee's authorized official.

Third, that the authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the City.

Fourth, the City agrees that in the event of loss or misuse of the Office of the Governor Funds, the City assures that the funds will be returned to the Office of the Governor in full.

Fifth, in the event any section or provision of this resolution is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this resolution and such remaining sections and provisions shall remain in full force and effect.

Sixth, this resolution shall take effect and be in force from and after its passage and adoption.

Seventh, the original of this resolution, after execution and attestation, shall be maintained by the City Secretary in the permanent records of the City.

READ, PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Betty Wells, City Secretary,  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Christopher Duncan, City Attorney,  
City of Freeport, Texas





## City Council Agenda Item # 5

**Title:** Consideration and possible action on Resolution approving a lease agreement with Amistad Recovery for office space at City Hall.

**Date:** December 6, 2021

**From:** Tim Kelty, City Manager

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**Staff Recommendation:** Staff recommends approval of the Lease agreement with Amistad.

**Item Summary:** Amistad Recovery has been a long-term tenant of office space at City Hall. Currently their lease has expired. The proposed lease formalizes their continued lease of office space at City Hall. Their proposed rent is \$1,089 per month and increase from \$750 per month previously.

**Background Information:** In 2015 the City entered into a one-year lease agreement with Amistad which was never renewed. During the recent planning for City Hall Renovation it was discussed with Amistad and they expressed a desire to relocate to unused office space on the second floor. It was at that point that the lack of an existing lease was identified.

The one-year lease is based on 1,390 square feet at .78 cents a square foot, which is the rate that was charged on the more recent leases made with Freeport L&G and Creative Design, Inc., both on the second floor.

**Special Considerations:** Under the terms of the lease, Amistad plans to make significant investment in the space, replacing carpet, painting, and making other improvements. As a result, the lease proposes to waive the first 4 months of rent. They will be required to pay a security deposit of \$1,089 upon approval of the lease.

**Financial Impact:** The new lease will generate an additional 4,068 annually.

**Board or 3<sup>rd</sup> Party recommendation:** This lease agreement was created by Mr. Duncan and has already been accepted by Amistad.

**Supporting Documentation:** Resolution. Lease agreement

**RESOLUTION NO. 2021-2720**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH AMISTAD RECOVERY SERVICES LLC TO LEASE OFFICE SPACE IN CITY HALL.**

**Whereas**, AMISTAD RECOVERY SERVICES LLC currently leases office space on the first floor of the City of Freeport City Hall; and

**Whereas**, AMISTAD RECOVERY SERVICES LLC desires to enter a new lease with the City of Freeport to move their operations to the third floor of the City of Freeport City Hall and execute a new lease for such office space; and

**Whereas**, it is in the best interest of the citizens and taxpayers of the City of Freeport to lease unused space within the City Hall, producing funds to be used for the benefit of said citizens and taxpayers.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT THAT:**

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The Mayor is hereby authorized to execute an agreement to execute a lease agreement with AMISTAD RECOVERY SERVICES LLC to lease office space on the third floor of the City Hall building on behalf of the City of Freeport, Texas.

**SECTION 3. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**READ, PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF DECEMBER, 2021.**

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Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM:

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Betty Wells, City Clerk  
City of Freeport, Texas

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Christopher Duncan, City Attorney  
City of Freeport, Texas

## OFFICE SPACE LEASE

1. **BASIC TERMS.** This **Section 1** contains the Basic Terms of this lease (this "**Lease**") between Landlord and Tenant, as each is named below. Other sections of the Lease referred to in this **Section 1** explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

- 1.1. Effective Date of Lease: February 1, 2022.
- 1.2. Landlord: **City of Freeport, Texas**, a municipal corporation.
- 1.3. Tenant: **Amistad Recovery Services LLC**
- 1.4. Premises: approximately 1390 rentable square feet on the second floor of the City Hall building located at 200 W. Second Street, Freeport, Texas. A diagram of the specific rented premises is attached as Exhibit A and incorporated for all purposes herein.
- 1.5. Lease Term: Twelve ( 12 ) months ("**Term**"), commencing February 1, 2022 ("**Commencement Date**") and ending, on January 31, 2023 ("**Expiration Date**").
- 1.6. Permitted Uses: Office Space for Counseling Services.
- 1.7. Security Deposit: \$1089.00 (prior receipt acknowledged)
- 1.8. Exhibits to Lease: The following exhibits are attached to and made a part of this Lease: Exhibit A – diagram of specific rented premises. Exhibit B - Broom Clean Condition and Repair Requirements.

## 2. LEASE OF PREMISES; RENT.

2.1. **Lease of Premises for Term.** Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, for the Term and subject to the conditions of this Lease.

2.2. **Rental Payments.** Tenant shall pay rent (the "**Rent**") to Landlord in monthly installments, in advance, on the first day of each and every calendar month during the Term, in the amount of \$1098.00. Based on the investment being made by Amistad to renovate the proposed space, they shall receive credit for the first 4 months rent resulting in the first monthly rent payable by May 1<sup>st</sup> 2022.

2.3. **Property Taxes as Additional Rent** Lessee agrees to pay, before they become delinquent, any ad valorem taxes and assessments lawfully levied or assessed against Lessee's leasehold interest in the premises, and to furnish to Lessor a receipt evidencing such payment within five (5) days after such payment is made. Payment of these taxes shall be considered additional rent, with the same remedies of default as the monthly rent.

2.4. In the event any monthly installment of Rent or Tax payment is not paid when due, a late charge in an amount equal to 5% of the then delinquent installment of Rent (the "**Late Charge**") shall be imposed with respect to the then-delinquent Rent (as defined below) payment. For purposes of this Lease, the Late Charge, Default Interest, as defined in **Section 0** below, Rent shall collectively be referred to as "**Rent.**" All Rent shall be paid by Tenant to Landlord (or such other entity designated as Landlord's management agent, if any, and if Landlord so appoints such a management agent, the "**Agent**") or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

2.5. **Covenants Concerning Rental Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord.

### **3. USE OF PREMISES AND COMMON AREAS; SIGNAGE; SECURITY DEPOSIT.**

**3.1. Use of Premises and Property.** The Premises shall be used by the Tenant for the purpose(s) set forth in **Section 1.5** above and for no other purpose whatsoever. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises or the Property, in any manner that may (a) violate any "Certificate of Occupancy" (or comparable permit or license) for either or both of the Premises and the Property; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Property or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies or the rules and regulations of the Property, as adopted by Landlord from time to time, including, but not limited to, any covenant, condition or restriction or similar document encumbering the Property; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair the character, reputation or appearance of the Property; or (f) unreasonably inconvenience or disrupt the operations or tenancies of other tenants or permitted users of the Property.

**3.2. Signage.** Tenant shall not affix any sign of any size or character to any portion of the Property, without prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed, and then only in compliance with all applicable Laws, and easements. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to either or both of the Property and the Premises caused by, or resulting from, such removal, or the installation or existence of the signs.

**3.3. Security Deposit.** Simultaneously with the execution and delivery of this Lease, Tenant shall deposit with Landlord or Agent the sum set forth in **Section 1.7** above, in cash (the "Security"), representing security for the performance by Tenant of the covenants and obligations hereunder. The Security shall be held by Landlord or Agent in favor of Tenant; provided, however, that no trust relationship shall be deemed created thereby; the Security may be commingled with other assets of Landlord; and Landlord shall not be required to pay any interest on the Security. If Tenant defaults in the performance of any of its covenants hereunder, Landlord or Agent may, without notice to Tenant, apply all or any part of the Security to the cure of such default or the payment of any sums then due from Tenant under this Lease (including, but not limited to, amounts due under **Section 0** of this Lease as a consequence of termination of this Lease or Tenant's right to possession), in addition to any other remedies available to Landlord. In the event the Security is so applied, Tenant shall, upon demand, immediately deposit with Landlord or Agent a sum equal to the amount so used. If Tenant fully and faithfully complies with all the covenants and obligations hereunder, and there are no Defaults or any event that with notice or passage of time, or both, would constitute a Default at the time of the applicable Security release, Landlord shall release to Tenant the Security (or any applicable lesser amount in the event the Security has been applied in accordance with this **Section 4.4**) within thirty (30) days after the later to occur of (i) the date the Term expires or terminates or (ii) Tenant's delivery to Landlord of possession of the Premises in compliance with the terms of this Lease.

### **4. CONDITION AND DELIVERY OF PREMISES.**

**4.1. Condition of Premises.** Tenant agrees that Tenant is familiar with the condition of both the Premises and the Property, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis. Tenant acknowledges that neither Landlord nor Agent, nor any representative of Landlord, has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Neither Landlord nor Agent shall be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease, except as expressly and specifically set forth in this Lease.

**4.2. Transfer by Landlord.** In the event of a sale or conveyance by Landlord of the Property, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant and first arising or accruing after the effective date of Landlord's transfer of its interest in the Premises, and in such event Tenant agrees to look solely to Landlord's successor in interest ("Successor Landlord") with respect thereto and agrees to attorn to such successor.

5. **QUIET ENJOYMENT.** Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall not be disturbed in its possession of the Premises by Landlord, Agent or any other person lawfully claiming through or under Landlord.

6. **ASSIGNMENT AND SUBLETTING.** Tenant shall not (a) assign (whether directly or indirectly), in whole or in part, this Lease, or (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, including, without limitation, by a sale of all or substantially all of the assets or transfer of a controlling interest (i.e. greater than a 25% interest) of stock, membership interests or partnership interests, or by merger or dissolution, which sale of assets or transfer of a controlling interest, merger or dissolution shall be deemed an assignment for purposes of this Lease, or (c) mortgage Tenant's interest in either or both of the Premises and this Lease or pledge its interest in this Lease, or (d) sublet or grant a license to occupy the Premises, in whole or in part, without (in the case of any or all of (a) through (d) above) the prior written consent of Landlord (and Landlord's lender, if applicable), which consent shall not be unreasonably withheld or delayed, and provided that no Event of Default shall then exist. **Any sublease agreement must be in writing, signed by subtenant, and submitted to Landlord for consideration of approval.** In making its determination to provide or withhold its consent, it shall be reasonable for Landlord to take into consideration both the business experience and the financial condition of the surviving entity that shall constitute its tenant after the occurrence of any of (a) through (d) above, and Landlord may impose conditions precedent to the issuance of its consent (e.g. delivery of a guarantee or other collateral, whether in the form of a security deposit or otherwise). Tenant may, however, assign this Lease or sublease a portion of the Premises to a wholly-owned subsidiary, provided that Tenant advises Landlord (and Landlord's lender, if applicable), in writing, in advance. In no event shall any assignment or sublease ever release Tenant or any guarantor from any obligation or liability hereunder; and in the case of any assignment, Landlord shall retain all rights with respect to the Security. Any purported assignment, mortgage, transfer, pledge or sublease made without the prior written consent of Landlord (and Landlord's lender, if applicable) shall be absolutely null and void and, at Landlord's election, shall constitute an Event of Default under this Lease (without any obligation on the part of Landlord to provide any notice thereof or any opportunity to cure). No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord (and Landlord's lender, if applicable) any and all documentation reasonably required by Landlord (and Landlord's lender, if applicable) in order to evidence assignee's assumption of all obligations of Tenant hereunder. Regardless of whether or not an assignee or sublessee executes and delivers any documentation to Landlord pursuant to the preceding sentence, any assignee or sublessee shall be deemed to have automatically attorned to Landlord in the event of any termination of this Lease.

7. **COMPLIANCE WITH LAWS.**

7.1. **Compliance with Laws.** Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "Laws"), pertaining to either or both of the Premises and Tenant's use and occupancy thereof, and including, but not limited to, all Laws concerning or addressing matters of an environmental nature. If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof.

8. **INSURANCE.**

8.1. **Insurance to be Maintained by Tenant.**

Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) commercial general liability insurance, including personal injury and property damage, in the amount of not less than \$100,000.00 per occurrence.

8.2. **Waiver of Subrogation.** Notwithstanding anything to the contrary in this Lease, Landlord and Tenant mutually waive their respective rights of recovery against each other and each other's officers, directors, constituent partners, members, agents and employees, and Tenant further waives such rights against (a)

each lessor under any ground or underlying lease encumbering the Property and (b) each lender under any mortgage or deed of trust or other lien encumbering the Property (or any portion thereof or interest therein), for any loss or damage that may occur to the Premises, including any improvements, regardless of origin, to the extent any such losses are insured against or required to be insured against under this Lease. This provision is intended to waive, fully and for the benefit of each party to this Lease, any and all rights and claims that might give rise to a right of subrogation by an insurance carrier. Each party shall cause its respective insurance policy(ies) to be endorsed to evidence compliance with such waiver. **THE FOREGOING WAIVERS APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF THE OTHER PARTY, BUT DOES NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY.**

9. **ALTERATIONS.** Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided that Tenant first obtains the written consent of Landlord. All of the following shall apply with respect to all Alterations: (a) the Alterations are non-structural and the structural integrity of the Property shall not be affected; (b) the Alterations are to the interior of the Premises; (c) the proper functioning of the mechanical; electrical; heating, ventilating, air-conditioning ("**HVAC**"); sanitary and other service systems of the Property shall not be affected and the usage of such systems by Tenant shall not be increased; (d) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; and (e) the Alterations shall be performed by licensed contractors acceptable to Landlord. Additionally, before proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit to Landlord, for its written approval, working drawings, plans and specifications and all permits for the work to be done and Tenant shall not proceed with such Alterations until it has received Landlord's approval (if required); and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance and workers' compensation insurance. Such insurance policies shall satisfy the obligations imposed herein. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, Laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other restrictions that Landlord may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Property established by Landlord. With respect to any and all Alterations for which Landlord's consent is required, Tenant shall provide Landlord with "as built" plans (upon completion), copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers. If Landlord's consent to any Alterations is required, and Landlord provides that consent, then at the time Landlord so consents, Landlord shall also advise Tenant whether or not Landlord shall require that Tenant remove such Alterations at the expiration or termination of this Lease. If Landlord shall not require that Tenant remove the Alterations, such Alterations shall constitute Landlord's Property.

10. **LANDLORD'S AND TENANT'S PROPERTY.** All fixtures, machinery, equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of, or during the Term, whether or not placed there by or at the expense of Tenant, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "**Landlord's Property**"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requires their removal. For purposes of this Lease, any references to "**Tenant's Property**" shall mean any personal property for which Tenant has itself paid or manufactured, together with any machinery and equipment for which Tenant has paid and that is not attached to, or built into, the Premises. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, fire suppression, vent hood, grease trap, affixed kitchen equipment or other similar building operating equipment and decorations. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's Property and any Alterations that Landlord requires be removed, and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises or the Property resulting from either or both of such installation and removal. Any other items of Tenant's Property that remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items of Tenant's Property may be retained by Landlord as its property or be disposed of by

Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense. Notwithstanding the foregoing, if Tenant is in default under the terms of this Lease, Tenant may remove Tenant's Property from the Premises only upon the express written direction of Landlord.

**11. REPAIRS AND MAINTENANCE.**

**11.1. Tenant Repairs and Maintenance.**

**11.1.1. Tenant Responsibilities.** Except for damage, destruction or casualty to the Premises or Property that Landlord is required to repair and restore under the terms below, throughout the Term, Tenant shall, at its sole cost and expense: (i) both (x) maintain and preserve, in a good and safe condition, repair and appearance (the "**Required Condition**"), and (y) perform any and all repairs and replacements required in order to so maintain and preserve, in the Required Condition, the Premises, the fixtures and appurtenances therein (including, but not limited to, the Premises' plumbing, glass, floors and flooring, interior walls, and all doors serving the Premises; and excluding, however, only those specific components of the Premises for which Landlord is expressly responsible under **Section 11.2**), and such portions of the Building and improvements as are within the exclusive control of Tenant or such improvements that exclusively serve the Premises wherever located; In addition to Tenant's obligations under (i) above, Tenant shall also be responsible for all costs and expenses incurred to perform any and all repairs and replacements (whether structural or non-structural; interior or exterior; and ordinary or extraordinary), in and to the Premises and the Property and the facilities and systems thereof, if and to the extent that the need for such repairs or replacements arises directly or indirectly from any act, omission, misuse, or neglect of any or all of Tenant, any of its subtenants, any Tenant's Parties, or others entering into, or utilizing, all or any portion of the Premises for any reason or purpose whatsoever, including, but not limited to (a) the performance or existence of any Alterations, (b) the installation, use or operation of Tenant's Property in the Premises; and (c) the moving of Tenant's Property in or out of the Property (collectively, "**Tenant-Related Repairs**"). All such repairs or replacements required under this Section shall be subject to the supervision and control of Landlord, and all repairs and replacements shall be made with materials of equal or better quality than the items being repaired or replaced.

**11.2. Landlord Repairs.** Landlord shall repair, replace and restore the (a) foundation, exterior and interior load-bearing walls, roof structure and roof covering, HVAC, electrical and mechanical systems of the Property and (b) the Common Areas; (ii) notwithstanding the above, in the event that any such repair, replacement or restoration is a Tenant-Related Repair, then Tenant shall be required to reimburse Landlord for all costs and expenses that Landlord incurs in order to perform such Tenant-Related Repair, and such reimbursement shall be paid, in full, within ten (10) days after Landlord's delivery of demand therefor.

**12. UTILITIES.** Lessor shall pay all charges incurred for any utility services used by Lessee or the officers, agents, employees, invitees, licensees, permittees, contractors, successors or assigns of Lessee, and Lessee agrees to reimburse Lessor therefor at 3.7% of the total utility costs per month, which is based on the total square footage of the office.

**13. LANDLORD'S RIGHTS.** Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior notice (except in the event of emergency): (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Property or providers of capital to Landlord and its affiliates; and in connection with the foregoing, to install a sign at or on the Property to advertise the Property for lease or sale; (b) to make such repairs, alterations, additions and improvements in or to all or any portion of either or both of the Premises and the Property, or the Property's facilities and equipment as Landlord is required or desires to make. During the period of nine (9) months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to have pass keys, access cards, or both, to the Premises; and (ii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises



for more than thirty (30) consecutive days or without notice to Landlord of Tenant's intention to reoccupy the Premises.

#### **14. NON-LIABILITY AND INDEMNIFICATION; FORCE MAJEURE.**

**14.1 Non-Liability.** Subject to Landlord's indemnity herein, none of the Landlord Indemnified Parties (defined below) shall be liable to Tenant for any Loss to Tenant or to any other person, or to its or their property, irrespective of the cause of such Loss. In the event that Landlord's indemnity herein is applicable, it shall apply only as and to the specific extent expressly provided herein. Further, none of the Landlord Indemnified Parties shall be liable to Tenant (a) for any damage caused by other tenants or persons in, upon or about the Property, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential, punitive or indirect damages, including those purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) for any defect in the Premises or the Property; or (d) for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Property, or from the pipes, appliances or plumbing work of the same.

**14.2 Tenant Indemnification.** Except in the event of, and to the extent of, Landlord's gross negligence, sole negligence or willful misconduct, Tenant hereby indemnifies, defends, and holds Landlord, Agent, Landlord's members and their respective affiliates, owners, partners, members, directors, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of: (a) the conduct or management of either or both the Property and the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant has possession of, or is given access to, the Premises or during any holdover period; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever, including, without limitation, any workplace injuries to Tenant or Tenant's Parties occurring in, at or upon either or both of the Property and the Premises and caused by any or all of Tenant and Tenant's Parties. Tenant also indemnifies, defends, and holds the Landlord Indemnified Parties harmless from and against any and all Losses arising from or in connection with any or all of: (i) any breach by Tenant of any or all of its warranties, representations and covenants under this Lease; (ii) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (iii) the creation or existence of any Hazardous Materials in, at, on or under the Premises or the Property, if and to the extent brought to the Premises or the Property or caused by Tenant or any party within Tenant's control; and (iv) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law. The obligations of Tenant in the two prior sentences are referred to collectively as "**Tenant's Indemnified Matters.**" In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Superior Party (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but except in connection with third party tort claims, not indirect, special, consequential, or punitive), penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this **Section 0** shall survive the expiration or termination of this Lease.

**14.3 Landlord Indemnification and Limitation of Landlord's Liability.** Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all Losses actually suffered or incurred by Tenant as the sole and direct result of any negligent, willful or intentional acts or omissions of any Landlord Indemnified Party. Notwithstanding anything to the contrary set forth in this Lease, however, in all events and under all circumstances, the liability of Landlord to Tenant, whether under this Section or any other provision of this Lease, shall be limited to the interest of Landlord in the Property, and Tenant agrees to look solely to Landlord's interest in the Property for the recovery of any judgment or award against Landlord, it being intended that neither Landlord nor Landlord Indemnified Parties shall be personally liable for any judgment or deficiency. The provisions of this Section shall survive the expiration or termination of this Lease.

**14.4 Force Majeure.** Each of the obligations of Tenant (except the obligation to pay Rent and the obligation to maintain insurance, and provide evidence thereof,) and each of the obligations of Landlord, shall be excused, and neither Landlord nor Tenant shall have any liability whatsoever to the other, to the extent that any failure to perform, or delay in performing such obligation arises out of either or both of (a) any labor dispute, governmental preemption of property in connection with a public emergency or shortages of fuel, supplies, or labor, or any other cause, whether similar or dissimilar, beyond Landlord's or Tenant's, as the case may be, reasonable control; or (b) any failure or defect in the supply, quantity or character of utilities furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Property, beyond Landlord's or Tenant's, as the case may be, reasonable control.

#### **15.0 DAMAGE OR DESTRUCTION.**

**15.1 Notification and Repair; Rent Abatement.** Tenant shall give prompt notice to Landlord and Agent of (a) any fire or other casualty to the Premises or the Property, and (b) any damage to, or defect in, any part or appurtenance of the Property's sanitary, electrical, HVAC, elevator or other systems located in or passing through the Premises or any part thereof. In the event that, as a result of Tenant's failure to promptly notify Landlord pursuant to the preceding sentence, Landlord's insurance coverage is compromised or adversely affected, then Tenant is and shall be responsible for the payment to Landlord of any insurance proceeds that Landlord's insurer fails or refuses to pay to Landlord as a result of the delayed notification. Subject to the provisions below, if either or both of the Property and the Premises is damaged by fire or other insured casualty, Landlord shall repair (or cause Agent to repair) the damage and restore and rebuild the Property and/or the Premises (except Tenant's Property) with reasonable dispatch after the adjustment of the insurance proceeds attributable to such damage. Landlord (or Agent, as the case may be) shall use its diligent and good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord or Agent shall not be required to do such repair or restoration work except during normal business hours of business days. Provided that any damage to either or both of the Property and the Premises is not caused by, or is not the result of acts or omissions by, any or all of Tenant and Tenant's Parties, if (i) the Property is damaged by fire or other casualty thereby causing the Premises to be inaccessible or (ii) the Premises are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.

**15.2 Total Destruction.** If the Property or the Premises shall be totally destroyed by fire or other casualty, or if the Property shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration of the Premises requires more than one hundred eighty (180) days or (ii) such repair or restoration requires the expenditure of more than (a) eighty percent (80%) of the full insurable value of the Premises on file with Landlord's insurer immediately prior to the casualty or (b) fifty percent (50%) of the full insurable value of the Property immediately prior to the casualty, Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within ten (10) days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises or the Property by Landlord. Additionally, if the damage (x) is less than the amount stated in (ii) above, but more than ten percent (10%) of the full insurable value of the Property; and (y) occurs during the last two years of Term, then Landlord, but not Tenant, shall have the option to terminate this Lease pursuant to the notice and within the time period established pursuant to the immediately preceding sentence. In the event of a termination pursuant to either of the preceding two (2) sentences, the termination shall be effective as of the date upon which either Landlord or Tenant, as the case may be, receives timely written notice from the other terminating this Lease pursuant to the preceding two (2) sentences. If neither Landlord nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect. Notwithstanding the foregoing, if (A) any holder of a mortgage or deed of trust encumbering the Property or landlord pursuant to a ground lease encumbering the Property (collectively, "Superior Parties") or other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises or the Property, or (B) the issuer of any commercial property insurance policies on the Property fails to make available to Landlord sufficient proceeds for restoration of the Premises or the Property, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within thirty (30) days after Landlord receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. Landlord shall

have no liability to Tenant for, and Tenant shall not be entitled to terminate this Lease by virtue of, any delays in completion of repairs and restoration. For purposes of this Section 0 only, "full insurable value" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

#### 16.0 SURRENDER AND HOLDOVER.

On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises: (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" (as defined by Exhibit A attached hereto and incorporated herein by reference), and in a condition that would reasonably be expected, with normal and customary use in accordance with (i) prudent operating practices and (ii) the covenants and requirements imposed under this Lease, subject only to ordinary wear and tear (as is attributable to deterioration by reason of time and use, in spite of Tenant's reasonable care), and such damage or destruction as Landlord is required to repair or restore under this Lease; (b) Tenant shall remove all of Tenant's Property therefrom, except as otherwise expressly provided in this Lease; and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Landlord shall be permitted to inspect the Premises in order to verify compliance with this Section 16 at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this Section 16 shall survive the termination or expiration of this Lease. If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (A) Tenant shall be deemed a tenant-at-will; (B) Tenant shall pay 200% of the aggregate of all Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (C) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by either party hereto upon thirty (30) days' prior written notice given by the terminating party to the non-terminating party. The provisions of this Section shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

#### 17. EVENTS OF DEFAULT.

**17.1 Bankruptcy of Tenant.** It shall be a default by Tenant under this Lease ("Default" or "Event of Default") if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law, or an involuntary petition is filed against Tenant under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law that is not dismissed within ninety (90) days after filing, or whenever a receiver of Tenant or of or for the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

**17.2 Default Provisions.** In addition to any Default arising under Section 17.1 above, each of the following shall constitute a Default: (a) if Tenant fails to pay Rent or any other payment when due; (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of thirty (30) days after Landlord's delivery to Tenant of written notice of such default under this Section; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then Landlord shall not exercise its remedies unless such default remains uncured for more than sixty (60) days after the initial delivery of Landlord's original default notice; or, at Landlord's election (c) if Tenant vacates or abandons the Premises during the Term; (d) if Tenant is in default, beyond any notice and cure period, under any other lease or license with Landlord or an Affiliate of Landlord. For the purposes of this section, "Affiliate" shall be defined as, with respect to any Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, and shall include the spouse of any natural person, with the term "control" and any derivatives thereof meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. For the purposes of this section, "Person" shall mean an individual, partnership, association, corporation or other entity.

## 18. RIGHTS AND REMEDIES.

**18.1 Landlord's Cure Rights Upon Default of Tenant.** If a Default occurs, then Landlord may (but shall not be obligated to) cure or remedy the Default for the account of, and at the expense of, Tenant, but without waiving such Default.

**18.2 Landlord's Remedies.** In the event of any Default by Tenant under this Lease, Landlord, at its option, may, in addition to any and all other rights and remedies provided in this Lease or otherwise at law or in equity, do or perform any or all of the following:

Terminate this Lease and/or terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and/or Tenant shall immediately surrender possession to Landlord. In such event, Landlord shall be entitled to recover from Tenant all of: (i) the unpaid Rent that is accrued and unpaid as of the date on which this Lease is terminated (ii) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of events, would be likely to result therefrom, including but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term (as of the date on which this Lease is terminated). The worth, at the time of award, of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the current yield, as of the date on which this Lease is terminated under this Section on United States Treasury Bills having a maturity date closest to the stated Expiration Date of this Lease, plus one percent per annum. Efforts by Landlord to mitigate damages caused by Tenant's Default shall not waive Landlord's right to recover damages under this Section. If this Lease is terminated through any unlawful entry and detainer action, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable in such action, or Landlord may reserve the right to recover all or any part of such Rent and damages in a separate suit; or Pursue any other remedy now or hereafter available under the laws of the state in which the Premises are located. Without limitation of any of Landlord's rights in the event of a Default by Tenant, Landlord may also exercise its rights and remedies with respect to any Security under **Section 3.3** above.

Any and all of Tenant's Property that may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges for such Tenant's Property so long as the same shall be in Landlord's possession or under Landlord's control. Any Tenant's Property not removed from the Premises as of the Expiration Date or any other earlier date on which this Lease is terminated shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant. Neither expiration nor termination of this Lease, nor the termination of Tenant's right to possession, shall relieve Tenant from its liability under the indemnity provisions of this Lease.

**18.3 Additional Rights of Landlord.** All sums advanced by Landlord or Agent on account of Tenant under this section, or pursuant to any other provision of this Lease, and all Rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest ("**Default Interest**") at the rate of five percent (5%) per annum above the "prime" or "reference" or "base" rate (on a per annum basis) of interest publicly announced as such, from time to time, by the JPMorgan Chase Bank, NA, or its successor, from the due date thereof until paid, and such interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

**18.4 Event of Bankruptcy.** In addition to, and in no way limiting the other remedies set forth herein, Landlord and Tenant agree that if Tenant ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then: (a) "adequate assurance of future performance" by Tenant pursuant to Bankruptcy Code Section 365 will include (but not be limited to) payment of an additional/new security deposit in the amount of three

times the then current Base Rent payable hereunder; (b) any person or entity to which this Lease is assigned, pursuant to the provisions of the Bankruptcy Code, shall be deemed, without further act or deed, to have assumed all of the obligations of Tenant arising under this Lease on and after the effective date of such assignment, and any such assignee shall, upon demand by Landlord, execute and deliver to Landlord an instrument confirming such assumption of liability; (c) notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "Rent", shall constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code; and (d) if this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord or Agent (including Base Rent, Additional Rent and other amounts hereunder), shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord or Agent shall be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

**18.5 Landlord's Default.** In the event that Landlord defaults in the observance or performance of any term or condition required to be performed by Landlord hereunder, Tenant, may commence an action in a court of competent jurisdiction to compel performance by Landlord hereunder; provided, however, that Tenant may not exercise such remedy without first providing written notice of the alleged default to Landlord, setting forth with reasonable specificity and detail the nature of such default, and thereafter permitting Landlord a thirty (30) day period to cure such default (which cure period may be extended if Landlord is diligently pursuing performance of the applicable cure, but such cure is not completed within the thirty (30) day period). Upon expiration of Landlord's cure period, Tenant shall deliver written notice to Landlord advising of Tenant's election to file the action contemplated above. The remedy provided in this Section 18.5 is Tenant's sole and exclusive remedy, whether at law or in equity. In connection with the exercise of the foregoing remedy or otherwise, Tenant shall not be entitled to any abatement, deduction or set off against the Rent payable hereunder.

## **19. MISCELLANEOUS.**

**19.1 Merger.** All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.

**19.2 Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if (a) personally delivered, or (b) if sent by Federal Express or other comparable commercial overnight delivery service, or (c) sent by certified mail, return receipt requested and postage prepaid, addressed (in the case of any or all of (a), (b) and (c) above) to the other party at the addresses set forth below each party's respective signature block (or to such other address as Landlord or Tenant may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made (i) on the day so delivered or (ii) in the case of overnight courier delivery on the first business day after having been deposited with the courier service, and (iii) in the case of certified mail, on the third (3<sup>rd</sup>) business day after deposit with the U.S. Postal Service, postage prepaid.

**19.3 Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord or Agent of Base Rent or Additional Rent with knowledge of any breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

**19.4 Parties Bound.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Property. In the event of such conveyance and transfer, Landlord's obligations hereunder shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise).

No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

**19.5 Recordation of Lease.** Tenant shall not record or file this Lease (or any memorandum hereof) in the public records of any county or state.

**19.6 Governing Law; Construction.** This Lease shall be governed by and construed in accordance with the laws of the state of Texas. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provision minus the invalid or unenforceable portion, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

**19.7 Time.** Time is of the essence for this Lease unless waived by Landlord (which it shall have the right, but not the obligation to do). If the time for performance hereunder falls on a Saturday, Sunday or a day that is recognized as a holiday in the state in which the Property is located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in said state.

**19.8 Authority of Tenant.** Tenant and the person(s) executing this Lease on behalf of Tenant hereby represent, warrant, and covenant with and to Landlord as follows: the individual(s) acting as signatory on behalf of Tenant is(are) duly authorized to execute this Lease; Tenant has procured (whether from its members, partners or board of directors, as the case may be), the requisite authority to enter into this Lease; this Lease is and shall be fully and completely binding upon Tenant; and Tenant shall timely and completely perform all of its obligations hereunder.

**19.9 WAIVER OF TRIAL BY JURY.** LANDLORD AND TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE PREMISES.

**19.91 Lien Prohibition.** Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises or the Property. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within thirty (30) days after the filing thereof; or, within such thirty (30) day period, Tenant shall provide Landlord, at Tenant's sole expense, with endorsements (satisfactory, both in form and substance, to Landlord and the holder of any mortgage or deed of trust) to the existing title insurance policies of Landlord and the holder of any mortgage or deed of trust, insuring against the existence of, and any attempted enforcement of, such lien or encumbrance. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, together with Default Interest thereon, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises or the Property. The provisions of this section shall survive the termination or expiration of this Lease. THE INTEREST OF THE LANDLORD IN THE PREMISES SHALL NOT, UNDER ANY CIRCUMSTANCES, BE SUBJECT TO LIENS FOR ALTERATIONS MADE BY THE TENANT OR ANY OTHER ACT OF TENANT.

**19.92 Counterparts.** This Lease may be executed in multiple counterparts, but all such counterparts shall together constitute a single, complete and fully-executed document.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

**City of Freeport, Texas**

By: \_\_\_\_\_  
Brooks Bass, Mayor

Date: \_\_\_\_\_

Landlord's Address for Notices:  
200 W. Second St.  
Freeport, Texas 77541

**TENANT:**

**Amistad Recovery Services LLC,**

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

Tenant's Addresses for Notices:

\_\_\_\_\_

\_\_\_\_\_

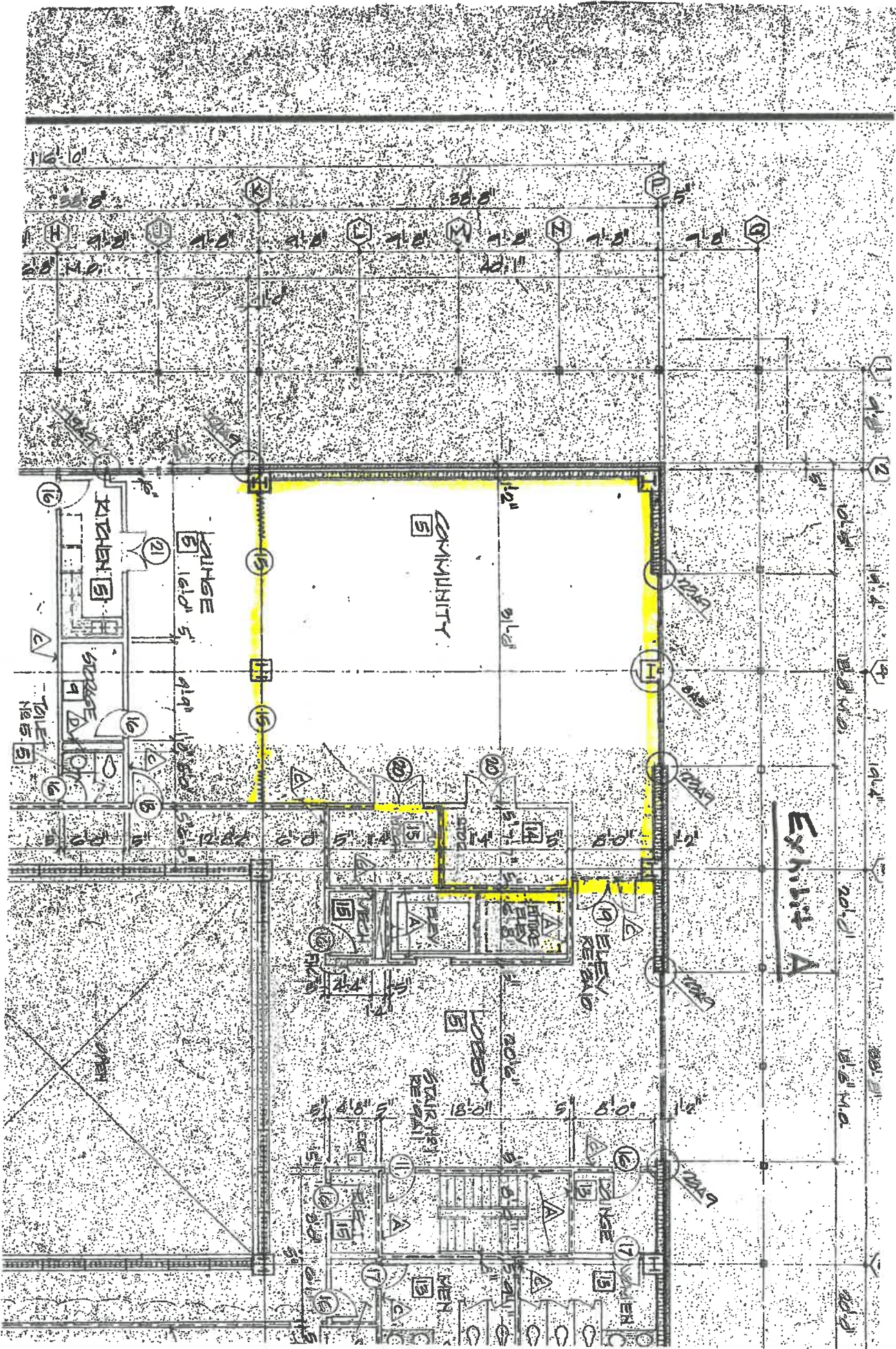
\_\_\_\_\_



**LEASE EXHIBIT A  
DIAGRAM OF LEASED PREMISES**

**LEASE EXHIBIT B**  
**Broom Clean Condition and Repair Requirements**

- All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.
- All holes in the sheet rock walls shall be repaired prior to move-out. All walls shall be clean.
- The carpets and vinyl tiles shall be in a clean condition and shall not have any holes or chips in them. Flooring shall be free of excessive dust, dirt, grease, oil and stains. Cracks in concrete and asphalt shall be acceptable as long as they are ordinary wear and tear, and are not the result of misuse.
- Facilities shall be returned in a clean condition, including, but not limited to, the cleaning of the floors, walls, windows, glass, and other portions of the Premises.
- Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
- All trash shall be removed from the leased premises of the Building.
- All signs in front of Building and on glass entry door shall be removed.



### Exhibit A



## City Council Agenda Item # 6

**Title:** Consideration and possible action on approval and awarding the contract for janitorial services and authorize City Manager to sign the contract.

**Date:** December 6, 2021

**From:** Cathy Ezell, Finance Director

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**Staff Recommendation:**

Staff recommends awarding the contract for janitorial services to Ambassador Services for City Hall, Police Department, Library, and Service Center and authorizing the City Manager to sign the contract.

**Item Summary:**

The City currently does not have a contract for janitorial services. Janitorial services are being provided by two different vendors. The City also provides all cleaning supplies used by the janitorial companies. Under the new contract the City will only provide paper goods and trash bags. The City feels that better services will be provided under a longer-term contract.

**Background Information:**

The City does not have a contract for janitorial services. A Request for Proposal for janitorial services was released on November 10, 2021. The bids were received on November 30, 2021. Four bids were received with Ambassador Services being the lowest bidder.

**Special Considerations:** N/A

**Financial Impact:**

The costs are within the current budget amount because the City will be saving costs janitorial supplies.

**Board or 3<sup>rd</sup> Party recommendation:** N/A

**Supporting Documentation:**

Resolution  
Bid Analysis  
Contract



**RESOLUTION NO. 2021-2721**

**A RESOLUTION OF THE CITY OF FREEPORT, TEXAS AUTHORIZING EXECUTION OF AN AGREEMENT WITH AMBASSADOR SERVICES LLC TO PROVIDE JANITORIAL SERVICES.**

**Whereas**, the City of Freeport owns and maintains numerous facilities that require regular janitorial services; and

**Whereas**, the City of Freeport issued a Request for Proposal for janitorial services on November 10, 2021; and

**Whereas**, a total of four (4) were timely received and said bids were reviewed on November 30, 2021; and

**Whereas**, Ambassador Services LLC submitted the lowest qualified bid; and

**Whereas**, the request for proposal bid process followed by the City complies with all procurement laws and policies.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT THAT:**

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The Mayor or City Manager is hereby authorized to execute the attached agreement with Ambassador Services LLC on behalf of the City of Freeport, Texas.

**SECTION 3. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**READ, PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF DECEMBER, 2021.**

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Betty Wells, City Clerk  
City of Freeport, Texas

\_\_\_\_\_  
Christopher Duncan, City Attorney  
City of Freeport, Texas

**MASTER SERVICES AGREEMENT**

This Master Services Agreement (this "Agreement"), dated as of

\_\_\_\_\_ (the  
"Effective Date"), is by and between Ambassador Services, LLC, a Texas limited  
liability company, with offices located at 11710 North Freeway, Ste 200, Houston, TX  
77060 ("Ambassador") and  
CITY of FREEPORT ("Client")

(Ambassador and together with Client, the "Parties", and each a "Party").

Client Tax ID: \_\_\_\_\_

WHEREAS, Ambassador has the capability and capacity to provide certain services related to commercial facilities management; and

WHEREAS, Client desires to retain Ambassador to provide the said services, and Ambassador is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for their good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SERVICES.** Ambassador shall provide to Client the services the "Services") set forth in one or more work orders to be issued by Ambassador (each, a "Work Order"), each such Work Order including additional terms and conditions and statements of work. Each Work Order shall become effective and continue thereafter in accordance with the dates and periods specified therein. If Client requests a reduction in Services or additional Services not specifically stated in the initial Work Order, Ambassador shall issue an additional Work Order, specifying the nature and costs of the reduced or additionally requested Services, subject to Liquidated Damages under Section 6.5. Additional Work Orders shall be deemed issued and accepted only if signed by the Client Contract Manager, appointed pursuant to Section 4.1, and subject to this Agreement unless specified otherwise therein.

2. **SPECIALS AND DISCOUNTS.** Ambassador may, from time to time and in its sole discretion, provide or offer certain specials and discounts to Client, including, without limitation, the following (each individually and collectively "Specials and Discounts"): additional services, supplemental services, special, discounts, or other incentives, each applied on specific billing cycles, on a prorated basis, or to additionally requested Services, or a combination thereof.

3. **AMBASSADOR'S OBLIGATIONS.** Ambassador shall:

3.1 designate managers, officers, directors, employees, agents, affiliates, representatives, contractors, subcontractors, subsidiaries, or business partners that it determines, in its sole discretion, to be capable of (a) acting as its authorized representative with respect to all matters pertaining to this Agreement (the "Ambassador Contract Manager"); and (b) sufficient to perform the Services detailed in each Work Order, (collectively, with the Ambassador Contract Manager, "Ambassador Representatives");

3.2 comply with and abide by all federal, state, and local laws, ordinances, regulations, and orders applicable to the operation of its business and the performance of its obligations under this Agreement; and

3.3 take all steps necessary, including obtaining any required certifications, credentials, authorizations, licenses, permits or other consents, to conduct its business related to the performance of its obligations under this Agreement and to prevent Ambassador-caused delays in Ambassador's provision of the Services.

4. **CLIENT OBLIGATIONS.** Client shall:

4.1 designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "Client Contract Manager"), with such designation to remain in force unless and until a successor Client Contract Manager is appointed;

4.2 require that the Client Contract Manager respond promptly to any reasonable requests from Ambassador for instructions, information, or approvals required by Ambassador to provide the Services;

4.3 cooperate with Ambassador in its performance of the Services and provide access to Client's premises, employees, contractors, and equipment as required to enable Ambassador to provide the Services;

4.4 during the term of this Agreement and for a period of 180 days, beginning after the termination of this Agreement, not directly or indirectly, induce the termination of, or solicit, hire, recruit, or attempt to solicit, hire, or recruit, any Ambassador Representative.

4.5 comply with and abide by all federal, state, and local laws, ordinances, regulations, and orders applicable to the operation of its business and the performance of its obligations under this Agreement; and

4.6 take all steps necessary, including obtaining any required certifications, credentials, authorizations, licenses, permits or other consents, to conduct its business related to the performance of its obligations under this Agreement and to prevent Client-caused delays in Ambassador's provision of the Services.

**5. FEES AND EXPENSES.**

5.1 In consideration of the provision of the Services by the Ambassador and the rights granted to Client under this Agreement, Client shall pay the fees set forth in the applicable Work Order ("Fees"). Payment to Ambassador of Fees, the reimbursement of expenses pursuant to this Section 5, and of any Liquidated Damages (if applicable) shall constitute payment in full for the performance of the Services. Unless otherwise provided in the applicable Work Order, Fees will be payable within 30 days of receipt by the Client of an invoice from Ambassador. Ambassador shall issue such invoices on either or both of the 1st or 15th of each month.

5.2 Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder; provided, that in no event shall Client pay or be responsible for any taxes imposed on, or with respect to, Ambassador's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

5.3 Client shall notify Ambassador, in writing, of all disputed invoiced Fees no later than 10 days from Client's receipt of the disputed invoice. If Client fails to notify Ambassador of any such dispute within the 10-day period, Ambassador shall deem all such invoiced Fees as undisputed, and Client may not withhold any payments or make any deductions for such undisputed Fees.

5.4 Except for invoiced payments that the Client has successfully disputed, all late payments of Fees shall bear interest at the lesser of (a) the rate of 2% per month, or (b) the highest rate permissible under Texas law, calculated daily and compounded monthly. Client shall also reimburse Ambassador for all reasonable costs incurred in collecting any late payments, including, without limitation, attorney's fees. In addition to all other remedies available under this Agreement or at law (which Ambassador does not waive by the exercise of any rights hereunder), Ambassador shall be entitled to terminate this Agreement in accordance with Section 6.4 or suspend the provision of any Services if the Client fails to pay any undisputed Fees, including any applicable interest, when due hereunder and such failure continues for 10 days following written notice thereof.

5.5 Ambassador shall calculate the Fees set forth in the applicable Work Order based on the service information provided by Client, including Client's requested or otherwise agreed to frequency, work hours, scope of work, service area, and any increase or reduction of any of the above. If Client seeks to modify the provided service information, Client shall provide notice to Ambassador of such increase or decrease no later than 30 days prior to such change. Ambassador shall revise the Fees proportionately to the specific modifications to the service information and shall issue to Client a new Work Order reflecting such requested modifications. If Client fails to timely notify Ambassador of any modification to the service information in accordance with this Section 5.5, Ambassador may: (a) refuse to reimburse Client for any portion of the Fees overcharge based on prior service information provided by Client; and (b) charge Client Fees for any unbilled, and increase in, provided Services resulting from any such modification on the invoice following Ambassador's discovery of such modification that resulted in an increase in Services.

5.6 Notwithstanding Section 5.5, if the state minimum wage is raised in the state in which the Services are performed, Ambassador may raise the Fees in the then applicable Work Order in proportion to the raised wages to account for the increased labor costs, including any associated taxes and additional costs.

5.7 The Fees identified in the applicable Work Order include expenses for the supplies, materials, and equipment necessary for Ambassador to provide the Services. Ambassador shall remain the sole owner of any and all supplies, materials, and equipment used to provide the Services. Client shall be responsible for providing secure storage space for such supplies, materials, and equipment on the premises to be serviced. If Services are terminated pursuant to this Agreement, Ambassador shall reimburse Client the portion of the Fees paid for any unused supplies and materials and will remove any such unused supplies and materials on the final day Services are provided. Notwithstanding the above, Client may elect to purchase any unused supplies or materials from Ambassador by paying the current price of such supplies or materials at the time of termination.

5.8 Client acknowledges that, by default, client will be charged an additional amount equal to two times the regular daily billing rate for Services performed on any of the following holidays: (a) Thanksgiving; (b) Christmas Day; (c) New Year's Day; (d) Memorial Day; (e) Independence Day; or (f) Labor Day. Ambassador shall perform

scheduled Services on the above holidays, unless Client provides to Ambassador a written "no service" request no later than one week prior to the specific holiday.

5.9 At the beginning of any Renewal Term (as defined in Section 6.1, Client shall pay to Ambassador an additional amount up to 2.5% of the total Fees of the Work Order(s) in effect in the immediately prior to such renewal.

## 6. TERM, TERMINATION, AND SURVIVAL.

6.1 This Agreement shall commence as off the Effective Date and shall continue thereafter for a period of one year (the "Initial Term"), unless terminated sooner pursuant to Section 6.2, Section 6.3, or Section 6.4. Upon expiration of the Initial Term, this Agreement shall automatically renew for an additional one-year term, unless either Party provides a written notice of nonrenewal at least 60 days prior to the end of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"), or unless terminated sooner pursuant to Section 6.2, Section 6.3, or Section 6.4. If the Term is renewed for any Renewal Term pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any modifications in the Fees payable hereunder by Client during the applicable Renewal Term as set forth in Section 5. If either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term. Termination of this Agreement shall result in termination of any Work Orders issued under this Agreement.

6.2 Client may terminate any or all Work Orders at any time, if Client provides a notice of termination to Ambassador no later than 60 days prior to the proposed termination date.

6.3 Either Party may terminate this Agreement or any or all Work Orders, notwithstanding anything to the contrary in Section 6.2 or 6.4, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party:

- (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party fails to cure such breach within 30 days after receipt of written notice of such breach; provide that such notice specifies in reasonable detail the alleged breach;
- (b) becomes insolvent or admits its inability to pay its debts generally as they become due;
- (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 10 days or is not dismissed or vacated within 45 days after filing;
- (d) is dissolved or liquidated or takes any corporate action for such purpose;
- (e) makes a general assignment for the benefit of creditors;
- (f) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

6.4 Notwithstanding anything to the contrary in Section 6.3, Ambassador may terminate this Agreement or any or all Work Orders (a) if Ambassador provides a notice of termination to Client no later than 60 days prior to the proposed termination date, or (b) effective upon written notice to Client, if Client fails to pay any Fees, interest, or any other owed amounts when due under this Agreement.

6.5 Client acknowledges that, to receive more favorable pricing, it has elected to enter into this Agreement which requires a commitment to retain Ambassador for the provision of Services as specified in the Work Order(s) for the duration of the term(s) stated therein. Accordingly, if (a) Client terminates a Work Order pursuant to Section 6.2, (b) Client reduces the Services under a Work Order prior to the completion of the term of such Work Order, resulting in a reduction of 20% or more of the total Fees that would have been paid for the remainder of the term thereof, or (c) if Ambassador terminates any Work Order pursuant to Section 6.3 or 6.4, then, in addition to any outstanding Fees owed at such termination, Client shall pay Ambassador an amount equal to the sum of (x) the Fees that would have been paid for the remainder of the term of the terminated Work Order, and (y) the value of any Specials and Discounts specified in such Work Order, whether or not any additional or supplemental services, specials, or discounts were actually performed or applied by Ambassador prior to termination (each of (x) and (y) and collectively, the "Liquidated Damages"). The Parties intend that the Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge and agree that Ambassador's harm caused by a premature termination would be impossible or very difficult to accurately estimate as of the Effective Date and the effective date of the applicable Work Order(s), and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such termination. The Client's payment of the Liquidated Damages is the Client's sole liability and entire obligation and Ambassador's exclusive remedy for Client's termination of any Work Order pursuant to Section 6.2, or Ambassador's termination of any Work Order pursuant to Section 6.3 or 6.4.

6.6 Any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## 7. LIMITED WARRANTY AND LIMITATION OF LIABILITY.

7.1 Ambassador warrants that it shall perform the Services:

- (a) in accordance with the terms and subject to the conditions set forth in the respective Work Order and this Agreement;
- (b) using personnel of commercially reasonable skill, experience, and qualifications.
- (c) in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services, including applicable federal and state OSHA regulations and guidelines, governing the use of cleaning or disposal materials used.

7.2 Ambassador's sole and exclusive liability, and Client's sole and exclusive remedy, for breach of the warranties in Section 7.1 shall be as follows:

- (a) Client shall provide to Ambassador written notice of, and specifying in reasonable detail, the alleged breach, and Ambassador shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Ambassador cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving a subsequent written notice of termination to Ambassador no later than 60 days prior to the proposed termination date.
- (b) If the Agreement is terminated pursuant to Section 7.2(a) above, Ambassador shall, within 30 days after the effective date of termination, refund to Client any Fees paid by the Client for the Services provided by Ambassador between the date of the notice of the alleged breach and the effective date of termination, less a deduction equal to the Fees for Services provided by Ambassador up to and including the date of termination that are unrelated to the breach, or otherwise not specified in the notice of breach.
- (c) The foregoing remedy shall not be available unless Client provides written notice of such breach within 30 days after performance of the specific Services to Client alleged to be in breach.

7.3 AMBASSADOR MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 7.1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

## 8. LIMITATION OF LIABILITY.

8.1 IN NO EVENT SHALL AMBASSADOR BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT AMBASSADOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.2 IN NO EVENT SHALL AMBASSADOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE GREATER OF:

- (a) TWO TIMES THE AGGREGATE FEES PAID OR PAYABLE TO AMBASSADOR PURSUANT TO THIS AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM; OR
- (b) SIX TIMES THE FEES OF THE SINGLE GREATEST MONTHLY INVOICE ISSUED BY AMBASSADOR TO CLIENT IN PURSUANT TO THIS AGREEMENT.

9. INSURANCE. During the term of this Agreement, Ambassador shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect, that includes commercial general liability in a sum no less than \$2,000,000.00 for personal injury, death, or property damage (combined) arising out of any one occurrence or in the aggregate during any one policy year.

10. INTERRUPTION OF MAJOR UTILITIES. Notwithstanding anything to the contrary in this Agreement, if any major utility, including, but not limited to, air conditioning, heating, electricity, or water, are inoperable, inaccessible, or otherwise interrupted at the location to be serviced by Ambassador under the applicable Work Order, Client shall provide to Ambassador immediate notice thereof. Upon receipt of such notice, Ambassador may elect, in its sole discretion, to not provide Services if any such utility is inoperable, inaccessible, otherwise interrupted, or if such inoperability, inaccessibility, or interruption makes providing the Services too costly or impossible (collectively, an "Interruption"). If any such utility Interruption continues for a period longer than seven consecutive days, Ambassador shall reimburse Client the portion of the Fees for Services paid for by Client but not performed by Ambassador as a result of such Interruption, such period beginning on the eighth day and continuing until the removal of the Interruption.

**11. LOCATION INACCESSIBILITY.** Notwithstanding anything to the contrary in this Agreement, if the location to be serviced by Ambassador under the applicable Work Order is inaccessible, Client shall provide to Ambassador immediate notice thereof. Upon receipt of such notice, Ambassador may elect to not provide Services (a) while the location remains inaccessible, or (b) if such inaccessibility makes providing the Services too costly or impossible. If client provides timely notice, and any such inaccessibility continues for a period longer than seven consecutive days, Ambassador shall reimburse Client the portion of the Fees for Services paid for by Client but not performed by Ambassador as a result of the inaccessibility, such period beginning on the eighth day and continuing until the removal of the cause of inaccessibility. If Client fails to provide timely notice, Ambassador shall invoice, and Client shall pay, Fees for the Services that would have been performed by Ambassador absent the inaccessibility, even if such Services were not actually performed by Ambassador.

**12. CHANGE IN MANAGEMENT OR OWNERSHIP.** Client shall provide to Ambassador notice of any change in management or ownership of the location to be serviced by Ambassador under the applicable Work Order no later than 60 days prior to such change. If any such change is to occur in less than 60 days, Client shall provide to Ambassador immediate notice of the change. If a change in management or ownership occurs, and the new manager or owner seeks to engage Ambassador for continued Services for the location, Client shall provide to Ambassador a notice of the manager's or owner's intent to engage Ambassador no later than 30 days prior to the change in management or ownership. If Client fails to provide a notice required under this Section 12, Client shall pay an amount equal to the combined average of two-month's Fees of Services under all active Work Orders. Client hereby acknowledges and agrees that the notice obligations under this Section 12 are applicable whether or not Client has actual knowledge of a change in management or ownership.

**13. AMBASSADOR-PROVIDED HOURLY ASSOCIATES.**

**13.1 Overtime.** Client hereby pre-approves and allows each Ambassador-provided hourly associate to perform Services exceeding 40 hours per week ("Overtime") for the total amount of hours per week indicated in the applicable Work Order. If no total amount of hours is specified therein, Client hereby pre-approves and allows the provided hourly associates to perform Overtime Services in an amount not to exceed five hours per month per each hourly associate. Notwithstanding the above, Ambassador shall request Client's written consent to allow each provided hourly associate to perform Overtime Services in any amount exceeding the pre-approved amount. Ambassador shall charge, and Client shall pay, an amount equal to 1.5 times the hourly rates detailed in the applicable Work Order for any provided Overtime Services by hourly associates.

**13.2 Breaks.** Notwithstanding anything to the contrary in this Agreement, for each six-hour shift, Client shall provide two 15-minute breaks and a 30-minute lunch break to each provided hourly associate working such shift.

**14. AMBASSADOR-PROVIDED PERSONNEL.**

**14.1 Supervision.** Ambassador shall be solely responsible for the direction and supervision of all Ambassador-provided associates (including hourly associates). Notwithstanding the above, Client acknowledges and agrees that (a) Client's direction and supervision may impact the health and welfare of any such associates; and (b) Client is responsible for ensuring such associates are compliant with any health and safety standards required by the Occupational Safety and Health Act ("OSHA") and any other local, state, or federal safety laws while performing the Services under Client's direction and supervision.

**14.2 Restricted Activities.** Unless Client obtains Ambassador's written consent, Client shall not require any Ambassador-provided associates (including hourly associates) to (a) climb or perform any work on a ladder that is over seven feet high; (b) be exposed to any hazardous materials or chemicals; (c) operate any equipment or perform any acts requiring personal protective equipment; or (d) perform any other tasks that may expose such associates to a greater health or safety risk beyond the associates' typical performance of the Services. If Ambassador consents to Client's request for such associates to perform any of the above restricted activities, Ambassador shall provide any necessary training or equipment at Client's expense.

**14.3 No Guaranty; Productivity; Replacement.** Ambassador makes no guarantee of the production rate of any associates provided to Client for performance of the Services. If Client determines that a provided associate is unproductive, Client shall, immediately upon making such determination, send a notice to Ambassador, stating in reasonable detail the reasoning for the determination. Ambassador shall direct the provided associate to address and improve their productivity. If such associate fails to improve productivity to meet Client's reasonable standards, Client may request Ambassador to replace such associate. Ambassador shall cooperate with Client and Client's supervisory staff to provide replacement associates when requested under this Section 14.3.

**14.4 Indemnification.** Client shall indemnify, hold harmless, and defend Ambassador, Ambassador's Representatives, and Ambassador's successors and assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities,

deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kinds, including professional fees and attorney's fees, that are incurred by Indemnified Party in a judgment or administrative proceeding arising out of any third-party claim alleging a violation of OSHA or any federal, state, or local laws, ordinances, regulations, or orders; negligence; or any higher standard of culpability resulting from the work performed by Ambassador-provided associates under Section 14.2, even if Ambassador provided the necessary consent thereunder.

**15. GENERAL PROVISIONS.**

**15.1 Choice of Law.** This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

**15.2 Forum; Venue.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Southern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Harris County, Texas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Southern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Harris County, Texas. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**15.3 Waiver of jury trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**15.4 Attorney's Fee.** If any Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement), including, but not limited to, contract, equity, tort, fraud, and statutory claims, the prevailing Party in the suit, action, or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, reasonable attorney's fees and expenses, and court costs, even if not recoverable by law.

**15.5 Force Majeure.**

(a) No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make any payments hereunder), when and to the extent such failure or delay is caused by or results from events outside of the impacted Party's ("Impacted Party") reasonable control ("Force Majeure Events"), including but not limited to: (i) acts of God; (ii) flood, hurricane, fire, earthquake, snow or ice making it unsafe to drive, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (iv) government order or law; (v) actions, embargoes, or blockades in effect on or after the date of this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) pandemic, (ix) strikes, labor stoppages or slowdowns, or other industrial disturbances; or (x) shortage of adequate power or transportation facilities (subject to Section 10 and Section 11).

(b) The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. If the Force Majeure Event continues for a period of seven consecutive days, Ambassador shall abate the Fees in the applicable Work Order and reimburse Client, either directly or via a discount on the following invoice, for Fees paid during the period that Ambassador is unable to perform the Services, such period beginning on the eighth day and continuing until the removal of the cause for failure or delay. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

**15.6 Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email if sent during normal business



hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set out on the applicable Work Order (or to such other address that may be designated by a Party from time to time in accordance with this Section 15.6).

15.7 Assignment. Client may assign or otherwise transfer this Agreement if:

- (a) such assignment or transfer is for the purpose of an acquisition, merger, or reorganization; and
- (b) Client provides to Ambassador notice of such assignment or transfer no later than seven days following Client's execution of a contract or memorandum of understanding to sell substantially all of the Client's assets, to merge, or to be acquired through any other means.

Any purported assignment or transfer in violation of this Section 15.7 shall be null and void. If Client elects to not assign or transfer this Agreement during an acquisition, merger, or reorganization, Client shall pay to Ambassador, as liquidated damages, a one-time buyout fee equal to two times the average monthly Fees of the Services provided to Client in the preceding three-month period. Ambassador may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Ambassador's assets without Client's consent.

15.8 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

15.9 No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.10 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise,

employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

15.11 Amendments. No amendment to or modification of or rescission, termination (except for a termination under Section 6.3 or Section 6.4), or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement, and signed by an authorized representative of each Party.

15.12 Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.13 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 15.6, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15.14 Entire Agreement. This Agreement, including and together with any related Work Orders, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter, including, without limitation, any prior executed Master Services Agreements between the Parties. If there is any conflict between the terms and provisions of this Agreement and those of any Work Order, then the terms of this Agreement shall control unless expressly set forth otherwise in the applicable Work Order.

Ambassador agrees to the terms of this Agreement. Accordingly, intending to be legally bound, Client has caused this Agreement to be executed by its authorized representative, the Parties have caused this Agreement to be executed as of the Effective Date as evidenced by their execution of the initial Work Order between the Parties.

Signature \_\_\_\_\_  
 Representative name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Email \_\_\_\_\_  
 Date \_\_\_\_\_



Ambassador Services LLC  
 11710 North fwy. Ste 200  
 Houston, TX 77060  
 www.AmbassadorUSA.com

**SERVICE WORK ORDER**

CITY of FREEPORT

11/30/2021

Service Address 200 W 2nd St

Contract manager \_\_\_\_\_

Freeport TX 77541

Phone \_\_\_\_\_

Billing email address \_\_\_\_\_

Email \_\_\_\_\_

Work Order / Job ID \_\_\_\_\_

Term 12/13/2021 11/30/2022

Service description	Rate	Rate type
Janitorial City Hall Janitorial	\$1,716.65	Monthly
Start date: 12/13/2021	Service Frequency: 5 Per Week	Days of service: <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> S
Janitorial Police Department Janitorial	\$1,234.13	Monthly
Start date: 12/13/2021	Service Frequency: 5 Per Week	Days of service: <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> S
Janitorial Freeport Branch Library	\$980.81	Monthly
Start date: 12/13/2021	Service Frequency: 5 Per Week	Days of service: <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> S
Janitorial Freeport Public Library	\$160.14	Monthly
Start date: 12/13/2021	Service Frequency: 5 Per Week	Days of service: <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> S

Specials and Discounts	Value
Description	
Description	

**Additional Terms and Conditions**

**1.Master Services Agreement.** The rights and obligations of Client and Ambassador under this work order form ("Work Order") are subject to and governed by the Ambassador Master Services Agreement, as modified by any written addenda referencing this Work Order and attached hereto, which are incorporated herein by this reference (the "MSA"). The "Agreement" shall mean this Work Order and the attached MSA. Capitalized terms not otherwise defined in this Work Order shall have the same meaning given to them in the MSA. In the event of any conflict between the terms contained in this Work Order and the MSA, then the MSA shall prevail, except if this Work Order specifically references the provision of the MSA and expressly indicates that the terms hereof shall govern. In signing this Work Order, Client (i) agrees to comply with the MSA and to complete the payments in full for the Term as set forth therein, and (ii) expressly acknowledges and agrees that the terms of the MSA attached hereto shall govern and apply to all of Client's previously purchased Services still active as of the date of this Work Order, and that any agreement or arrangement previously entered into by the Parties in connection with the purchase such Services shall hereby be amended to give effect to the terms of such MSA.

**2.Term, (If other than one-time service is selected).** The Term starts on the date set forth above and continues for the number of months set forth above. The Term renews automatically for successive periods for the same number of month set forth above, unless Client provides written notice of Non-Renewal to Ambassador on or before the day that is 60 days before the last day of the Term and pursuant to Section 13.6 of the MSA. Please read this Work Order and the MSA before signing this Agreement. By signing below, Client represents and warrants that it has read the terms of the Agreement, including this Work Order, it understands them, and it agrees to be bound by them. By signing below, Client warrants and represents that the person signing has full authority to accept the Agreement and the terms of this Work Order.

Signature \_\_\_\_\_  
 Representative name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Email \_\_\_\_\_  
 Date \_\_\_\_\_

**City of Freeport  
Analysis of Janitorial Bids**

<b>Bid</b>	<b>Location</b>	<b>Monthly Costs</b>			
		<b>Ambassador</b>	<b>Chano &amp; Son's Inc</b>	<b>Southern Maid</b>	<b>Kleen-Tech</b>
	City Hall	\$ 1,716.65	\$ 2,374.00	\$ 11,392.33	\$ 2,608.67
	Police Department	1,234.13	1,979.00	3,895.67	1,664.00
	Library	980.81	1,583.00	8,012.33	1,486.33
	Service Center	160.14	395.00	6,495.67	953.33
		<u>\$ 4,091.73</u>	<u>\$ 6,331.00</u>	<u>\$ 29,796.00</u>	<u>\$ 6,712.33</u>

<b>Current Costs</b>	<b>Monthly Costs</b>
City Hall	\$ 1,296.25
Police Department	575.00
Library	600.00
Service Center	-
	<u>\$ 2,471.25</u>

Difference in cost      \$ 1,620.48

The City will only provide paper products and trash bags under new contract.  
Currently the City is funding all cleaning supplies.



## City Council Agenda Item # 7

**Title:** Consideration and possible action on adoption of Zoning Ordinance No. 2021-2653, and Subdivision Control Ordinance No. 2021-2654.

**Date:** December 6, 2021

**From:** Kacey Roman, Director of Building Code

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**Staff Recommendation:**

Staff recommends approval of these ordinances

**Item Summary:**

The Zoning and Subdivision Control Ordinances have been overhauled and revised. These ordinances have been under consideration and development for a year, incorporating review, discussion, and recommendations by a City Council-appointed Steering Committee, by the Planning and Zoning Commission, by City Council, as well as by members of the general public and formal Public Hearings. This is the culmination of a huge collaborative effort facilitated by City Consultant, Kendig Keast.

**Background Information:**

Council authorized this effort in late 2020. A comprehensive zoning ordinance update had not occurred since 1964. However, dozens of amendments have been made over the years making the regulations convoluted and cumbersome, and making consistent enforcement challenging. The City's and common standards have changed a lot in the past 60 years, thus prompting the need to update and simplify the Zoning and Subdivision ordinances. This update will also make the Zoning and Subdivision Ordinance easier to use and understand by the public, adding more and up to date definitions, cross-references, illustrations, and consistent review procedures which are now common practices in most city codes today.

**Special Considerations:** NA

**Financial Impact:** NA

**Board or 3<sup>rd</sup> Party recommendation:**

The Planning and Zoning Commission has voted to recommend approval

**Supporting Documentation:** Ordinances for adoption of Zoning and Subdivision Regulations. The entire proposed regulations and Zoning Map have been previously provided.

**ORDINANCE NO. 2021-2653**

**AN ORDINANCE OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW; ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR THE CITY OF FREEPORT, TEXAS, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THERETO IN ACCORDANCE WITH THE PROVISIONS OF TEXAS LOCAL GOVERNMENT CODE CHAPTER 211; AND ESTABLISHING DISTRICTS AND SETTING FORTH RULES FOR EVERY DISTRICT; PROVIDING PENALTIES AND A SAVINGS CLAUSE RATIFYING AND CONFIRMING ALL ACTIONS PREVIOUSLY TAKEN BY THE PLANNING AND ZONING COMMISSION OF SAID CITY OR THE CITY COUNCIL, OR BOTH; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION**

**WHEREAS**, Chapter 211.001 et seq of the Texas Local Government Code and Article 8 of the Home Rule Charter of the City of Freeport, Texas, which empowers the City to enact a zoning ordinance and to provide for its administration, enforcement and amendments; and

**WHEREAS**, the City Council deems it necessary for the purpose of promoting the health, safety, morals and the general welfare of the City to enact such an ordinance; and

**WHEREAS**, the City Council, pursuant to the provisions of the Texas Local Government Code, has appointed a Zoning Commission to recommend the boundaries of the various districts and appropriate regulations to be enforced therein; and

**WHEREAS**, the Zoning Commission has divided the city into districts and has prepared regulations pertaining to such districts in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements; and

**WHEREAS**, the Zoning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality, and

**WHEREAS**, the City Council has given due public notice of hearings relating to zoning districts, regulations, and restrictions, and held such public hearings, jointly with the Zoning Commission to consider the pre-liminary report of the Commission; and

**WHEREAS**, all requirements of the Texas Local Government Code with regard to the preparation of the report of the Zoning Commission and subsequent acts of the City Council have been met.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS:**

**SECTION ONE--Findings of Fact and Conclusions of Law.**

The City Council of the City of Freeport, Brazoria County, Texas, ("the City") makes the following findings of fact and conclusions of law, viz:

First, that the public hearings required by the Zoning Enabling Act of the State of Texas, codified as Section 211.001, et seq., of the Texas Local Government Code, have been conducted in the manner and at the time required.

Second, that not less than fifteen (15) days prior to the date of such hearings, public notice thereof was published once in the Brazosport Facts, a newspaper of general circulation in and the official newspaper of the City, stating the date, time and place of such hearings.

Third, that after considering evidence submitted at such hearings, the City Council of the City is of the opinion and finds that the conditions at the time of the adoption of the previously enacted Comprehensive Zoning Plan have changed and, considering the community as a whole, the

present Comprehensive Zoning Plan of the City should be replaced with a new Comprehensive Zoning Plan as set forth herein.

Fourth, that the health, safety, morals and general welfare of the inhabitants of the City will best be served by the adoption of this ordinance and the new Comprehensive Zoning Plan as set forth herein.

**SECTION TWO—Adoption of New Comprehensive Zoning Ordinance**

The prior comprehensive zoning ordinance of the City of Freeport is hereby rescinded replaced with the following New Comprehensive Zoning Ordinance, to-wit:

Chapters 155 and 157 contained in Exhibit A, attached and incorporated herein for all purposes.

**SECTION THREE—Adoption of Official Zoning Map.**

The official zoning map of the City of Freeport is hereby adopted as set forth in Exhibit B attached and incorporated herein for all purposes.

**SECTION FOUR--Ratification and Confirmation.**

The City Council of the City hereby ratifies and confirms any and all action taken by the Planning and Zoning Commission thereof or the City Council, or both, in connection with the adoption of the new Comprehensive Zoning Ordinance and Official Zoning Map evidenced by this ordinance, including but not limited to the calling of a public hearing required by said Zoning Enabling Act, the giving of public notice of such hearings, the giving of written notice to the owners of property which is the subject of such and to the adjoining property owners, the making of preliminary and final reports with respect to such change and the conducting of the public hearings required by said Act and said Ordinance.



**SECTION FIVE--Severance Clause.**

In the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

**SECTION SIX--Effective Date.**

This ordinance shall take effect and be in force from and after its passage and approval.

**READ, PASSED AND ADOPTED this \_\_\_\_\_, day of December, 2021.**

\_\_\_\_\_  
Brooks Bass, Mayor

**ATTEST:**

\_\_\_\_\_  
Betty Wells, City Secretary

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
Christopher Duncan, City Attorney

**ORDINANCE NO. 2021-2654**

**AN ORDINANCE OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW; ESTABLISHING COMPREHENSIVE SUBDIVISION AND PROPERTY DEVELOPMENT REGULATIONS FOR THE CITY OF FREEPORT, TEXAS, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THERETO IN ACCORDANCE WITH THE PROVISIONS OF TEXAS LOCAL GOVERNMENT CODE CHAPTER 212; AND ESTABLISHING DISTRICTS AND SETTING FORTH RULES FOR EVERY DISTRICT; PROVIDING PENALTIES AND A SAVINGS CLAUSE RATIFYING AND CONFIRMING ALL ACTIONS PREVIOUSLY TAKEN BY THE PLANNING AND ZONING COMMISSION OF SAID CITY OR THE CITY COUNCIL, OR BOTH; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION**

**WHEREAS**, Chapter 212.001 et seq of the Texas Local Government Code and Article 8 of the Home Rule Charter of the City of Freeport, Texas, which empowers the City to enact a ordinance and to provide for its administration, enforcement and amendments; and

**WHEREAS**, the City Council deems it necessary for the purpose of promoting the health, safety, morals and the general welfare of the City to enact such an ordinance; and

**WHEREAS**, the City Council, pursuant to the provisions of the Texas Local Government Code, has appointed a Planning and Zoning Commission to recommend the appropriate regulations to be enforced therein; and

**WHEREAS**, the Planning and Zoning Commission has prepared regulations pertaining to such subdivision and development designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements; and

**WHEREAS**, the City has given due public notice of hearings relating to subdivision and planning regulations, and restrictions, and held such public hearings to consider the pre-liminary report of the Commission; and

**WHEREAS**, all requirements of the Texas Local Government Code with regard to the preparation of the report of the Planing and Zoning Commission and subsequent acts of the City Council have been met.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS:**

**SECTION ONE--Findings of Fact and Conclusions of Law.**

The City Council of the City of Freeport, Brazoria County, Texas, ("the City") makes the following findings of fact and conclusions of law, viz:

First, that the public hearings required by Section 212.001, et seq., of the Texas Local Government Code, have been conducted in the manner and at the time required.

Second, that not less than fifteen (15) days prior to the date of such hearings, public notice thereof was published once in the Brazosport Facts, a newspaper of general circulation in and the official newspaper of the City, stating the date, time and place of such hearings.

Third, that after considering evidence submitted at such hearings, the City Council of the City is of the opinion and finds that the conditions at the time of the adoption of the previously enacted subdivision and development regulations have changed and, considering the community as a whole, the present regulations of the City should be replaced with a new regulations as set forth herein.

Fourth, that the health, safety, morals and general welfare of the inhabitants of the City will best be served by the adoption of this ordinance as set forth herein.

**SECTION TWO—Adoption of Subdivision and Development Control Ordinance**

The prior subdivision and development control ordinance of the City of Freeport is hereby rescinded replaced with the following Subdivision and Development Control Ordinance, to-wit:

Chapter 154 contained in Exhibit A, attached and incorporated herein for all purposes.

**SECTION THREE -- Ratification and Confirmation.**

The City Council of the City hereby ratifies and confirms any and all action taken by the Planning and Zoning Commission thereof or the City Council, or both, in connection with the adoption of the new subdivision and development control Ordinance evidenced by this ordinance, including but not limited to the calling of a public hearing required by said the Texas Local Government Code, the giving of public notice of such hearings, the making of preliminary and final reports with respect to such change and the conducting of the public hearings required by said Act and said Ordinance.

**SECTION FOUR--Severance Clause.**

In the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

**SECTION FIVE--Effective Date.**

This ordinance shall take effect and be in force from and after its passage and approval.

**READ, PASSED AND ADOPTED this \_\_\_\_\_, day of December, 2021.**

\_\_\_\_\_  
Brooks Bass, Mayor

**ATTEST:**

\_\_\_\_\_  
Betty Wells, City Secretary

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
Christopher Duncan, City Attorney



## City Council Agenda Item # 8

**Title:** Discuss and take action regarding request for replat of Lots 63, 64 and 71, Block 14 of the Las Playas Subdivision Part II of Section 5 Recorded in Volume 15, Pages 81-82 Of the Brazoria County Plat Records Situated in the T. & W. Alley League, Abstract 2, Brazoria County, Texas October 2021

**Date:** December 6, 2021

**From:** Kacey Roman, Director of Building and Code

---

**Staff Recommendation:**

Staff recommends approval of this replat.

**Item Summary:**

The owners are taking a large lot and dividing it into smaller lots.

**Background Information:**

The owners intend to give the lots to their son and daughter.

**Special Considerations:**

None.

**Financial Impact:**

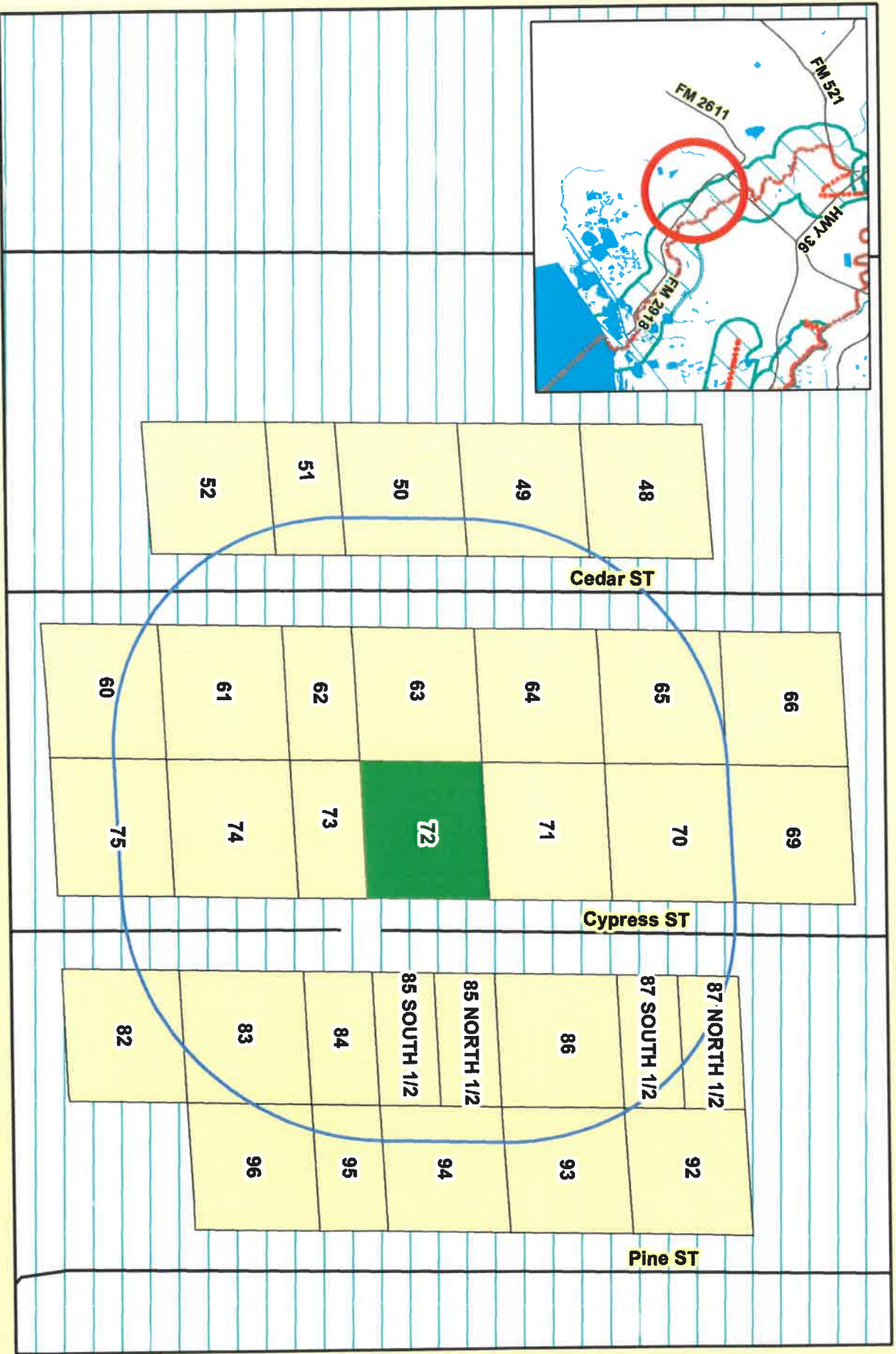
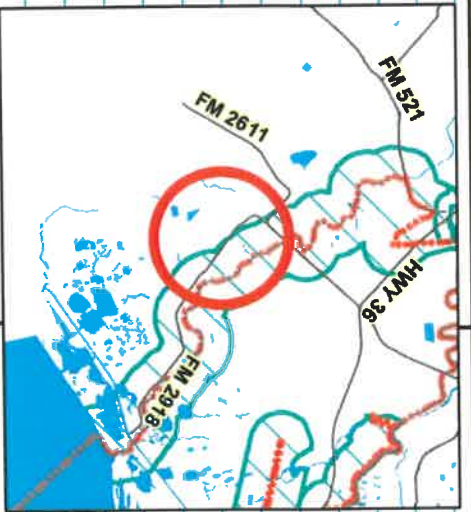
None.

**Board or 3<sup>rd</sup> Party recommendation:**

The Planning and Zoning Commission voted to approve the replat on November 30, 2021.

**Supporting Documentation:**

See attached.



**Legend**

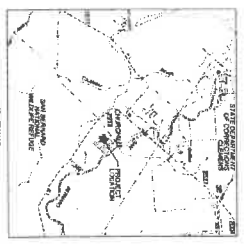
- 224728
- 200r Buffer
- Buffered Parcels
- Roads
- Water
- City of Freeport ETJ

# Replat Property Location Map

## Property ID 224728

**Author:** Laura Tolar  
**Document Path:** S:\GIS Data\224728 harrison replat 200r w template

0 25 50 100 150 200 Feet



- NOTES:
1. THIS INSTRUMENT IS SUBJECT TO THE SURVEY OF THE LANDS OF THE STATE OF TEXAS, AS CONDUCTED BY THE COMMISSIONERS OF THE GENERAL LAND OFFICE.
  2. THIS INSTRUMENT IS SUBJECT TO THE SURVEY OF THE LANDS OF THE STATE OF TEXAS, AS CONDUCTED BY THE COMMISSIONERS OF THE GENERAL LAND OFFICE.
  3. THIS INSTRUMENT IS SUBJECT TO THE SURVEY OF THE LANDS OF THE STATE OF TEXAS, AS CONDUCTED BY THE COMMISSIONERS OF THE GENERAL LAND OFFICE.
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  9. THIS INSTRUMENT IS SUBJECT TO THE SURVEY OF THE LANDS OF THE STATE OF TEXAS, AS CONDUCTED BY THE COMMISSIONERS OF THE GENERAL LAND OFFICE.
  10. THIS INSTRUMENT IS SUBJECT TO THE SURVEY OF THE LANDS OF THE STATE OF TEXAS, AS CONDUCTED BY THE COMMISSIONERS OF THE GENERAL LAND OFFICE.

WITNESSED my hand and seal of office this 15th day of October, 2021.

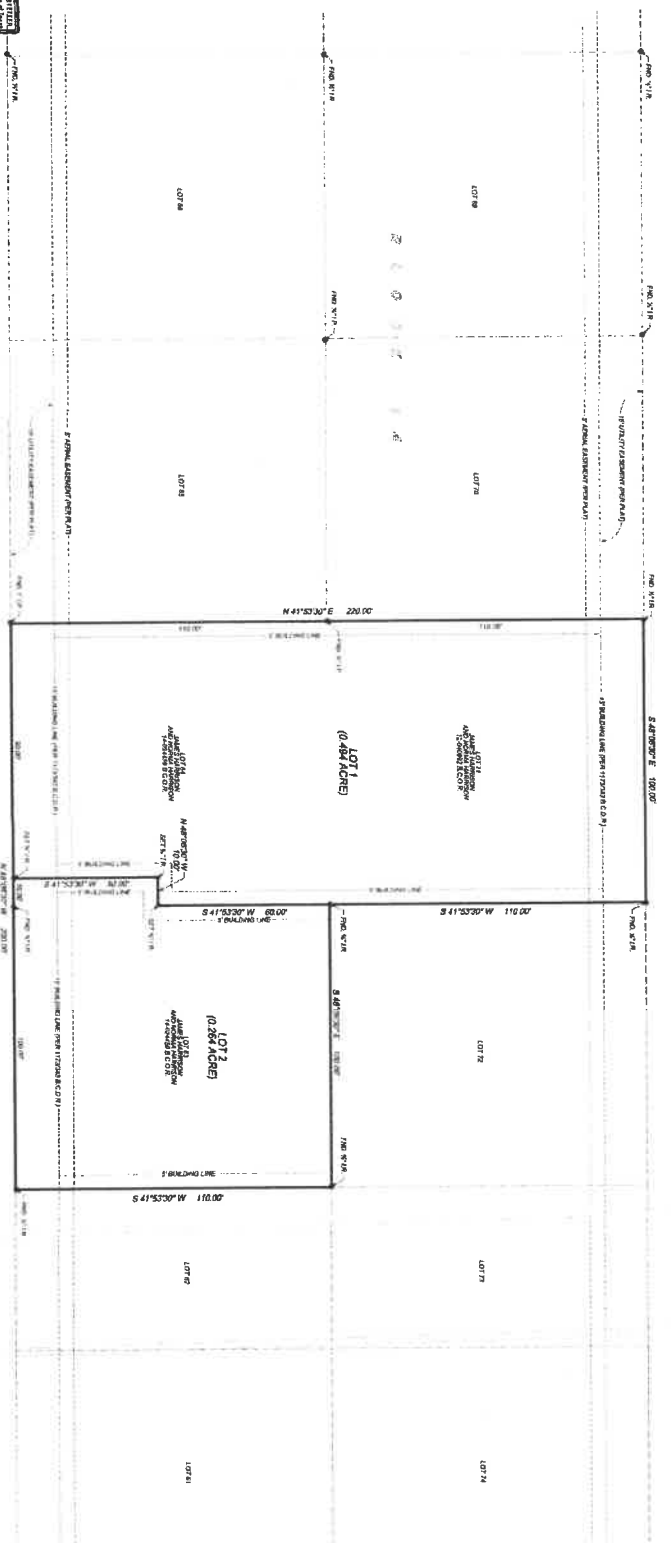
*[Signature]*  
County Clerk

WITNESSED my hand and seal of office this 15th day of October, 2021.

*[Signature]*  
County Clerk

WITNESSED my hand and seal of office this 15th day of October, 2021.

*[Signature]*  
County Clerk



CEDAR STREET (R/R.O.W.)

CYPRESS STREET (R/R.O.W.)

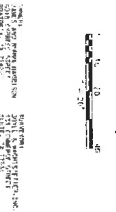


WITNESSED my hand and seal of office this 15th day of October, 2021.

*[Signature]*  
County Clerk

WITNESSED my hand and seal of office this 15th day of October, 2021.

*[Signature]*  
County Clerk



**Doyle & Wachsteiner, Inc.**  
Surveying and Mapping GPS-GIS  
11111 W. US HWY 75, SUITE 200  
DALLAS, TEXAS 75244  
TEL: 972-412-1111  
WWW.DOYLEANDWACHSTEINER.COM

**HARRISON SUBDIVISION**  
A PART OF  
LOTS 63, 64 AND 71, BLOCK 14  
L&S PLATS SUBDIVISION  
PART OF SECTION 5  
VOLUME 10, PAGE 91-92  
RECORDED IN  
BRAZORIA COUNTY PLAT RECORDS  
BOOK 10, PAGE 91-92  
OCTOBER 2021  
BRAZORIA COUNTY, TEXAS





## City Council Agenda Item # 9

**Title:** Discuss and take action on re-plat on TEXAS GULF FREEPORT MHJB A Subdivision of 1.589 Acres/69,205 SQ FT Situated in the S. T. Angier Survey Abstract No. 8 City of Freeport, Brazoria County, Texas 1 Blocks 2 Lots July 2021 Owner Texas Gulf Bank, N. A., A national banking association P. O. Box 738, Lake Jackson, TX 77566 979-297-7211 Surveyor Windrose Land Surveying/Platting 11111 Richmond Ave, Suite 150 Houston, TX 77082 713-458-2281 Firm Registration No. 10108800

**Date:** December 6, 2021

**From:** Kacey Roman, Director of Building and Code

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**Staff Recommendation:**

Staff recommends approval of this replat.

**Item Summary:**

The Texas Gulf Bank is requesting that their lot be re-platted into two smaller lots, with the purpose of selling one of the lots.

**Background Information:**

The Texas Gulf Bank submitted a proposed replat. The survey showed that the proposed replat would violate the existing Setbacks, which require a minimum 10-foot setback from the interior edge of a property line.

The Texas Gulf Bank demolished the covered carport that was in violation of the setbacks, and provided documentation, photos and a survey showing the correction. The existing building will no longer be in violation of the setback requirements. Also, a contractor has already been hired to begin demolition of the old Texas Gulf Bank as soon as the new one is finished construction.

**Special Considerations:**

This property is located in the City of Freeport.

**Financial Impact:**

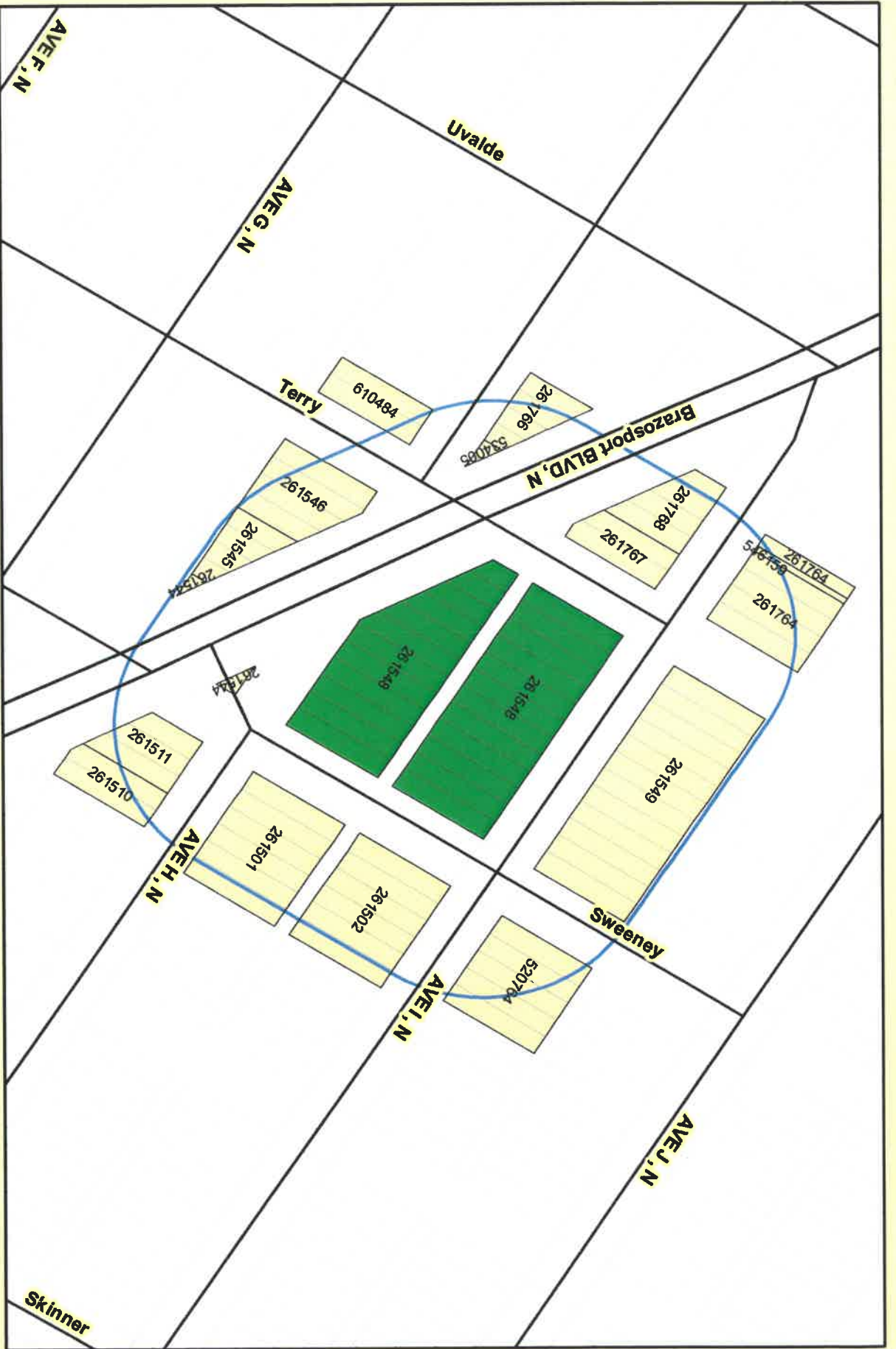
None.

**Board or 3<sup>rd</sup> Party recommendation:**

The Planning and Zoning Commission voted to approve the replat on November 30, 2021.

**Supporting Documentation:**

Copy of plat, survey and associated paperwork attached.



**Legend**

- 261548
- Roads
- 200' Buffer
- Water
- Buffered Parcels

# Replat Property Location Map

## Property ID 261548

0 40 80 160 240 320  
Feet

Author: Laura Tolar  
 Document Path: S:\GIS Data\561548 TGB  
 replat 200ft w template 092121.mxd









## City Council Agenda Item # 10

**Title:** Consideration and possible action to enter into an agreement with the General Land Office (GLO) to provide \$5,991,468 to the City of Freeport from the CDBG-Mitigation Harvey to fund Wastewater Treatment Plant Improvements Contract #22-085-047-D300

**Date:** December 6, 2021

**From:** Cathy Ezell, Finance Director

---

**Staff Recommendation:**

Staff recommends entering into the agreement with the GLO.

**Item Summary:**

This agreement would fund \$5,991,468 of wastewater treatment plant improvements with grant funds from the CDBG-Mitigation Harvey Contract #22-085-047-D300.

**Background Information:**

On October 28, 2020, the City of Freeport submitted an application to the GLO for the Community Development Block Grant – Mitigation (CDBG-MIT) Harvey.

The City received notification that the City was being awarded a grant in the amount of \$5,991,468 for sanitary sewer collection system rehab.

**Special Considerations:**

N/A

**Financial Impact:**

The City must provide a match for the grant in the amount of 60,520, which will be funded from the bond funds from last year's bond sale.

**Supporting Documentation:**

Agreement

**RESOLUTION NO. 2021-2723**

**A RESOLUTION OF THE CITY OF FREEPORT, TEXAS AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE TEXAS GENERAL LAND OFFICE PROVIDING FUNDS FOR A WASTEWATER TREATMENT PLANT.**

**Whereas**, the Texas General Land Office is a Texas state agency administers Community Development Block Grants under the U.S. Department of Housing and Urban Development's Community Black Grant Mitigation Program (CDBG-MIT); and

**Whereas**, the City of Freeport has been approved to receive funds and such funds shall be issued in an amount not to exceed Five Million Nine Hundred Ninety-One Thousand, Four Hundred Sixty-Eight and 00/100 Dollars (\$5,991,468.00) subject acceptance and execution of the contract and terms in contract 22-085-047-D300 attached; and

**Whereas**, the City Council specifically finds that receipt and use of the above funds will benefit the health, safety and welfare of the citizens of the City of Freeport and the community at large.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT THAT:**

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The Mayor, City Manager, Finance Manager and other signatory authorities are hereby authorized to execute Contract 22-085-047-D300 with the GLO regarding the CDBG-MIT award on behalf of the City of Freeport, Texas.

**SECTION 3. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**READ, PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF DECEMBER, 2021.**

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Betty Wells, City Clerk  
City of Freeport, Texas

\_\_\_\_\_  
Christopher Duncan, City Attorney  
City of Freeport, Texas



**GLO CONTRACT NO. 22-085-047-D300**  
**COMMUNITY DEVELOPMENT BLOCK GRANT**  
**MITIGATION PROGRAM INFRASTRUCTURE PROJECTS**  
**NON-RESEARCH & DEVELOPMENT**  
**MITIGATION FUNDING**

The GENERAL LAND OFFICE (the “GLO”), a Texas state agency, and CITY OF FREEPORT, Texas Identification Number (TIN) 17460008893 (“Subrecipient”), each a “Party” and collectively the “Parties,” enter into this Subrecipient agreement (the “Contract”) under the U.S. Department of Housing and Urban Development’s Community Development Block Grant Mitigation (“CDBG-MIT”) program to provide financial assistance with funds appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, mitigation, and affirmatively furthering fair housing, in accordance with Executive Order 12892, in the most impacted and distressed areas resulting from major declared disasters that occurred in 2015, 2016, and 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.).

Through CDBG-MIT Federal Award Number B-18-DP-48-0002, awarded January 12, 2021, as may be amended from time to time, the GLO administers grant funds as Community Development Block Grants (Catalog of Federal Domestic Assistance Number 14.228, “Community Development Block Grants/State’s program and Non-Entitlement Grants in Hawaii”), as approved by the Texas Land Commissioner and limited to use for facilitating recovery efforts in Presidentially-declared major disaster areas.

**ARTICLE I - GENERAL PROVISIONS**

**1.01 SCOPE OF PROJECT AND SUBAWARD**

**(a) Scope of Project**

The purpose of this Contract is to set forth the terms and conditions of Subrecipient’s participation in the CDBG-MIT program. In strict conformance with the terms and conditions of this Contract, Subrecipient shall perform, or cause to be performed, the Infrastructure Activities defined in **Attachment A** (the “Project”). Subrecipient shall conduct the Project in strict accordance with this Contract, including all Contract Documents listed in **Section 1.02**, below, and any Amendments, Revisions, or Technical Guidance Letters issued by the GLO.

(b) **Subaward**

Subrecipient submitted a Grant Application under the Program. The GLO enters into this Contract based on Subrecipient's approved Grant Application.

Subject to the terms and conditions of this Contract and Subrecipient's approved Grant Application, the GLO shall issue a subaward to Subrecipient in an amount not to exceed **\$5,991,468.00**, payable as reimbursement of Subrecipient's allowable expenses, to be used in strict conformance with the terms of this Contract and the Performance Statement, Budget, and Benchmarks in **Attachment A**.

The GLO is not liable to Subrecipient for any costs Subrecipient incurs before the effective date of this Contract or after the expiration or termination of this Contract. The GLO, in its sole discretion, may reimburse Subrecipient for allowable costs incurred before the effective date of this Contract, in accordance with federal law.

**1.02 CONTRACT DOCUMENTS**

This Contract and the following Attachments, attached hereto and incorporated herein in their entirety for all purposes, shall govern this Contract:

- ATTACHMENT A:** Performance Statement, Budget, and Benchmarks
- ATTACHMENT B:** Federal Assurances and Certifications
- ATTACHMENT C:** General Affirmations
- ATTACHMENT D:** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E:** Special Conditions
- ATTACHMENT F:** Monthly Activity Status Report
- ATTACHMENT G:** GLO Information Security Appendix (CDBG)
- ATTACHMENT H:** Public Law 113-2 Contract Reporting Template

**1.03 GUIDANCE DOCUMENTS**

Subrecipient is deemed to have read and understood, and shall abide by, all Guidance Documents applicable to the CDBG-MIT program, including, without limitation, the following:

- (a) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- (b) the relevant Federal Register publications;
- (c) the Action Plan;
- (d) the Method of Distribution (as applicable);
- (e) Other guidance posted at: <https://recovery.texas.gov/action-plans/mitigation-funding/index.html>; and



(f) Other guidance posted at: <https://www.hudexchange.info/>.

All Guidance Documents identified herein are incorporated herein in their entirety for all purposes.

#### 1.04 DEFINITIONS

“**Acquisition**” means the purchase by Subrecipient of residential real property in a floodplain or Disaster Risk Reduction Area for any public purpose, as further defined in 42 U.S.C. § 5305(a)(1). Subrecipient may acquire property through the property owner’s voluntary relinquishment of the property upon Subrecipient’s purchase of it or through Subrecipient’s eminent domain authority.

“**Act**” means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301, et seq.).

“**Action Plan**” means the State of Texas CDBG Mitigation (CDBG-MIT) Action Plan, as amended, found at <https://recovery.texas.gov/action-plans/mitigation-funding/index.html>.

“**Activity**” means a defined class of works or services eligible to be accomplished using CDBG-MIT funds. Activities are specified in Subrecipient’s Performance Statement and Budget in **Attachment A**.

“**Administrative and Audit Regulations**” means all applicable statutes, regulations, and other laws governing administration or audit of this Contract, including Title 2, Part 200, of the Code of Federal Regulations and Chapters 321 and 2155 of the Texas Government Code.

“**Advance Payment**” means any payment issued by the GLO to Subrecipient before Subrecipient disburses awarded funds for Program purposes, as further defined at 2 C.F.R. § 200.1 and 2 C.F.R. § 200.305.

“**Amendment**” means a written agreement, signed by the Parties hereto, that documents alterations to the Contract other than those permitted by Technical Guidance Letters or Revisions, as herein defined.

“**Application**” or “**Grant Application**” means the information Subrecipient provided to the GLO that is the basis for the award of funding under this Contract.

“**As-Built Plans**” means the revised set of drawings submitted by a contractor upon completion of a project or a particular job that reflects all changes made in the specifications and working drawings during the construction process and show the exact dimensions, geometry, and location of all elements of the work completed under the project.

“**Attachment**” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference.

“**Audit Certification Form**” means the form, as specified in the GLO Guidance Documents, that Subrecipient will complete and submit to the GLO annually, in accordance with **Section 4.01** of this Contract, to identify Subrecipient’s fiscal year expenditures.

“**AUGF**” means HUD Form 7015.16, *Authority to Use Grant Funds*.

“Benchmark” means the milestones identified in **Attachment A** that define actions and Deliverables required to be completed by Subrecipient for release of funding by the GLO throughout the life of the Contract.

“Budget” means the budget for the Activities funded by the Contract, a copy of which is included in **Attachment A**.

“Buyout” means an Acquisition of real property in a floodplain or Disaster Risk Reduction Area that Subrecipient makes with the intent to reduce risk of real and personal property damage from future flooding events. Real property purchased under a local Buyout program is subject to post-acquisition land-use restrictions, which require that any structures on the property be demolished or relocated and the land be reverted to a natural floodplain, converted into a retention area, or retained as green space for recreational purposes.

“CDBG-MIT” means the Community Development Block Grant Mitigation Program administered by the U.S. Department of Housing and Urban Development, in cooperation with the GLO.

“Certificate of Construction Completion” or “COCC” means a document to be executed by Subrecipient, Subrecipient’s construction contractor, and Subrecipient’s engineer for each construction project that, when fully executed, provides final performance measures for the project and indicates acceptance of the completed project.

“C.F.R.” means the United States Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“Contract” means this entire document; any Attachments, both physical and incorporated by reference; and any Amendments, Revisions, or Technical Guidance Letters the GLO may issue, to be incorporated by reference herein for all purposes as they are issued.

“Contract Documents” means the documents listed in **Section 1.02**.

“Contract Period” means the period of time between the effective date of the Contract and its expiration or termination date.

“Deliverable” means a work product required to be submitted to the GLO as set forth in the Performance Statement and Benchmarks, which are included in **Attachment A**.

“Disaster Risk Reduction Area” means a clearly delineated area established by Subrecipient in which real property suffered damage from a disaster for which CDBG-MIT funding has been awarded to Subrecipient and in which the safety and well-being of area residents are at risk from future flooding events.

“Environmental Review Record” or “ERR” means the cumulative documentation required for each Activity or project to certify whether or not the Activity or project was found to have significant impacts on the environment and certify that, in order to reach said conclusion, the required environmental review process was completed in accordance with HUD’s environmental regulations.

“Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by Subrecipient for financial statement purposes or \$5,000, as further defined at 2 C.F.R. § 200.313.

“Event of Default” means the occurrence of any of the events set forth in **Section 3.03**, herein.

“Federal Assurances” means Standard Form 424B (for non-construction projects) or Standard Form 424D (for construction projects), as applicable, in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means the document titled “Certification Regarding Lobbying – Compliant with Appendix A to 24 C.F.R. Part 87” and Standard Form LLL, “Disclosure of Lobbying Activities,” also in **Attachment B**, attached hereto and incorporated herein for all purposes.

“Federal Register” means the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices, including U.S. Department of Housing and Urban Development’s Federal Register Notice 84 Fed. Reg. 45838 (August 30, 2019) and any other publication affecting CDBG-MIT funding allocations.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“FWCR” means Final Wage Compliance Report, a report Subrecipient will prepare at the completion of each federally funded project to certify that all workers on the project have been paid contract-specified prevailing wages and that any restitution owed to workers has been paid.

“GAAP” means “generally accepted accounting principles.”

“GASB” means accounting principles as defined by the Governmental Accounting Standards Board.

“General Affirmations” means the affirmations in **Attachment C**, which Subrecipient certifies by signing this Contract.

“GLO” means the Texas General Land Office and its officers, employees, and designees, acting in their official capacities.

“GLO Implementation Manual” means the manual created by the GLO for subrecipients of CDBG-MIT grant allocations to provide guidance and training on the policies and procedures required so that subrecipients can effectively implement CDBG-MIT programs and timely spend grant funds.

“Grant Completion Report” or “GCR” means a report containing an as-built accounting of all Activities completed under the Project and all information required for final acceptance of Deliverables and Contract closeout.

“Grant Manager” means the authorized representative of the GLO responsible for the day-to-day management of the Project and the direction of staff and independent contractors in the performance of work relating thereto.

“[Guidance Documents](#)” means the documents referenced in **Section 1.03**.

“[HUD](#)” means the United States Department of Housing and Urban Development.

“[Implementation Schedule](#)” means the schedule that establishes the Project milestones Subrecipient will utilize to ensure timely expenditures and Project completion.

“[Infrastructure](#)” means a project involving the creation of, repairs to, or replacement of public-works facilities and systems, including roads, bridges, dams, water and sewer systems, railways, subways, airports, and harbors. The term “Infrastructure” may also include a Planning Study project that relates to or affects Infrastructure facilities or systems.

“[Intellectual Property](#)” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, other intangible proprietary information, and all federal, state, or international registrations or applications for any of the foregoing.

“[Method of Distribution](#)” or “[MOD](#)” means a document developed for a specific region that outlines the distribution of CDBG-MIT funding to counties, cities, and local government entities in the region.

“[MID](#)” means “most impacted and distressed,” referencing a geographical area identified by the State of Texas or HUD as an area that sustained significant damage from a major disaster.

“[Monthly Activity Status Report](#)” means a monthly Project Benchmark status report, as required under **Section 4.02**, for which a template is included as **Attachment F** of this Contract.

“[NTP](#)” means “notice to proceed,” a written authorization from the GLO to Subrecipient that allows Subrecipient to commence the work described in the NTP.

“[Performance Statement](#)” means the statement of work for the Project in **Attachment A**, which includes specific Benchmarks and Activities, provides specific Project details and location(s), and lists Project beneficiaries.

“[Planning](#)” means an Activity performed to assist in determining community disaster recovery needs such as urban environmental design, flood control, drainage improvements, surge protection, or other recovery responses. Planning services cannot include engineering design.

“[Program](#)” means the CDBG-MIT program, administered by HUD and the GLO.

“[Project](#)” means the work to be performed under this Contract, as described in **Section 1.01(a)** and **Attachment A**.

“[Prompt Pay Act](#)” means Chapter 2251 of the Texas Government Code.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Revision](#)” means the GLO’s written approval of changes to Deliverable due dates, movement of funds among budget categories, and other Contract adjustments the GLO may approve without a formal Amendment.



“Start-Up Documentation” means the documents identified in Section 2.8.1 of the GLO Implementation Manual that must be completed and/or submitted to the GLO as specified in Section 4.01, below, before the GLO may reimburse Subrecipient for any invoiced expenses.

“Subrecipient” means City of Freeport, a recipient of federal CDBG-MIT funds through the GLO as the pass-through funding agency. Subrecipient may also be referred to as “Provider” herein.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of this Contract or the CDBG-MIT Program that is issued by the GLO and provided to Subrecipient, applicable to specific subject matters pertaining to this Contract, and to which Subrecipient shall be subject as of a specific date.

“Texas Integrated Grant Reporting System” or “TIGR” means the GLO system of record for documenting and reporting the use of grant funding.

“U.S.C.” means the United States Code.

#### 1.05 INTERPRETIVE PROVISIONS

- (a) The meaning of a defined term applies to its singular and plural forms.
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- (c) The term “including” means “including, without limitation.”
- (d) Unless otherwise expressly provided, a reference to a contract includes subsequent amendments and other modifications thereto that were executed according to the contract’s terms and a reference to a statute, regulation, ordinance, or other law includes subsequent amendments, renumbering, recodification, and other modifications thereto made by the enacting authority.
- (e) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.
- (f) The limitations, regulations, and policies contained herein are cumulative and each must be performed in accordance with its terms without regard to other limitations, regulations, and policies affecting the same matter.
- (g) Unless otherwise expressly provided, reference to any GLO action by way of consent, approval, or waiver is deemed modified by the phrase “in its sole discretion.” Notwithstanding the preceding, the GLO shall not unreasonably withhold or delay any consent, approval, or waiver required or requested of it.
- (h) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day.
- (i) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received.
- (j) Time is of the essence in this Contract.

- (k) In the event of conflicts or inconsistencies between this Contract, its Attachments, federal and state requirements, and any documents incorporated herein by reference, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: all applicable laws, rules, and regulations, including, but not limited to, those included in **Attachment D**; the Contract; **Attachment A**; **Attachment E**; **Attachment B**; **Attachment C**; **Attachment F**; **Attachment G**; **Attachment H**; applicable Guidance Documents; and the GLO Implementation Manual. Conflicts or inconsistencies between GLO Implementation Manual and this Contract; any laws, rules, or regulations; or any of the Guidance Documents should be reported to the GLO for clarification of the GLO Implementation Manual.

## ARTICLE II – REIMBURSEMENT, ADVANCE PAYMENT, BUDGET VARIANCE, AND INCOME

### 2.01 REIMBURSEMENT REQUESTS

Each invoice submitted by Subrecipient shall be supported by actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred. Requests for payment must be submitted via the GLO's Texas Integrated Grant Reporting (TIGR) system of record or as otherwise specified in a Technical Guidance Letter issued under this Contract.

Subrecipient will be paid in accordance with the Contract Budget and the Benchmarks described in **Attachment A**. Failure by Subrecipient to perform any action or submit any Deliverable as described in **Attachment A** could result in the GLO placing a hold on further Subrecipient draws, conducting an official monitoring risk assessment, or requiring repayment, in part or in full, by Subrecipient of drawn funds in addition to other remedies provided to the GLO under this Contract.

A draw request for an Advance Payment must be supported with documentation clearly demonstrating that the Advance Payment is required by Subrecipient in order for Subrecipient to continue carrying out the purpose of the Project.

### 2.02 TIMELY EXPENDITURES

In accordance with the Federal Register and to ensure timely expenditure of grant funds, Subrecipient shall submit reimbursement requests under this Contract, at a minimum, quarterly.

**THE GLO MUST RECEIVE A REIMBURSEMENT REQUEST FOR AN INCURRED EXPENSE NOT LATER THAN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE SUBRECIPIENT OR ANY OF ITS SUBCONTRACTORS INCUR THE EXPENSE. THE GLO MAY, IN ITS SOLE DISCRETION, DENY REIMBURSEMENT REQUESTS THAT DO NOT MEET THIS REQUIREMENT, ISSUE DELINQUENCY NOTICES, WITHHOLD CAPACITY POINTS ON FUTURE FUNDING COMPETITIONS, IMPOSE A MONITORING REVIEW OF SUBRECIPIENT'S ACTIVITIES, OR IMPLEMENT OTHER CORRECTIVE ACTIONS.**

Subrecipient shall make timely payments to its subcontractors in accordance with Chapter 2251 of the Texas Government Code.

Subrecipient shall submit final reimbursement requests to the GLO prior to Contract expiration or termination. The GLO, in its sole discretion, may deny payment and de-obligate remaining funds from the Contract upon expiration or termination of the Contract. The GLO's ability to de-obligate funds under this **Section 2.02** notwithstanding, the GLO shall pay all eligible reimbursement requests that are timely submitted.

**2.03 VARIANCE**

Amendments to decrease or increase the subaward amount or to add or delete an Activity may be made only by written agreement of the Parties, under the formal Amendment process described in **Section 8.16**, below. The GLO may, in its sole discretion and in conformance with federal law, approve other adjustments required during Project performance through a Revision or Technical Guidance Letter. Such approvals must be in writing and may be delivered by regular or electronic mail.

**SUBRECIPIENT SHALL SUBMIT A FINAL BUDGET AND ACTUAL EXPENDITURES AS PART OF THE GRANT COMPLETION REPORT TO THE GLO PRIOR TO CONTRACT EXPIRATION OR TERMINATION OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE GRANT COMPLETION REPORT SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM ELIGIBILITY AND COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT. FAILURE TO SUBMIT THE FINAL BUDGET AND ACTUAL EXPENDITURES TO THE GLO AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION WILL RESULT IN FORFEITURE AND DE-OBLIGATION OF REMAINING, UNREQUESTED FUNDS.**

Upon completion of the Project, the GLO shall formally close out the Project by issuing a closeout letter to Subrecipient.

**2.04 PROGRAM INCOME**

In accordance with 24 C.F.R. § 570.489(e), Subrecipient shall maintain records of the receipt and accrual of all program income, as "program income" is defined in that section. Subrecipient shall report program income to the GLO in accordance with **Article IV** of this Contract. Subrecipient shall return all program income to the GLO at least quarterly.

**2.05 SUBAWARD OFFER SUBJECT TO CANCELLATION**

**IF SUBRECIPIENT DOES NOT RETURN THE ORIGINAL SIGNED CONTRACT TO THE GLO WITHIN SIXTY (60) DAYS OF TRANSMITTAL OF THE CONTRACT TO SUBRECIPIENT, SUBAWARD FUNDING FOR THE PROJECT MAY BE SUBJECT TO CANCELLATION, IN THE SOLE DISCRETION OF THE GLO.**

**ARTICLE III - DURATION, EXTENSION, AND TERMINATION OF CONTRACT**

**3.01 DURATION OF CONTRACT AND EXTENSION OF TERM**

This Contract shall become effective on the date on which it is signed by the last Party and shall terminate on **January 31, 2025**, or upon the completion of all Benchmarks listed in **Attachment A** and required closeout procedures, whichever occurs first.

**Subrecipient must meet all Project Benchmarks identified in Attachment A. Subrecipient's failure to meet any Benchmark may result in suspension of payment or termination under Sections 3.02, 3.03, or 3.04, below.**

Upon receipt of a written request and acceptable justification from Subrecipient, the GLO, at its discretion, may agree to amend this Contract to extend the Contract Period one time for a period of up to two years. ANY REQUEST FOR EXTENSION MUST BE RECEIVED BY THE GLO AT LEAST SIXTY (60) DAYS BEFORE THE ORIGINAL TERMINATION DATE OF THIS CONTRACT AND, IF APPROVED, SUCH EXTENSION SHALL BE DOCUMENTED IN A WRITTEN AMENDMENT.

**3.02 EARLY TERMINATION**

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Upon receipt of such notice, Subrecipient shall cease work, terminate any subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

**3.03 EVENTS OF DEFAULT**

Each of the following events shall constitute an Event of Default under this Contract: (a) Subrecipient fails to comply with any term, covenant, or provision contained in this Contract; (b) Subrecipient makes a general assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors; or (c) Subrecipient makes a materially incorrect representation or warranty in a Performance Statement, a reimbursement request for payment, or any report submitted to the GLO under the Contract. Prior to a determination of an Event of Default, the GLO shall allow a thirty (30) day period to cure any deficiency or potential cause of an Event of Default. The GLO may extend the time allowed to cure any deficiency or potential cause of an Event of Default. The GLO shall not arbitrarily withhold approval of an extension of the time allowed to cure a deficiency or potential cause of an Event of Default. In no event shall the amount of time allowed to cure a deficiency or potential cause of an Event of Default extend beyond the Contract Period.

**3.04 REMEDIES; NO WAIVER**

Upon the occurrence of any Event of Default, the GLO may avail itself of any equitable or legal remedy available to it, including without limitation, withholding payment, disallowing all or part of noncompliant Activities, or suspending or terminating the Contract.

The Parties' rights or remedies under this Contract are not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Contract, or hereafter legally existing, upon the occurrence of an Event of Default. The GLO's failure to insist upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy provided in this Contract shall not impair, waive, or relinquish any such right or remedy with respect to another Event of Default.



### 3.05 REVERSION OF ASSETS

Upon expiration or termination of the Contract and subject to this Article:

- (a) If applicable, Subrecipient shall transfer to the GLO any CDBG-MIT funds Subrecipient has in its possession at the time of expiration or termination that are not attributable to work performed on the Project and any accounts receivable attributable to the use of CDBG-MIT funds awarded under this Contract; and
- (b) If applicable, real property under Subrecipient's control that was acquired or improved, in whole or in part, with funds in excess of \$25,000 under this Contract shall be used to meet one of the CDBG-MIT National Objectives pursuant to 24 C.F.R. § 570.208, as identified in the Action Plan, until five (5) years after the expiration of this Contract or such longer period of time as the GLO deems appropriate. If Subrecipient fails to use the CDBG-MIT funded real property in a manner that meets a CDBG-MIT National Objective for the prescribed period of time, Subrecipient shall pay the GLO an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG-MIT funds for acquisition of, or improvement to, the property. Subrecipient may retain real property acquired or improved under this Contract after the expiration of the five-year period or such longer period of time as the GLO deems appropriate.

## ARTICLE IV - CONTRACT ADMINISTRATION

### 4.01 SUBMISSIONS – GENERALLY

Except for legal notices that must be sent by specific instructions pursuant to **Section 8.10** of the Contract, any report, form, document, or request required to be submitted to the GLO under this Contract shall be sent in the format prescribed by the GLO.

**If Subrecipient fails to submit to the GLO any required Program documentation in a timely and satisfactory manner as required under this Contract, the GLO, in its sole discretion, may issue a delinquency notification and withhold any payments, pending Subrecipient's correction of the deficiency.**

(a) **Start-Up Documentation**

Not later than the close of business sixty (60) calendar days after the effective date of this Contract, Subrecipient must submit its Start-Up Documentation to the GLO.

(b) **Audit Certification Form**

Not later than the close of business sixty (60) calendar days after the end of Subrecipient's fiscal year for each year during the Contract term, Subrecipient must submit a completed Audit Certification Form to the GLO.

(c) **Other Forms**

In conformance with required state and federal laws applicable to the Contract:

- (i) Subrecipient certifies, by the execution of this Contract, all applicable statements in **Attachment C, General Affirmations**;

- (ii) Subrecipient must execute Standard Form 424D, Federal Assurances for Construction Programs, found at Page 1 of **Attachment B**;
- (iii) Subrecipient must execute the “Certification Regarding Lobbying Compliant with Appendix A to 24 C.F.R. Part 87,” found at Page 3 of **Attachment B**; and
- (iv) If any funds granted under this Contract have been used for lobbying purposes, Subrecipient must complete and execute Standard Form LLL, “Disclosure of Lobbying Activities,” found at Page 4 of **Attachment B**.

#### 4.02 MONTHLY ACTIVITY STATUS REPORTS

Subrecipient must provide monthly Activity status reporting, in the format prescribed in **Attachment F** (Monthly Activity Status Report) or as otherwise instructed by the GLO Grant Manager, for each individual Activity identified in **Attachment A**. The Monthly Activity Status Report is due on the fifth day of the month following the month in which the reported Activities were performed for the duration of the Contract. Subrecipient shall submit the Monthly Activity Status Reports to the GLO through the TIGR system as prescribed in **Attachment F** or as specified by the GLO Grant Manager.

#### 4.03 HUD CONTRACT REPORTING REQUIREMENT

HUD requires the GLO to maintain a public website that accounts for the use and administration of all GLO-administered CDBG-MIT grant funds. To assist the GLO in meeting this requirement, Subrecipient must prepare and submit monthly to the GLO a written summary of all contracts procured by Subrecipient using grant funds awarded under this Contract. Subrecipient shall only report contracts as defined in 2 C.F.R. § 200.1. Subrecipient must use a template developed by HUD to prepare the monthly reports, attached hereto as **Attachment H** and accessible online at <https://www.hudexchange.info/resource/3898/public-law-113-2-contract-reporting-template/>. On or before the fifth day of each month during the Contract Period, reports summarizing required information for the preceding month shall be submitted through the TIGR system as prescribed in **Attachment H** or as specified by the GLO Grant Manager. Additional information about this reporting requirement is available in Federal Register publications governing the CDBG-MIT funding allocation.

#### 4.04 SECTION 3 REPORTING REQUIREMENTS

In accordance with 24 C.F.R. § 75.25, Subrecipient is required to submit to the GLO quarterly reports documenting actions taken to comply with the employment, training, and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended ([12 U.S.C. § 1701u](#)), the results of such actions taken, and impediments encountered (if any) to such actions. Subrecipient should maintain records of job vacancies, solicitations of bids or proposals, selection materials and contracting documents (including scopes of work and contract amounts), in accordance with procurement laws and regulations. Records should demonstrate Subrecipient’s efforts to achieve the Section 3 numerical goals.

Section 3 quarterly reports are due on the 10<sup>th</sup> of the month following the quarter's close. The schedule is as follows:

- Quarter 1 (Sept-Nov): Due **December 10<sup>th</sup>**
- Quarter 2 (Dec-Feb): Due **March 10<sup>th</sup>**
- Quarter 3 (Mar-May): Due **June 10<sup>th</sup>**
- Quarter 4 (Jun-Aug): Due **September 10<sup>th</sup>**

Subrecipient is also required to submit an annual report, due on **September 30** of each year during the Contract Period. Forms for the Section 3 quarterly and annual reports may be found at <https://recovery.texas.gov/local-government/resources/infrastructure/index.html>. Subrecipient must submit completed forms to the GLO through the TIGR system, as instructed by the GLO Grant Manager.

If Subrecipient conducts no hiring or contracting efforts during a quarter, Subrecipient must report zeros in the quarterly report fields for such and add a note in the "other efforts, see remarks below" field that states that fact.

Subrecipient is not required to develop and implement a Section 3 Plan and assign a Section 3 Coordinator, but these actions are considered best practices.

#### **ARTICLE V - FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT**

##### **5.01 FEDERAL FUNDING**

- (a) Funding for this Contract is appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, mitigation, and affirmatively furthering fair housing, in accordance with Executive Order 12892, in the most impacted and distressed areas resulting from major declared disasters that occurred in 2015, 2016, and 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-MIT Program and any other applicable laws. **All funds disbursed under this Contract are subject to recapture and repayment for non-compliance.**
- (b) Subrecipient must have a Data Universal Numbering System (DUNS) number and a Commercial and Government Entity (CAGE) code. Subrecipient shall report its DUNS number and CAGE code to the GLO for use in various grant-reporting documents. A DUNS number may be obtained by visiting the Dun & Bradstreet website: <https://www.dnb.com>. A CAGE code will be assigned when the obtained DUNS number is registered with the System for Award Management at <https://www.sam.gov>. Assistance with the System for

Award Management website may be obtained by calling 866-606-8220. **Subrecipient is responsible for renewing its registration with the System for Award Management annually and maintaining an active registration status throughout the Contract Period.**

#### 5.02 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas or the GLO in violation of Article III, Section 49, of the Texas Constitution. The GLO's obligations hereunder are subject to the availability of state funds. If adequate funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their interests accrued up to the date of termination.
- (b) Any claim by Subrecipient for damages under this Contract may not exceed the amount of payment due and owing Subrecipient or the amount of funds appropriated for payment but not yet paid to Subrecipient under this Contract. Nothing in this provision shall be construed as a waiver of the GLO's sovereign immunity.

#### 5.03 RECAPTURE OF FUNDS

Subrecipient shall conduct, in a satisfactory manner as determined by the GLO, the Activities as set forth in the Contract. The discretionary right of the GLO to terminate for convenience under **Section 3.02** notwithstanding, the GLO may terminate the Contract and recapture, and be reimbursed by Subrecipient for, any payments made by the GLO (a) that exceed the maximum allowable HUD rate; (b) that are not allowed under applicable laws, rules, and regulations; or (c) that are otherwise inconsistent with this Contract, including any unapproved expenditures. **This recapture provision applies to any funds expended for the Project or any Activity that does not meet a CDBG-MIT Program National Objective as specified in the Performance Statement in Attachment A or that is not otherwise eligible under CDBG-MIT regulations.**

#### 5.04 OVERPAYMENT AND DISALLOWED COSTS

Subrecipient shall be liable to the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds Subrecipient received under this Contract. Subrecipient shall reimburse the GLO for such disallowed costs from funds that were not provided or otherwise made available to Subrecipient under this Contract. Subrecipient must refund disallowed costs and overpayments of funds received under this Contract to the GLO within 30 days after the GLO issues notice of overpayment to Subrecipient.

#### 5.05 FINAL BENCHMARK

##### (a) Construction Activities

To ensure full performance of each construction Activity and the Project, the GLO has set aside an amount equal to five percent (5%) of Subrecipient's

construction budget per Activity until completion and acceptance by the GLO of all actions and Deliverables for the Activity, as identified in **Attachment A**.

The GLO shall make the final disbursement to Subrecipient only upon the GLO's receipt and acceptance of the Deliverables identified in **Attachment A** as required for the completion of construction phase.

If Subrecipient has multiple construction subcontracts, an amount equal to five percent (5%) of Subrecipient's construction budget per construction subcontract shall be withheld by the GLO until completion and acceptance by the GLO of all actions and Deliverables identified in **Attachment A** for the particular project. Separate Deliverables are required per construction subcontract, and associated costs are pro-rated in accordance with budget details in the final GLO-approved Application. If a project includes more than one Environmental Review Record, associated costs are pro-rated in accordance with budget details in the final GLO-approved Application.

**(b) Project Delivery – Grant Administration**

To ensure full performance of this Contract, the GLO has set aside an amount equal to five percent (5%) of Subrecipient's project delivery – grant administration budget until completion and acceptance by the GLO of all actions and Deliverables identified in **Attachment A**.

**ARTICLE VI - INTELLECTUAL PROPERTY**

**6.01 OWNERSHIP AND USE**

- (a) The Parties shall jointly own all right, title, and interest in and to all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract, with each Party having the right to use, reproduce, or publish any or all of such information and other materials without obtaining permission from the other Party, subject to any other restrictions on publication outlined in this Contract, and without expense or charge.
- (b) Subrecipient grants the GLO and HUD a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for U.S. Government purposes, all reports, drafts of reports, or other material, data, drawings, computer programs, and codes associated with this Contract, and/or any copyright or other intellectual property rights, and any material or information developed and/or required to be delivered under this Contract.

**6.02 NON-ENDORSEMENT BY STATE AND THE UNITED STATES**

Subrecipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still or motion pictures, articles, manuscripts, or other publications) that states or implies the GLO, the State of Texas, U.S. Government, or any government employee, endorses a product, service, or position

Subrecipient represents. Subrecipient may not release information relating to this Contract or state or imply that the GLO, the State of Texas, or the U.S. Government approves of Subrecipient's work products or considers Subrecipient's work product to be superior to other products or services.

**6.03 DISCLAIMER REQUIRED**

On all public information releases issued pursuant to this Contract, Subrecipient shall include a disclaimer stating that the funds for this Project are provided by Subrecipient and the Texas General Land Office through HUD's CDBG-MIT Program.

**ARTICLE VII - RECORDS, AUDIT, AND RETENTION**

**7.01 BOOKS AND RECORDS**

Subrecipient shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary for fully disclosing to the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine Subrecipient's compliance with this Contract and all applicable laws, statutes, rules, and regulations, including the applicable laws and regulations provided in **Attachment D** and **Attachment E**.

**7.02 INSPECTION AND AUDIT**

- (a) All records related to this Contract, including records of Subrecipient and its subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and work product shall be subject, at any time, to inspection, examination, audit, and copying at Subrecipient's primary location or any location where such records and work product may be found, with or without notice from the GLO or other government entity with necessary legal authority. Subrecipient shall cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Subrecipient will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and work product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. **The Office of the Comptroller General of the United States, the Government Accountability Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of**

**inspection.** Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.

- (c) Subrecipient will be deemed to have read and know of all applicable federal, state, and local laws, regulations, and rules pertaining to the Project, including those identified in **Attachment D**, governing audit requirements.
- (d) At any time, the GLO may perform, or instruct a for-profit Subrecipient to perform, an annual Program-specific, fiscal, special, or targeted audit of any aspect of Subrecipient's operation. Subrecipient shall maintain financial and other records prescribed by the GLO or by applicable federal or state laws, rules, and regulations.

### **7.03 PERIOD OF RETENTION**

All records relevant to this Contract shall be retained for a period of three (3) years subsequent to the final closeout of the overall State of Texas CDBG-MIT grant, in accordance with federal regulations. **The GLO will notify all Program participants of the date upon which local records may be destroyed.**

## **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

### **8.01 LEGAL OBLIGATIONS**

For the duration of this Contract, Subrecipient shall procure and maintain any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation to be held by Subrecipient to provide the goods or services required by this Contract. Subrecipient shall pay all costs associated with all taxes, assessments, fees, premiums, permits, and licenses required by law. Subrecipient shall pay any such government obligations not paid by its subcontractors during performance of this Contract. **Subrecipient shall maintain copies of such licenses and permits as a part of its local records in accordance with Section 7.01 of this Contract or as otherwise specifically directed by the GLO. Subrecipient shall provide Monthly Activity Status Reports via the GLO system of record in accordance with Section 4.02 of this Contract.**

### **8.02 INDEMNITY**

As required under the Constitution and laws of the State of Texas, each Party understands that it is solely liable for any liability resulting from its acts or omissions. No act or omission of a Party shall be imputed to the other Party. Neither Party shall indemnify or defend the other Party.

### **8.03 INSURANCE AND BOND REQUIREMENTS**

- (a) Unless Subrecipient is authorized by Chapter 2259 of the Texas Government Code to self-insure, Subrecipient shall carry insurance for the duration of this Contract in types and amounts necessary and appropriate for the Project.
- (b) Subrecipient shall require all contractors, subcontractors, vendors, service providers, or any other person or entity performing work described in



**Attachment A** to carry insurance for the duration of the Project in the types and amounts customarily carried by a person or entity providing such goods or services. Subrecipient shall require any person or entity required to obtain insurance under this section to complete and file the declaration pages from the insurance policies with Subrecipient whenever a previously identified policy period expires during the term of Subrecipient's contract with the person or entity, as proof of continuing coverage. Subrecipient's contract with any such person or entity shall clearly state that acceptance of the insurance policy declaration pages by Subrecipient shall not relieve or decrease the liability of the person or entity. **Persons or entities shall be required to update all expired policies before Subrecipient's acceptance of an invoice for monthly payment from such parties.**

- (c) Subrecipient shall require performance and payment bonds to the extent they are required under Chapter 2253 of the Texas Government Code.
- (d) **Subrecipient shall require any person or entity performing work on any construction Activity under the Contract to complete form SF-424D, entitled "Assurances – Construction Programs," and Subrecipient shall maintain such documentation.**

#### **8.04 ASSIGNMENT AND SUBCONTRACTS**

Subrecipient must not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the GLO's prior written consent. Any attempted assignment, transfer, or delegation in violation of this provision is void and without effect. Notwithstanding this provision, it is mutually understood and agreed that Subrecipient may subcontract with others for some or all of the services to be performed under this Contract. In any approved subcontracts, Subrecipient must legally bind the subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Subrecipient as specified in this Contract. Nothing in this Contract shall be construed to relieve Subrecipient of the responsibility for ensuring that the goods delivered and/or the services rendered by Subrecipient and/or any of its subcontractors comply with all the terms and provisions of this Contract.

For subcontracts to which Federal Labor Standards requirements apply, Subrecipient shall submit to the GLO all documentation required to ensure compliance. Subrecipient shall retain five percent (5%) of the payment due under each of Subrecipient's construction or rehabilitation subcontracts until the GLO determines that the Federal Labor Standards requirements applicable to each such subcontract have been satisfied, as outlined in Section 5.05 above.

#### **8.05 PROCUREMENT**

Subrecipient must comply with the procurement procedures stated at 2 C.F.R. §§ 200.318 through 200.327 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules. Failure to comply with 2 C.F.R. §§ 200.318 through 200.327 and all other applicable federal, state, and local procurement procedures and laws, regulations, and rules could result in recapture of funds. Subrecipient must confirm



that its vendors and subcontractors are not debarred from receiving state or federal funds at each of the following web addresses:

- (a) the Texas Comptroller's Vendor Performance Program at <https://comptroller.texas.gov/purchasing/>; and
- (b) the U.S. General Services Administration's System for Award Management at <https://www.sam.gov/>.

#### **8.06 EQUIPMENT AND COMPUTER SOFTWARE**

Any purchase of Equipment or computer software made pursuant to this Contract shall be made in accordance with all applicable laws, regulations, and rules, including those defined in 2 C.F.R. § 200.313.

In accordance with 24 C.F.R. § 570.502(a), if Equipment is acquired, in whole or in part, with funds under this Contract and is then sold, the proceeds shall be considered program income, as defined in **Section 2.04** above. Equipment not needed by Subrecipient for Activities under this Contract shall be (a) transferred to the GLO for the CDBG-MIT Program or (b) retained by Subrecipient after compensating the GLO an amount equal to the current fair market value of the Equipment less the percentage of non-CDBG-MIT funds used to acquire the Equipment.

#### **8.07 COMMUNICATION WITH THIRD PARTIES**

The GLO and the authorities named in **Article VII**, above, may initiate communications with any subcontractor of Subrecipient, and may request access to any books, documents, personnel, papers, and records of a subcontractor which are pertinent to this Contract. Such communications may be required to conduct audits, examinations, Davis-Bacon Labor Standards interviews, and gather additional information as provided in **Article VII** herein.

#### **8.08 RELATIONSHIP OF THE PARTIES**

Subrecipient is associated with the GLO only for the purposes and to the extent specified in this Contract. Subrecipient is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, an employer-employee or principal-agent relationship, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of Subrecipient or any other party. Subrecipient shall be solely responsible for, and the GLO shall have no obligation with respect to, the following: the withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; participation in any group insurance plans available to employees of the State of Texas; participation or contributions by the State of Texas to the State Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State of Texas.

**8.09 COMPLIANCE WITH OTHER LAWS**

In the performance of this Contract, Subrecipient must comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations, including those listed in **Attachments B, C, and D**. Subrecipient is deemed to know of and understand all applicable laws, statutes, ordinances, and regulations affecting its performance under this Contract.

**8.10 NOTICES**

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail (certified, postage paid, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address below.

**GLO**

Texas General Land Office  
1700 N. Congress Avenue, 7<sup>th</sup> Floor  
Austin, TX 78701  
Attention: Contract Management Division

**Subrecipient**

City of Freeport  
200 W. 2nd Street  
Freeport, TX 77541  
Attention: Brooks Bass

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party sent in accordance with this section.

**8.11 GOVERNING LAW AND VENUE**

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Subrecipient irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Contract or any related document. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

**8.12 SEVERABILITY**

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

### 8.13 DISPUTE RESOLUTION

Except as otherwise provided by statute, rule or regulation, Subrecipient shall use the dispute resolution process established in Chapter 2260 of the Texas Government Code and related rules to attempt to resolve any dispute under this Contract, including a claim for breach of contract by the GLO, that the Parties cannot resolve in the ordinary course of business. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of such a claim constitutes grounds for Subrecipient to suspend performance of this Contract. Notwithstanding this provision, the GLO reserves all legal and equitable rights and remedies available to it. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF THE GLO'S SOVEREIGN IMMUNITY.**

### 8.14 CONFIDENTIALITY

To the extent permitted by law, Subrecipient and the GLO shall keep all information, in whatever form produced, prepared, observed, or received by Subrecipient or the GLO, confidential to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Subrecipient or the GLO; or (c) information that Subrecipient or the GLO is otherwise required to keep confidential by this Contract. Subrecipient must not make any communications or announcements relating to this Contract through press releases, social media, or other public relations efforts without the prior written consent of the GLO.

### 8.15 PUBLIC RECORDS

The GLO shall post this Contract to the GLO's website. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. Subrecipient is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Subrecipient believes to be excepted from disclosure as "confidential" or a "trade secret," Subrecipient waives any and all claims it may make against the GLO for releasing such information without prior notice to Subrecipient. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Subrecipient shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to [PIALegal@glo.texas.gov](mailto:PIALegal@glo.texas.gov). If a request for information was not written, Subrecipient shall forward the third party's contact information to the above-designated e-mail address.

### 8.16 AMENDMENTS TO THE CONTRACT

Amendments to decrease or increase the subaward, to add or delete an Activity as allowed by the Guidance Documents, to extend the term of the Contract, and/or to make

other substantial changes to the Contract may be made only by written agreement of the Parties under the formal Amendment process outlined below, except that, upon completion of the Project, the GLO shall issue a closeout letter pursuant to **Section 2.03**. The formal Amendment process requires official request documentation from Subrecipient detailing all provisions to be amended and supporting documentation as required. The GLO Grant Manager will confirm and review the request and, as appropriate, submit the proposed amended language or amount to the GLO's Contract Management Division for the preparation of a formal Amendment and circulation for necessary GLO and Subrecipient signatures. In the sole discretion of the GLO and in conformance with federal law, the GLO may approve other adjustments required by the GLO during Project performance through a Revision or Technical Guidance Letter unilaterally issued by the GLO and acknowledged by Subrecipient. Such GLO approvals must be in writing and may be delivered by U.S. mail or electronic mail.

Pursuant to **Section 2.03** hereof, a final **Grant Completion Report** for all Activities performed under this Contract shall be submitted to the GLO for review and approval prior to expiration of the Contract and shall include all such informal Revisions approved by the GLO over the life of the Contract.

#### **8.17 ENTIRE CONTRACT AND MODIFICATIONS**

This Contract, its Attachments, and any Amendment(s), Technical Guidance Letter(s), and/or Revision(s) issued in conjunction with this Contract, if any, constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the subject matter hereof. Any additional or conflicting terms in issued Attachments, Technical Guidance Letters, and/or Revisions shall be harmonized with this Contract to the extent possible. Unless an Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the Contract.

#### **8.18 PROPER AUTHORITY**

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to legally bind its respective entity. Subrecipient acknowledges that this Contract is effective for the period of time specified in the Contract. Any work performed by Subrecipient after the Contract terminates is performed at the sole risk of Subrecipient.

#### **8.19 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

#### **8.20 SURVIVAL**

The provisions of **Articles V, VI, and VII** and **Sections 1.01, 1.03, 2.05, 3.02, 3.04, 3.05, 8.02, 8.03, 8.07, 8.08, 8.09, 8.10, 8.11, 8.13, 8.14, 8.15, and 8.16** of this Contract and any

other continuing obligations of Subrecipient shall survive the termination or expiration of this Contract.

#### **8.21 CONTRACT CLOSEOUT**

Upon completion of all Activities required for the Contract, and, pursuant to **Section 2.03** hereof, Subrecipient shall prepare a final **Grant Completion Report** confirming final performance measures, budgets, and expenses. The GLO will close the Contract in accordance with 2 C.F.R. §§ 200.344 through 200.346 and GLO CDBG-MIT guidelines consistent therewith.

**SUBRECIPIENT SHALL SUBMIT A FINAL BUDGET AND ACTUAL EXPENDITURES TO THE GLO AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION OR AT THE CONCLUSION OF ALL CONTRACT ACTIVITIES, WHICHEVER OCCURS FIRST. THE GRANT COMPLETION REPORT SHALL BE IN A FORMAT PRESCRIBED BY THE GLO AND SHALL CONFIRM ELIGIBILITY AND COMPLETION OF ALL ACTIVITIES PERFORMED UNDER THIS CONTRACT. FAILURE TO SUBMIT TO THE GLO THE FINAL BUDGET AND ACTUAL EXPENDITURES AS PART OF THE GRANT COMPLETION REPORT PRIOR TO CONTRACT EXPIRATION OR TERMINATION WILL RESULT IN FORFEITURE AND DE-OBLIGATION OF ALL REMAINING UNREQUESTED FUNDS.**

The GLO will notify Subrecipient via official closeout letter upon review and approval of the final Grant Completion Report.

#### **8.22 INDIRECT COST RATES**

Unless, under the terms of 2 C.F.R. Part 200, Appendix V, Subrecipient has negotiated or does negotiate an indirect cost rate with the federal government, subject to periodic renegotiations of the rate during the Contract Period, or is exempt from such negotiations and has developed and maintains an auditable central service cost allocation plan, Subrecipient's indirect cost rate shall be set by 2 C.F.R. § 200.414(f), i.e., ten percent (10%).

#### **8.23 CONFLICT OF INTEREST**

- (a) Subrecipient shall abide by the provisions of this section and include the provisions in all subcontracts. Subrecipient shall comply with all conflict-of-interest laws and regulations applicable to the Program.
- (b) Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts.

#### **8.24 FORCE MAJEURE**

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as "Force Majeure"), then, while compliance is so prevented, the affected Party's obligation to comply with

such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure must promptly notify the other Party of the Force Majeure event in writing, and, if possible, such notice must set forth the extent and duration of the Force Majeure. The Party claiming Force Majeure must exercise due diligence to prevent, eliminate, or overcome such Force Majeure event when it is possible to do so and must resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Subrecipient.

#### **8.25 ENVIRONMENTAL CLEARANCE REQUIREMENTS**

- (a) Subrecipient is the responsible entity, as “responsible entity” is defined under 24 C.F.R. Part 58, and is accountable for conducting environmental reviews and for obtaining any environmental clearance necessary for successful completion of an Activity or the Project. Subrecipient shall prepare an environmental review or assessment of each Activity or the Project in accordance with applicable laws, regulations, rules, and guidance. Subrecipient shall maintain a written Environmental Review Record (“ERR”) for each Activity or the Project, including all supporting source documentation and documentation to support any project mitigation. Subrecipient shall provide a copy of the ERR and all related source documentation to the GLO.
- (b) Subrecipient shall address inquiries and complaints and shall provide appropriate redress related to environmental Activities. Subrecipient shall document each communication issued or received hereunder in the related ERR.
- (c) The GLO may, in its sole discretion, reimburse Subrecipient for certain exempt environmental Activities, as defined in federal regulations. Reimbursement requests for exempt environmental Activities must be supported by the proper HUD-prescribed form.
- (d) The Parties acknowledge and understand that the GLO may enter into interagency agreements with the Texas Historical Commission and other entities in order to facilitate any necessary environmental or historic review. The GLO may incorporate one or more interagency agreements into this Contract via a Technical Guidance Letter.

#### **8.26 CITIZEN PARTICIPATION AND ALTERNATIVE REQUIREMENTS**

- (a) Subrecipient must ensure that all citizens have equal and ongoing access to information about an Activity or the Project, including ensuring that Activity or Project information is available in the appropriate languages for the geographical area served by Subrecipient. Information furnished to citizens shall include, without limitation:
  - (i) The amount of CDBG-MIT funds expected to be made available;
  - (ii) The range of Activities or projects that may be undertaken with the CDBG-MIT funds;

- (iii) The estimated amount of the CDBG-MIT funds proposed to be used for Activities or projects meeting the national objective of benefiting low-to-moderate income persons; and
  - (iv) A clear statement of such and the entity's anti-displacement and relocation plan if any proposed CDBG-MIT Activities or projects are likely to result in displacement.
- (b) **Complaint Procedures:** Subrecipient must have written citizen-complaint procedures for providing a timely written response (within fifteen [15] working days) to complaints and grievances. Subrecipient shall notify citizens of the location and the days and hours when the location is open for business so they may obtain a copy of these written procedures.
  - (c) **Technical Assistance:** If requested, Subrecipient shall provide technical assistance in completing applications under the Project to persons of low and moderate income.
  - (d) Subrecipient shall maintain a citizen participation file that includes a copy of Subrecipient's complaint procedures, documentation and evidence of opportunities provided for citizen participation (e.g., public notices, advertisements, flyers, etc.), documentation of citizen participation events (e.g., meeting minutes, attendance lists, sign-in sheets, news reports, etc.), and documentation of any technical assistance requested and/or provided.

#### 8.27 SIGNAGE REQUIREMENTS

On any public building or facility funded under this Contract, Subrecipient shall place permanent signage. Signs shall be placed in a prominent, visible public location. Subrecipient shall format each sign to best fit the architectural design of the building or facility but the sign should be legible from a distance of at least three (3) feet.

For other construction projects (e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation) funded under this Contract, Subrecipient shall place temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality.

All signage required under this section shall contain the following:

"This project is funded by the Texas General Land Office of the State of Texas to provide for the restoration of infrastructure for communities impacted by Hurricane Harvey. The funds have been allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant – Mitigation Program."

#### 8.28 PREFERENCE AND PROCUREMENT OF MATERIALS

- (a) To the extent applicable, Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired in the following manner:
  - (i) competitively within a timeframe allowing compliance with the Contract's performance schedule;



- (ii) in a way that meets the Contract's performance requirements; or
- (iii) at a reasonable price.

To ensure maximum use of recovered/recycled materials pursuant to 2 C.F.R. § 200.323, information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guideline Program website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

- (b) As appropriate and to the extent consistent with law, Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (c) For purposes of section (b) above:
  - (i) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (ii) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### 8.29 EQUAL OPPORTUNITY CLAUSE

Subrecipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

**"During the performance of this contract, the contractor agrees as follows:**

**(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:**

**Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.**

**(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive**

consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

***Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.***

Subrecipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided, That if Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.*

Subrecipient agrees that it will assist and cooperate actively with the GLO and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the GLO and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the GLO in the discharge of the GLO's primary responsibility for securing compliance.

Subrecipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts, as defined in 41 C.F.R. § 60-1.3, and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Subrecipient agrees that if it fails or refuses to comply with these undertakings, the GLO may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Contract; refrain from extending any further assistance to Subrecipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Subrecipient; and refer the case to the Department of Justice for appropriate legal proceedings.

### **8.30 INFORMATION AND DATA SECURITY STANDARDS**

Subrecipient shall comply with all terms specified in the **GLO Information Security Appendix (CDBG)**, incorporated herein for all purposes as **Attachment G**.

### **8.31 STATEMENTS OR ENTRIES**

**WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.**

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to

contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001.

**Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned Subrecipient representative hereby declares that he/she has examined this Contract and Attachments, and, to the best of his/her knowledge and belief, any statements, entries, or claims made by Subrecipient are true, accurate, and complete.**

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR GLO CONTRACT NO. 22-085-047-D300  
INFRASTRUCTURE SUBRECIPIENT CONTRACT AGREEMENT  
CDBG-MIT – HURRICANE HARVEY HUD MID COMPETITION ROUND 1**

**GENERAL LAND OFFICE**

**CITY OF FREEPORT**

\_\_\_\_\_  
Mark A. Havens, Chief Clerk/  
Deputy Land Commissioner

\_\_\_\_\_  
By: Brooks Bass

\_\_\_\_\_  
Title: Mayor

Date of execution: \_\_\_\_\_

Date of execution: \_\_\_\_\_

OGC <sup>DS</sup> MB

PM <sup>DS</sup> U

SDD <sup>DS</sup> HL

DGC <sup>DS</sup> MB

GC <sup>DS</sup> JG

**ATTACHED TO THIS CONTRACT:**

- ATTACHMENT A** Performance Statement, Budget, and Benchmarks
- ATTACHMENT B** Federal Assurances and Certifications
- ATTACHMENT C** General Affirmations
- ATTACHMENT D** Nonexclusive List of Applicable Laws, Rules, and Regulations
- ATTACHMENT E** Special Conditions
- ATTACHMENT F** Monthly Activity Status Report
- ATTACHMENT G** GLO Information Security Appendix (CDBG)
- ATTACHMENT H** Public Law 113-2 Contract Reporting Template

**ATTACHMENTS FOLLOW**

**CITY OF FREEPORT  
22-085-047-D300**

**PERFORMANCE STATEMENT**

The U.S. Department of Housing and Urban Development's Community Development Block Grant Mitigation ("CDBG-MIT") program to provide financial assistance with funds appropriated under Public Law 115-123, was enacted on August 30, 2019, to facilitate disaster recovery, restoration, mitigation, and economic revitalization and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas affected by 2015, 2016, and 2017 disasters, which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*).

In strict conformance with the terms and conditions of the Hurricane Harvey HUD Most Impacted and Distressed (HMID) Competition and this Contract, City of Freeport (Subrecipient) shall perform, or cause to be performed, the Infrastructure Activities defined below.

The Subrecipient has identified sanitary sewer activities that will increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

Subrecipient shall perform the activities identified herein for the target area specified in its approved Texas Community Development Block Grant Mitigation Grant Application to provide a long-lasting investment that increases resiliency in the community. The persons to benefit from the activities described herein must receive the prescribed service or benefit, and all eligibility requirements must be met to fulfill contractual obligations.

The grant total is \$5,991,468.00. Subrecipient will be required to maintain a detailed budget breakdown in the official system of record of the GLO's Community Development and Revitalization (GLO-CDR) division.

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Sewer Facilities

Subrecipient shall construct a Wastewater Treatment Plant and foundation that is engineered for the soil's condition and complete all associated appurtenances. Construction shall take place at the following location.

Sewer Facilities	Location Approximate Lat/Long	Proposed HUD Performance Measures	Census Tract	Block Group
Wastewater Treatment Plant	Wastewater Treatment Plant 28.943970, -95.377150	One (1) Public Facility	6642.00 6643.00 6644.00 6645.01	1 1,2,3,4,5 1,2,3,4,5,6 2
These Activities shall benefit twelve thousand twenty-five (12,025) persons. Of these persons, eight thousand eighty (8,080), or sixty-seven and nineteen hundredths' percent (67.19%), are of low to moderate income.				

**BUDGET**

HUD Activity Type	Grant Award	Other Funds	Total
Construction/Reconstruction of Sewer Lines or Systems	\$5,991,468.00	\$60,520.00 <sup>1</sup>	\$6,051,988.00
<b>TOTAL</b>	<b>\$5,991,468.00</b>	<b>\$60,520.00<sup>1</sup></b>	<b>\$6,051,988.00</b>

<sup>1</sup> CITY OF FREEPORT GENERAL FUND TO BE USED TOWARD CONSTRUCTION COST

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**MILESTONES**

<b>Budget Gates, Milestones, Actions, and Deliverables</b>	<b>Not-To-Exceed Budget Gate Percentages by Budget Category</b> (Subrecipient may draw up to, but not-to-exceed, the identified percentage of the budget category until stated deliverable(s) are submitted to and approved by the GLO.)			<b>Single Deliverable Milestones by Budget Category</b> (Subrecipient may draw up to 100% of budget category after submittal to and approval by the GLO of the stated deliverable.)		<b>Multiple Deliverable Milestones</b> (Subrecipient may draw up to, but not-to-exceed, the percentage stated after submittal to and approval by the GLO of the stated deliverable.)	
	<b>Project Delivery</b>			<b>Special Environmental Funds</b>	<b>Acquisition Funds</b>	<b>Construction Funds</b>	<b>Planning/ Studies (not related to engineering design)</b>
	<b>Grant Administration Funds</b>	<b>Environmental Funds</b>	<b>Engineering Funds</b>				
<b>Project Phase Actions and Deliverables:</b>							
<b>Action:</b> Start-up Phase <b>Deliverable:</b> Contract kick-off meeting sign-in sheet; all required start-up documentation reviewed and accepted by GLO; executed grant administration service provider contract in pdf.	0-15%						
<b>Action:</b> Commencement of Engineering Phase <b>Deliverable:</b> Executed engineering service provider contract in pdf provided during start-up phase as applicable.			0-30%				
<b>Action:</b> Commencement of Environmental Phase <b>Deliverable:</b> Executed environmental service provider contract in pdf provided during start-up phase as applicable.	15.01-30%	0-30%					
<b>Action:</b> Completion of Design Phase <b>Deliverable:</b> Complete signed and sealed 100% construction plans in pdf*.			30.01-60%				



Project Phase Actions and Deliverables:	Project Delivery		Engineering Funds	Special Environ- mental Funds	Acquisition Funds	Construction Funds	Planning/ Studies (not related to engineering design)
	Grant Administration Funds	Environ- mental Funds					
<b>Action:</b> Grant Completion Report Approval <b>Deliverable:</b> GCR approved by GLO.	95.01-100%						
<p><b>Failure to provide any deliverable identified could result in repayment of funds expended in part or in full. Deliverables identified in the table allow the subrecipient to draw the identified percentage per category contingent upon compliance of associated program guidance.</b></p> <p>*if multiple construction contracts, multiple deliverables are required and associated costs are pro-rated in accordance with budget details in final GLO approved application</p> <p>**if project includes more than one ERR, associated costs are pro-rated in accordance with budget details in final GLO approved application</p>							

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**ASSURANCES - CONSTRUCTION PROGRAMS**OMB Approval No. 4040-0009  
Expiration Date: 02/28/2022

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
	Mayor
APPLICANT ORGANIZATION	DATE SUBMITTED
City of Freeport	

SF-424D (Rev. 7-97) Back

THIS FORM MUST BE EXECUTED

**CERTIFICATION REGARDING LOBBYING  
COMPLIANT WITH APPENDIX A TO 24 C.F.R. PART 871**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements:*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance:*

The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

NAME OF APPLICANT  
City of Freeport

AWARD NUMBER AND/OR PROJECT NAME  
22-085-047-D300

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE  
Brooks Bass

Mayor

SIGNATURE

DATE

### Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
 (See reverse for public burden disclosure)

OMB Number: 4040-0013  
 Expiration Date: 02/28/2022

<b>1. *Type of Federal Action:</b> a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. *Status of Federal Action:</b> a. bid/offer/application _____ b. initial award c. post-award	<b>3. *Report Type:</b> a. initial filing _____ b. material change
<b>4. Name and Address of Reporting Entity:</b> _____ Prime _____ Subawardee Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip: _____ Congressional District, <i>if known</i> : _____		<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:  Congressional District, <i>if known</i> : _____
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, <i>if known</i>:</b>	<b>9. Award Amount, <i>if known</i>:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only</b>	<b>Authorized for Local Reproduction</b> Standard Form - LLL (Rev. 7-97)	



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-0013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-0013), Washington, DC 20503.

**GENERAL AFFIRMATIONS**

For the purposes of this document, the term “governmental entities” shall have the same meaning as defined in Chapter 2251 of the Texas Government Code.

TO THE EXTENT APPLICABLE, Subrecipient affirms and agrees to the following, without exception:

1. Subrecipient represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Subrecipient nor the firm, corporation, partnership, or institution represented by Subrecipient, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Subrecipient.
2. If the Contract is for services, Subrecipient shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts, but for contracts subject to 2 CFR 200, only to the extent such compliance is consistent with 2 CFR 200.319.
3. Under Section 231.006 of the Family Code, the vendor or applicant [Subrecipient] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. *[Not applicable to contracts with governmental entities.]*
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Subrecipient certifies it has submitted this information to the GLO. *[Not applicable to contracts with governmental entities.]*
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Subrecipient certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Subrecipient represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Subrecipient agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed by Subrecipient to the State of Texas.

8. Upon request of the GLO, Subrecipient shall provide copies of its most recent business continuity and disaster recovery plans.
9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Subrecipient certifies that it does not employ an individual who has been employed by the GLO or another agency at any time during the two years preceding the Subrecipient's submission of its offer to provide consulting services to the GLO or, in the alternative Subrecipient, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
10. If the Contract is not for architecture, engineering, or construction services, except as otherwise provided by statute, rule, or regulation, Subrecipient must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY SUBRECIPIENT.**
11. If the Contract is for architecture, engineering, or construction services, subject to Texas Government Code Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, and except as otherwise provided by statute, rule, or regulation, Subrecipient shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Except as otherwise provided by statute, rule, or regulation, in accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY SUBRECIPIENT.**
  - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if Subrecipient's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, Subrecipient may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against Subrecipient as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Subrecipient must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount Subrecipient seeks as damages; and (3) the legal theory of recovery.
  - b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with Subrecipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the

date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.

- c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the Parties shall reduce the agreement or settlement to writing and each Party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a Party's rights under this Contract as to the parts of the claim that are not resolved.
  - d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the Parties agree in writing to an extension of time, the Parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the Parties are unable to resolve their disputes as described in this section.
  - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity, or, if applicable, the governmental immunity of Subrecipient. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or Subrecipient. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas or, if applicable, of Subrecipient under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract. Subrecipient does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
  - f. Except as otherwise provided by statute, rule, or regulation, compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Subrecipient: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
12. If Chapter 2271 of the Texas Government Code applies to this Contract, Subrecipient verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.
  13. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Subrecipient understands that all obligations of the GLO under this Contract are subject to the availability of funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.

14. Subrecipient certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
15. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Subrecipient certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.
16. Subrecipient represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
17. Pursuant to Section 2155.004(a) of the Texas Government Code, Subrecipient certifies that neither Subrecipient nor any person or entity represented by Subrecipient has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Subrecipient from providing free technical assistance.
18. Subrecipient represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
19. In accordance with Section 2252.901 of the Texas Government Code, for the categories of contracts listed in that section, Subrecipient represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the contract. Solely for professional services contracts as described by Chapter 2254 of the Texas Government Code, Subrecipient further represents and warrants that if a former employee of the GLO was employed by Subrecipient within one year of the employee's leaving the GLO, then such employee will not perform services on projects with Subrecipient that the employee worked on while employed by the GLO.
20. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to any Party.

21. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT, TO THE EXTENT ALLOWED BY LAW, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. *[Not applicable to contracts with governmental entities.]*
22. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, SUBRECIPIENT, TO THE EXTENT ALLOWED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO SUBRECIPIENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE SUBRECIPIENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO SUBRECIPIENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. *[Not applicable to contracts with governmental entities.]*

23. TO THE EXTENT ALLOWED BY LAW, SUBRECIPIENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF SUBRECIPIENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR SUBRECIPIENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY SUBRECIPIENT OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF SUBRECIPIENT'S PERFORMANCE UNDER THE CONTRACT. SUBRECIPIENT AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SUBRECIPIENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUBRECIPIENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUBRECIPIENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, SUBRECIPIENT WILL REIMBURSE THE GLO AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUBRECIPIENT OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUBRECIPIENT WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL. *[Not applicable to contracts with governmental entities.]*
24. Subrecipient has disclosed in writing to the GLO all existing or known potential conflicts of interest relative to the performance of the Contract.
25. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Subrecipient certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
26. Subrecipient understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions



of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Subrecipient shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.

27. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Subrecipient and legally empowered to contractually bind Subrecipient to the terms and conditions of the Contract and related documents.
28. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Subrecipient shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
29. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.
30. Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
31. Subrecipient expressly acknowledges that funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Subrecipient represents and warrants to the GLO that any technology provided to the GLO for purchase pursuant to this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: providing equivalent access for effective use by both visual and non-visual means; presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and being integrated into networks for obtaining, retrieving, and

- disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
32. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Subrecipient certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
  33. Pursuant to Section 572.069 of the Texas Government Code, Subrecipient certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Subrecipient within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
  34. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Subrecipient shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO's Fraud Reporting hotline at (877) 888-0002.
  35. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and Subrecipient agrees that the Contract can be terminated if Subrecipient knowingly or intentionally fails to comply with a requirement of that subchapter.
  36. If Subrecipient, in its performance of the Contract, has access to a state computer system or database, Subrecipient must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Subrecipient must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Subrecipient must verify in writing to the GLO its completion of the cybersecurity training program.
  37. Under Section 2155.0061, Texas Government Code, Subrecipient certifies that the entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. *[Not applicable to contracts with governmental entities.]*
  38. Subrecipient certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Subrecipient's business. Subrecipient

- acknowledges that such a vaccine or recovery requirement would make Subrecipient ineligible for a state-funded contract.
39. Pursuant to Government Code Section 2274.0102, Subrecipient certifies that neither it nor its parent company, nor any affiliate of Subrecipient or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
  40. If Subrecipient is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Subrecipient verifies that Subrecipient does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Subrecipient does not make that verification, Subrecipient must notify the GLO and state why the verification is not required.
  41. If Subrecipient is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Subrecipient verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association" as those terms are defined in Texas Government Code section 2274.001 and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Subrecipient does not make that verification, Subrecipient must notify the GLO and state why the verification is not required.
  42. If Subrecipient is a "professional sports team" as defined by Texas Occupations Code Section 2004.002, Subrecipient will play the United States national anthem at the beginning of each team sporting event held at Subrecipient's home venue or other venue controlled by Subrecipient for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Subrecipient to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Subrecipient may be debarred from contracting with the State. The GLO or the Attorney General may strictly enforce this provision.
  43. To the extent Section 552.371 of the Texas Government Code applies to Subrecipient and the Contract, in accordance with Section 552.372 of the Texas Government Code, Subrecipient must (a) preserve all contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO for the duration of the Contract, (b) no later than the tenth business day after the date of the GLO's request, provide to the GLO any contracting information related to the Contract that is in Subrecipient's custody or possession, and (c) on termination or expiration of the Contract, either (i) provide to the GLO at no cost all contracting information related to the Contract that is in Subrecipient's custody or possession or (ii) preserve the contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and Subrecipient agrees that the Contract may be terminated if Subrecipient knowingly or intentionally fails to comply with a requirement of that subchapter.

44. If the Contract is for consulting services governed by Chapter 2254 of the Texas Government Code, Subrecipient, upon completion of the Contract, must give the GLO a compilation, in a digital medium agreed to by the Parties, of all documents, films, recordings, or reports Subrecipient compiled in connection with its performance under the Contract.
45. If subject to 2 CFR 200.216, Subrecipient shall not obligate or expend funding provided under this Contract to: (a) procure or obtain; (b) extend or renew a contract to procure or obtain; or (c) enter into a contract to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services, as defined in Public Law 115-232, Section 889, as a substantial or essential component of any system, or as critical technology as part of any system.

### NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to the Project, Subrecipient must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Subrecipient acknowledges that this list may not include all such applicable laws, rules, and regulations.

**Subrecipient is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:**

#### GENERALLY

The Acts and Regulations specified in this Contract;

Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (Public Law 115-123);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Community Development Block Grant Disaster Recovery and Mitigation Implementation Manual; and

State of Texas CDBG Mitigation Action Plan, dated March 31, 2020, as may be amended.

#### CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Subrecipient to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and

Urban Development", 24 C.F.R. Part 8. By signing this Contract, Subrecipient understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

**LABOR STANDARDS**

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

**EMPLOYMENT OPPORTUNITIES**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

**GRANT AND AUDIT STANDARDS**

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

**LEAD-BASED PAINT**

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

**HISTORIC PROPERTIES**

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

#### ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

#### FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

#### COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

#### SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

#### ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

#### WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

#### AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

#### FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b)



and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

**HUD ENVIRONMENTAL STANDARDS**

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

**ENVIRONMENTAL JUSTICE**

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

**SUSPENSION AND DEBARMENT**

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

**OTHER REQUIREMENTS**

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

**ACQUISITION / RELOCATION**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

**FAITH-BASED ACTIVITIES**

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

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### SPECIAL CONDITIONS

If applicable to a Project or Activity, Subrecipient must be in compliance with the following Special Conditions and any other State, Federal, or local laws, rules, and regulations as may be applicable, throughout the term of the Contract, prior to the release of any grant funds for the Projects or Activities anticipated.

Subrecipient is deemed to have read and to understand the requirements of each of the following, if applicable to the Project or any Activity under this Contract:

#### A. REIMBURSEMENT, GENERALLY

As provided for in Public Law 115-123, the Contract funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance, and Subrecipient shall ensure compliance with all such requirements.

#### B. NATIONAL FLOOD INSURANCE PROGRAM COMPLIANCE

1. Subrecipient must provide documentation which indicates they have received approval from the Texas Water Development Board (TWDB), the National Flood Insurance Program (NFIP) State Coordinating Agency, that appropriate ordinances or orders necessary for Subrecipient to be eligible to participate in the NFIP have been adopted.
2. When Activities specified in a Performance Statement involve structures that are located within Special Flood Hazard Areas (SFHA), flood insurance may be required. If required, Subrecipient shall obtain such insurance and shall maintain documentation evidencing compliance with such requirements.
3. Subrecipient acknowledges and agrees that if any property that is the subject of an Activity under this Contract is located within a floodplain, the following terms and conditions shall apply:
  - a. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001- 4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
    - i. The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP"), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
    - ii. Where the community is participating in the NFIP, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
  - b. Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, Subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.
  - c. Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
    - i. The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

- ii. The person failed to obtain and maintain flood insurance.
- d. Subrecipient understands and agrees that it has a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of their statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so.

**C. PROJECT MAPPING/DESIGN INFORMATION**

For construction projects, Subrecipient shall require and maintain copies, in written and/or digital format, of final Project record drawing(s) and engineering schematics, as constructed.

**D. WATER SYSTEM IMPROVEMENTS**

1. Prior to the GLO's release of funds for the construction of any water system improvements, Subrecipient shall provide certification to the GLO that plans, specifications, and related documents for the specified water system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.
2. Prior to construction, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.
3. Prior to Subrecipient submission of the Project Completion Report for any water system improvements described in Attachment A, Subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems.

**E. SEWER SYSTEM IMPROVEMENTS**

Prior to the construction of any sewer system improvements described, Subrecipient shall provide certification that the plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative and properly submitted to the Texas Commission on Environmental Quality (TCEQ) for review and approval in accordance with the administrative requirements of 30 TAC §217.6.

Further, prior to the construction of any sewer lines or additional service connections described in Attachment A, Subrecipient shall provide notification to the GLO of the start of construction on any sewer treatment plant or other system-related improvements included in this Contract.

**F. WASTEWATER TREATMENT CONSTRUCTION**

Prior to incurring costs for any wastewater treatment construction in Attachment A, Subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, Subrecipient shall provide documentation to the GLO that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served, has been issued by the TCEQ as required by 16 Texas Administrative Code Chapter 24, Subchapter H.

**G. ON-SITE SEWAGE FACILITIES (OSSF) IMPROVEMENTS**

1. Subrecipient shall provide documentation that final plans, specifications, and installation of its OSSF improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.
2. Subrecipient shall mitigate all existing OSSF in accordance with 30 Texas Administrative Code Chapter 285, Subchapter D, §285.36(b).
3. Prior to the selection of program recipients for proposed OSSF, Subrecipient shall provide a copy of its proposed program guidelines to for GLO review. All proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code Chapter 285, Subchapter D.

**H. BUILDING CONSTRUCTION**

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) adopted under the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the TDLR for an accessibility plan review.

**I. BRIDGE CONSTRUCTION/REHABILITATION**

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction in accordance with Transportation Code Section 201.084, and documentation of such approval must be provided to the GLO.

**J. DISASTER SHELTERS**

Subrecipient shall ensure that the primary purpose of the facility, as described in Attachment A, is to serve as a disaster shelter, and shall ensure the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. In addition, Subrecipient shall prepare or be incorporated into an approved emergency management plan, as prescribed by the Texas Division of Emergency Management, identifying the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO.

**K. DEBRIS REMOVAL**

Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

Prior to beginning debris collection operations, Subrecipient shall address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Further, Subrecipient shall adhere to the methods described herein for the collection and storage of debris prior to proper disposal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA

Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>.

In order to maintain the life expectancy of landfills, Subrecipients disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO.

#### **L. USE OF BONDS**

Subrecipient must notify the GLO of its issuance and sale of bonds for completion of the project funded under this Contract.

#### **M. PROGRAM GUIDELINES**

Prior to the selection of program beneficiaries, Subrecipient shall provide to the GLO, for GLO review and approval, a copy of its proposed guidelines for the program. The guidelines must meet or exceed to requirements in the Federal Registers. The guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation).

#### **N. AFFORDABILITY PERIODS FOR SINGLE-FAMILY HOUSING REHABILITATION, RECONSTRUCTION, OR NEW CONSTRUCTION ASSISTANCE**

For single-family non-rental housing assistance provided by Subrecipient, Subrecipient shall implement a minimum\* three-year affordability period during which the homeowner must occupy the home as a principal place of residence, guaranteed by an unsecured forgivable promissory note.

#### **O. UNSECURED FORGIVABLE PROMISSORY NOTE ("NOTE")**

Housing rehabilitation or reconstruction assistance provided by Subrecipient shall be in the form of a three-year unsecured forgivable promissory note at an interest rate of zero-percent (0%). Provided that all terms and conditions contained in the Note continue to be fulfilled, a Note will be forgiven according to the following terms, as applicable, until the applicant fulfills their note requirement (the requirements are defined in the promissory note document): at a rate of 33 percent per year for the first two years, and 34 percent after the third year.

1. If the homeowner occupies the home for the full three-year term, the Note expires and no repayment is required, nor will any conditions be imposed relative to the disposition of the property. If any of the terms and conditions under which the assistance was provided are breached or if the property is sold, leased, transferred or vacated by the homeowner for any consecutive thirty (30) day period during the Note term, the repayment provisions of the Note shall be enforced.
2. If, during the Note term, the homeowner vacates the unit for any consecutive thirty (30) day period, the locality may forgive, as evidenced by the program director, city council, or commissioner court action, the remaining loan balance. Prior to forgiveness of all or any portion of the assistance provided, the request for forgiveness must be approved by the local governing body and be based on documented and justifiable conditions or circumstances that would result in an unnecessary hardship to the homeowner and, in the case of a limited clientele project, the determination that the national objective of benefiting low to moderate-income persons was met.
3. For a limited clientele project, the national objective will be considered met only when the program director, city council, or county commissioners court determines that a low- to

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\* Subrecipient may establish a longer affordability period at its own discretion.

moderate-income person has occupied the rehabilitated or reconstructed home for a time sufficient to meet the national objective. If the national objective was not achieved, Subrecipient is liable for repayment of an amount equal to the difference in the appraised value of the home prior to reconstruction and the sales price when the home is sold during the term of the forgivable Note.

4. If property assisted under a limited clientele project is sold or transferred to a person other than an eligible LMI person, the remaining pro-rated balance of the Note must be repaid by Subrecipient from the sales proceeds. Notwithstanding the preceding, Subrecipient shall be held liable for any balance remaining over and above the sales proceeds. In all instances, upon completion of the Note or repayment of the assistance (in full or in part), Subrecipient shall prepare and record a release of lien document in the land records of the applicable county.
5. Monitoring of the Note is required both during and after the grant is closed. Subrecipient must utilize non-CDBG funds to fulfill the monitoring obligations for its impacted recovered community.
6. Subrecipient will maintain a list of homeowners that do not maintain flood insurance as documented in their promissory note. These applicants will not be allowed to receive future assistance as outlined in Section B of this document.

**P. RENTAL HOUSING REHABILITATION, RECONSTRUCTION, OR NEW CONSTRUCTION ASSISTANCE**

Rental housing rehabilitation, reconstruction, or new construction assistance will provided be provided in the form of a forgivable loan or grant at zero interest dependent on the applicable Federal Register notice, Action Plan, or Housing Guidelines. Provided all terms and conditions under which the assistance was provided continue to be fulfilled, the note will be forgiven on a pro-rated basis until the applicant fulfills their note requirement (the requirements are defined in the promissory note document).

The purpose of the program is to facilitate the rehabilitation, reconstruction, and/or new construction of affordable rental housing needs within the service area of a disaster event in order to increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters. A minimum of 51% of the multi-family units must be restricted during the affordability period of twenty (20) years for low to moderate income (LMI) persons. The rents, at a minimum, must comply with High HOME Investment Partnership (HOME) Rents and other existing Land Use Restriction Agreement (LURA) restrictions if applicable. HOME rent limits are defined by HUD and must equal the lesser of fair market rents or 30% of the adjusted income for people earning 65% of the AMFI.

**Q. COASTAL MANAGEMENT**

Subrecipient acknowledges and agrees that any Project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

### GLO Community Development and Revitalization Monthly Activity Status Report

Subrecipient must provide monthly Activity status reporting for all sites identified in the Performance Statement (**Attachment A**) and relevant to the milestones therein. The Monthly Activity Status Report is due the fifth day of the month following the reporting period for the duration of the Contract. Submit the report using the Texas Integrated Grant Reporting system upload for Monthly Activity Status Reporting.

Subrecipient:  
 Contract Number: \_\_\_\_\_  
 Preparer Name: \_\_\_\_\_  
 Reporting Period (Month/ Year): \_\_\_\_\_

Contact Information: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Project Title: \_\_\_\_\_

Project Milestone Phase	Att. A Budget Gates/Milestones		TIGR Milestone (Pending or Complete)	On Schedule? (If no, describe improvement plan below.)
	Budget Category	Budget Allowance		
Start-Up Documentation	PD-GA Funds	0-15%		
Engineering NTP	Eng Funds	0-30%		
Environmental NTP	PD-GA Funds	15.01-30%		
	PD-Env Funds	0-30%		
Engineering Design	Eng Funds	30.01-60%		
Completion of Special Env Svcs	PD-Special Env Funds	100%		
Authority to Use Grant Funds	PD-GA Funds	30.01-50%		
	PD-Env Funds	30.01-100%		
Acquisition (if applicable)	Acq Funds	100%		
Bid Advertisement	PD-GA Funds	50.01-60%		
	Eng Funds	60.01-70%		
Contract Award and Construction	PD-GA Funds	60.01-85%		
	Eng Funds	70.01-85%		
	Construction Funds	0-95%		
Construction Activity Completion	PD-GA Funds	85.01-95%		
	Eng Funds	85.01-100%		
	Construction Funds	95.01-100%		
Planning NTP	Planning Funds	0-95%		
Planning Completion	Planning Funds	95.01-100%		
Contract Closeout	PD-GA Funds	95.01-100%		

Project Status Concerns (provide notes or information relevant to the overall contract.):

Budget Status:	Total Budget	Total Expended	Balance	% Expended (Total Expended/Total Budget)
PD-GA Funds				
PD-Env Funds				
PD-Special Env Funds				
Eng Funds				
Acq Funds				
Construction Funds				
Planning Funds				
<b>Totals:</b>				



## GLO Information Security Appendix (CDBG)

### 1. Definitions

“Breach of Security” means any unauthorized access of computerized data that compromises the security, confidentiality, or integrity of GLO Data that is in the possession and/or control of Subrecipient (or any entity with which Subrecipient shares GLO Data as authorized herein) including data that is encrypted if the person accessing the data has the key required to decrypt the data, or a loss of control, compromise, unauthorized disclosure or access, failure to physically secure GLO Data or when unauthorized users access PII or SPI for an unauthorized purposes. The term encompasses both suspected and confirmed incidents involving GLO Data which raise a reasonable risk of harm to the GLO or an individual. A Breach of Security occurs regardless of whether caused by a negligent or intentional act or omission on part of Subrecipient and/or aforementioned entities.

“GLO Data” means any data or information, which includes PII and/or SPI as defined below, collected, maintained, and created by the GLO, for the purpose of providing disaster assistance to an individual, that Subrecipient obtains, accesses (via records, systems, or otherwise), receives (from the GLO or on behalf of the GLO), or uses in the performance of the Contract or any documents related thereto. GLO Data does not include other information that is lawfully made available to Subrecipient through other sources.

“Personal Identifying Information” or “PII” means information that alone, or in conjunction with other information, identifies an individual as defined at Tex. Bus. & Com Code Section 521.002(a)(1).

“Sensitive Personal Information” or “SPI” means the personal information identifying an individual as defined at Tex. Bus. & Com. Code Section 521.002(a)(2).

All defined terms found in the Contract shall have the same force and effect, regardless of capitalization.

### 2. Security and Privacy Compliance

- 2.1. Subrecipient shall keep all GLO Data received under the Contract and any documents related thereto strictly confidential.
- 2.2. Subrecipient shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations.
- 2.3. Subrecipient shall implement administrative, physical, and technical safeguards to protect GLO Data that are no less rigorous than accepted industry practices including, without limitation, the guidelines in the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Subrecipient will legally bind any contractor(s)/subcontractor(s) to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Subrecipient shall ensure that the requirements stated herein are imposed on any contractor/subcontractor of Subrecipient’s subcontractor(s).

- 2.5. With the exception of contractors and subcontractors as they are addressed in Section 2.4, Subrecipient will not share GLO Data with any third parties, except as necessary for Subrecipient's performance under the Contract and upon the express written consent of the GLO's Information Security Officer or his/her authorized designee.
- 2.6. Subrecipient will ensure that initial privacy and security training, and annual training, thereafter, is completed by its employees or contractor/subcontractors that have access to GLO Data or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle PII and/or SPI on behalf of the GLO. Subrecipient shall maintain and, upon request, provide documentation of training completion.
- 2.7. Any GLO Data maintained or stored by Subrecipient or any contractor/subcontractor must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.
- 2.8. Subrecipient shall require that all individuals allowed to access GLO Data pursuant to this Contract sign a confidentiality and non-disclosure agreement ("NDA") before being given access to GLO Data. At a minimum, the NDA shall inform all individuals of the confidential nature of the GLO Data, the security and non-disclosure requirements of this Contract, and the potential criminal penalties and civil remedies specified in federal and state laws that may result from the unauthorized disclosure of GLO Data. The NDA shall require all individuals to acknowledge that the GLO or the United States government, including the U.S. Department of Housing and Urban Development, will seek any remedy available, including all administrative, disciplinary, civil, or criminal action(s) or penalties, as appropriate, for any unauthorized disclosure of GLO Data. Subrecipient shall provide the GLO copies of any and all NDAs upon request or demand by the GLO.
- 2.9. Subrecipient shall only use GLO Data for the purposes of administering the Project(s).

### **3. Data Ownership**

- 3.1. The GLO shall retain full ownership of all GLO Data, which includes PII and/or SPI, disclosed to Subrecipient or to which Subrecipient otherwise gains access by operation of the Contract or any agreement related thereto.
- 3.2. If, at any time during the term of the Contract or upon termination of the Contract, whichever occurs first, any part of the GLO Data, in any form, provided to Subrecipient ceases to be necessary for Subrecipient's performance under the Contract, Subrecipient shall within fourteen (14) days thereafter securely return such GLO Data to the GLO, or, at the GLO's written request, destroy, uninstall, and/or remove all copies of data in Subrecipient's possession or control and certify to the GLO that such tasks have been completed. Subrecipient shall provide certification of such destruction of GLO Data. If such return is infeasible, as mutually determined by the GLO and Subrecipient, the obligations set forth in this Attachment, with respect to GLO Data, shall survive termination of the Contract and Subrecipient shall prohibit any further use and disclosure of GLO Data.

#### **4. Data Mining**

- 4.1. Subrecipient shall not use GLO Data for unrelated commercial purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in this Contract.
- 4.2. Subrecipient shall take all reasonable physical, technical, administrative, and procedural measures to ensure that no unauthorized use or access of GLO Data occurs.

#### **5. Breach of Security**

- 5.1. Subrecipient shall provide the GLO with the name and contact information for an employee of Subrecipient which shall serve as the GLO's primary security contact.
- 5.2. Upon Subrecipient's discovery of a Breach of Security or suspected Breach of Security, Subrecipient shall notify the GLO as soon as possible, but no later than 24 hours after discovery of the Breach of Security or suspected Breach of Security. Within 72 hours, Subrecipient shall provide to the GLO, at minimum, a written preliminary report regarding the Breach or suspected Breach to the GLO with root cause analysis including a log detailing the data affected.
- 5.3. Subrecipient shall submit the initial notification and preliminary report to the GLO Information Security Officer at [informationsecurity@glo.texas.gov](mailto:informationsecurity@glo.texas.gov).
- 5.4. Subrecipient shall take all reasonable steps to immediately remedy a Breach of Security and prevent any further Breach of Security.
- 5.5. Subrecipient shall not inform any third party of any Breach of Security or suspected Breach of Security without first obtaining GLO's prior written consent unless such action is required by law or is limited to third party personnel that have a need to know for the sole purpose of containing or remediating the Breach of Security or suspected Breach of Security. However, while a third party may be informed of the Breach or suspected Breach for the sole purpose of containing or remediating it, no GLO Data shall be shared with such third party unless express written permission is obtained from the GLO in accordance with Section 2.5. Subrecipient will legally bind such third party to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto as soon as practicable upon securing such third party to contain or remediate the Breach of Security or suspected Breach of Security.
- 5.6. Notwithstanding the remedies provided in the Contract, if a Breach of Security includes SPI, Subrecipient shall, at the discretion of the GLO, notify affected individuals of such Breach and provide affected individuals complimentary access to one (1) year of credit monitoring services.

#### **6. Right to Audit**

- 6.1 Upon the GLO's request and to confirm Subrecipient's compliance with this Attachment, Subrecipient grants the GLO, or a GLO-contracted vendor, permission to perform an assessment, audit, examination, investigation, or review of all controls in Subrecipient's, or Subrecipient's contractor/subcontractor's, physical and/or technical environment in relation to GLO Data. Subrecipient shall fully cooperate with such

assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that stores, processes, or transports GLO Data. In lieu of a GLO-conducted assessment, audit, examination, investigation, or review, Subrecipient may supply, upon GLO approval, the following reports: SSAE18, ISO/ICE 27001 Certification, FedRAMP Certification, and PCI Compliance Report. Subrecipient shall ensure that this clause concerning the GLO's authority to assess, audit, examine, investigate, or review is included in any contract/subcontract that Subrecipient awards.

- 6.2 At the GLO's request, Subrecipient shall promptly and accurately complete a written information security questionnaire provided by the GLO regarding Subrecipient's business practices and information technology environment in relation to GLO Data and the GLO shall consider such information to be confidential to the extent allowed by law.

**P.L. 113-2 Contract Reporting Template**

Grantees are to use this template to summarize all procured contracts, including those procured by the grantee, recipients, or subrecipients. For the purposes of this requirement, recipients and subrecipients are defined as any entity receiving funds directly from the grantee. Definitions of each field can be found below. Grantees are to update and upload this template to their website and to DRGR using the Lead Agency's Administration activity each quarter as part of their QPR submissions by selecting the "add additional documents" link in page 1 of the edit activity screen. Please note the specific activity title and number where the template has been uploaded within the QPR's Overall Progress narrative. Please contact your CDP representative with any questions about the requirements pertaining to this template or submit a question to <https://www.onecpd.info/get-assistance/my-question/> for DRGR technical assistance.

**Data Fields:**

Grantee	Enter grantee title as displayed in DRGR system.
Grant Number	Enter grant number as displayed in DRGR system.
Date Updated	Enter date template last updated.
A. Contractor Name	Enter name of Contracted Party
B. DUNS Number	Enter Data Universal Numbering System number of the Contractor. <u>Note:</u> Entering the DUNS into this template does not fulfill the requirement for grantees to enter DUNS into the DRGR Action Plan at the activity level. Refer to the Notice published July 11, 2014 for more information on this separate requirement.
C. Procured by	Enter name of entity that procured Contract - HUD grantee (state or local government), partner agency, a subrecipient of a state or local government, or a recipient of a state government.
D. Contract Execution Date	Enter date the Contract was executed.
E. Contract End Date	Enter date the Contract will expire.
F. Total Contract Amount	Enter total amount of executed Contract.
G. Amount of CDBG-DR Funds	Enter amount of CDBG-DR funds from this grant used to fund the Contract.
H. Brief Description of Contract	Enter a brief, one sentence description of the purpose of the Contract.

To insert additional ROWS, go to HOME menu, and select INSERT from the top left.



**Certificate Of Completion**

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Subject: \$5.9M Contract: 22-085-047-D300 - City of Freeport (Texas GLO)  
Source Envelope:  
Document Pages: 86  
Certificate Pages: 5  
AutoNav: Enabled  
Envelope Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Amy Navarro  
1700 Congress Ave  
Austin, TX 78701  
Amy.Navarro@glo.texas.gov  
IP Address: 209.30.145.105

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Amy.Navarro@glo.texas.gov

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**Signer Events**

Joanne Wright  
Joanne.Wright@glo.texas.gov  
Attorney  
Texas General Land Office  
Security Level: Email, Account Authentication (None)

**Signature**



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LaTanya Logan  
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Signature Adoption: Pre-selected Style  
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Sr Dep Director  
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Using IP Address: 165.225.34.64

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Marc Barenblat  
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Signed: 11/10/2021 5:06:34 PM

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**Signature**



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**Status**

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**Certified Delivery Events**

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Drafting Requests  
draftingrequests@GLO.TEXAS.GOV  
Texas General Land Office  
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Matthew Anderson  
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Accounting Team  
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**Timestamp**

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## City Council Agenda Item # 11

**Title:** Consider a Resolution Amending the City of Freeport Policy Handbook Chapter 9 – Employee Wage and Benefits 9.18 Assignment Pay

**Date:** December 6, 2021

**From:** Cathy Ezell, Finance Director

---

**Staff Recommendation:**

Staff recommends approval of the Resolution.

**Item Summary:**

The City can assign job duties to employees that are specialized and require additional training to complete the assigned job duties. These job duties are also considered to be over and above the employee's normal job duties.

**Background Information:**

The City has job duties that are specialized and require additional training, but do not provide certifications. An example of this is the driver/operator assignment in the Fire Department. The Driver/Operator assignment requires specialized training for a firefighter to be given this assignment. Currently the City's Personnel Policy does not contain an assignment pay wage classification

**Financial Impact:**

There is no financial impact. This was included in the budget.

**Supporting Documentation:**

Resolution

**RESOLUTION 2021-2722**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, ADOPTING AN ASSIGNMENT PAY WAGE CLASSIFICATION APPROVING ITS ADDITION TO THE PERSONNEL POLICY HANDBOOK.**

**WHEREAS**, the City of Freeport values employees who are assigned specialized job duties to provide services to the citizens of our city; and

**WHEREAS**, assignment to specialized job duties typically requires additional training to provide the specialized job duties; and

**WHEREAS**, the City of Freeport seeks to create an assignment pay wage classification to govern specialized job duties by assignment, which eligibility and rate of assignment pay will be determined by the City Manager.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS;**

**SECTION 1. ASSIGNMENT PAY WAGE CLASSIFICATION.** The City Council of the City hereby approves and adopts an Assignment Pay Wage Classification attached hereto as Exhibit "A" and approves its addition to the Personnel Policy, which shall take effect as of December 6, 2021.

**SECTION 2. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

Read, passed and adopted the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Betty Wells, City Secretary  
City of Freeport

\_\_\_\_\_  
Christopher Duncan, City Attorney  
City of Freeport

## Exhibit "A"

### Chapter Nine – Employee Wage and Benefits

#### 9.18 Assignment Pay

Employees who are assigned specialized job duties that are outside the employee's normal job duties and that require additional training may be paid assignment pay. Eligibility for assignment pay and the rate of said assignment pay shall be determined and approved by the City Manager. All assignment pay is paid-out on a per pay period basis, not annually. Assignment pay is not retroactive. Because assignment pay is paid-out to active employees on a per pay period basis, no additional assignment pay is issued upon separation of employment.



## City Council Agenda Item # 12

**Title:** Consideration of approving Resolution to Participate in Texas Cooperative Liquid Assets Securities System Trust (Texas Class) an investment pool administered by Public Trust Advisors, LLC.

**Date:** December 6, 2021

**From:** Cathy Ezell, Finance Director

---

**Staff Recommendation:**

Staff recommends approval of the Resolution.

**Item Summary:**

This item will give the City another investment pool to place City funds. This is a tool to ensure the safety of City funds by allowing more diversification of investments. The interest rate at Texas Class is comparable to TexPool interest rates.

**Background Information:**

Currently, City funds are held by Texas Gulf Bank and TexPool Investment Pool. The City per the depository contract can only keep \$6 million at Texas Gulf Bank. In the past year, the City has received funds from the sale of bonds in the amount of approximately \$13 million along with almost \$2 million in grant funds. These funds were being held at Texas Gulf Bank and the City was required to move funds to another account. The City needs another investment tool to ensure the safety and diversification of the City's investments.

**Special Considerations:** N/A

**Financial Impact:** N/A

**Board or 3<sup>rd</sup> Party recommendation:** N/A

**Supporting Documentation:**

Resolution

Interest Rates Texas Class

Interest Rates TexPool

*Resolution No. 2021-2724*

## Resolution to Participate

WHEREAS, the Public Funds Investment Act, Texas Government Code, Section 2256.001 et seq. (the Act) requires the governing body of each local government in this state to adopt investment policies in accordance with the terms of the Act; and

WHEREAS, pursuant to the requirements of the Act, the Board of Trustees (the Governing Body) of the City of Freeport (the Local Government) has previously reviewed and adopted an investment policy (the Policy) that provides in part that the funds of the local government will be invested in investments permitted by the Act in order to: (i) invest only in investments legally permitted under Texas law; (ii) minimize risk by managing portfolio investments so as to preserve principal and maintain a stable net asset value; (iii) manage portfolio investments to ensure that cash will be available as required to finance operations; and (iv) maximize current income to the degree consistent with legality, safety, and liquidity; and

WHEREAS, pursuant to the Policy and the Act, the Local Government has appointed Finance Director (the Investment Officer) to act as the investment officer of the Local Government; and

WHEREAS, the Act provides that funds under the control of a Local Government may be invested through investment pools meeting the standards of Section 2256.016 of the Act; and

WHEREAS, the Local Government has received and reviewed the Information Statement, dated December 2016 (the Information Statement), of Texas Cooperative Liquid Assets Securities System Trust (the Program), an investment pool administered by Public Trust Advisors, LLC that sets forth the information required by Section 2256.016(b) of the Act; and

WHEREAS, the Local Government has determined that the investments proposed to be acquired by the Program are of a type that are permitted by the Act and are consistent with the Policy; and

WHEREAS, the Local Government has determined that an investment in the Program will assist the Local Government in achieving the goals set forth in the Policy and will tend to preclude imprudent investment activities arising out of investment transactions conducted between the Local Government and the Program; and

WHEREAS, the Local Government understands that the Program operates through the Eighth Amended and Restated Trust Agreement dated as of April 8, 2019 (the Trust Agreement), that provides the terms on which the Program will operate and the rights of the Participants in the Program and sets forth the responsibilities of Public Trust Advisors, LLC as the administrator of the Program (the Administrator) and of Wells Fargo Bank as custodian (the Custodian);



NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE LOCAL GOVERNMENT:

That the form, terms, and provisions of the Trust Agreement, a draft of which was presented and reviewed at this meeting, providing for the creation of the Program and for the rights of the Program Participants and the duties and responsibilities of the Administrator be and the same are hereby approved and adopted; and that the Investment Officer be and he or she is hereby authorized and directed to execute and deliver to the Administrator and the Custodian in the name and on behalf of the Local Government a participation certificate evidencing the agreement of the Local Government to be bound by the Trust Agreement substantially in the form of the Trust Agreement reviewed and approved at this meeting, together with such changes therein as may be approved by the said officer, such approval to be conclusively evidenced by the execution thereof; and be it further

Resolved that the investment program established by the Trust Agreement is hereby found and determined to be consistent with the Policy and to preclude imprudent investment activities arising out of investment transactions conducted between the Local Government and the Program; and be it further

Resolved that the Governing Body hereby officially finds and determines that the facts and recitations contained in the preamble of this Resolution are true and correct; and be it further

Resolved that the Governing Body hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted for the time required by law preceding this meeting and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter thereof were discussed, considered, and formally acted upon all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Act; and be it further

Resolved that the officers of the Local Government, and each of them, shall be and each is expressly authorized, empowered, and directed from time-to-time to do and perform all acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the Local Government all certificates, instruments, and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this Resolution and of the Trust Agreement hereby authorized and approved, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument, or other paper; and be it further

Resolved that this Resolution shall take effect and be in full force upon and after its passage.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brooks Bass, Mayor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tim Kelty, City Manager

\_\_\_\_\_  
Printed Name

# Yields

Filter the yields by month:

November 2021 ▾

or select a date range:

Start Date

End Date


Submit

## Texas CLASS

November 2021

Date	Daily Yield (%)	YTD Yield (%)	7-Day Yield (%)	WAM Days to Reset	WAM Days to Final	Daily Dividend	Net Asset Value (NAV)
11/28/2021	0.0608	0.0747	0.0584	58	84	0.000001667	0.99998487
11/27/2021	0.0608	0.0748	0.0576	59	85	0.000001667	0.99998738
11/26/2021	0.0608	0.0748	0.0567	60	86	0.000001666	0.99998989
11/25/2021	0.0576	0.0749	0.0559	60	86	0.000001578	0.99998561
11/24/2021	0.0576	0.0749	0.0556	60	87	0.000001578	0.99998804
11/23/2021	0.0552	0.0750	0.0550	59	85	0.000001514	0.99998543
11/22/2021	0.0559	0.0750	0.0547	60	85	0.000001530	0.99998928
11/21/2021	0.0550	0.0751	0.0543	59	85	0.000001507	0.99999137
11/20/2021	0.0550	0.0752	0.0540	60	86	0.000001507	0.99999371
11/19/2021	0.0550	0.0752	0.0536	61	87	0.000001508	0.99999605
11/18/2021	0.0552	0.0753	0.0533	60	87	0.000001513	1.00000424
11/17/2021	0.0536	0.0753	0.0529	57	85	0.000001470	1.00000131
11/16/2021	0.0531	0.0754	0.0527	57	84	0.000001453	1.00000063

Date	Daily Yield (%)	YTD Yield (%)	7-Day Yield (%)	WAM Days to Reset	WAM Days to Final	Daily Dividend	Net Asset Value (NAV)
11/15/2021	0.0529	0.0755	0.0525	57	84	0.000001450	1.00000215
11/14/2021	0.0528	0.0756	0.0523	56	84	0.000001447	0.99999431
11/13/2021	0.0528	0.0756	0.0517	57	85	0.000001447	0.99999662
11/12/2021	0.0528	0.0757	0.0512	58	86	0.000001447	0.99999893
11/11/2021	0.0523	0.0758	0.0507	58	86	0.000001434	0.99995851
11/10/2021	0.0523	0.0758	0.0506	59	87	0.000001434	0.99996081
11/09/2021	0.0514	0.0759	0.0497	59	87	0.000001409	1.00000271
11/08/2021	0.0514	0.0760	0.0491	60	88	0.000001409	1.00000073
11/07/2021	0.0491	0.0761	0.0484	60	87	0.000001345	1.00000929
11/06/2021	0.0491	0.0762	0.0481	60	88	0.000001345	1.00001155
11/05/2021	0.0491	0.0763	0.0477	61	89	0.000001345	1.00001381
11/04/2021	0.0515	0.0763	0.0474	60	88	0.000001411	1.00001232
11/03/2021	0.0464	0.0764	0.0464	60	87	0.000001270	1.00001093
11/02/2021	0.0471	0.0765	0.0460	58	83	0.000001291	1.00001023
11/01/2021	0.0467	0.0766	0.0455	57	83	0.000001280	1.00001176


 [Download .CSV \(?export=csv&class=0&year=2021&month=11\)](https://www.texasclass.com/export=csv&class=0&year=2021&month=11)

## Texas CLASS Government

November 2021

Date	Daily Yield (%)	YTD Yield (%)	7-Day Yield (%)	WAM Days to Reset	WAM Days to Final	Daily Dividend	Net Asset Value (NAV)
11/28/2021	0.0251	0.0374	0.0251	44	80	0.000000687	0.99997550
11/27/2021	0.0251	0.0374	0.0251	44	80	0.000000687	0.99997600
11/26/2021	0.0251	0.0374	0.0251	44	81	0.000000688	0.99997650
11/25/2021	0.0251	0.0375	0.0251	44	80	0.000000688	0.99994375
11/24/2021	0.0251	0.0375	0.0251	44	80	0.000000688	0.99994423
11/23/2021	0.0251	0.0374	0.0251	47	48	0.000000688	0.99994537

Date	Daily Yield (%)	YTD Yield (%)	7-Day Yield (%)	WAM Days to Reset	WAM Days to Final	Daily Dividend	Net Asset Value (NAV)
11/22/2021	0.0251	0.0376	0.0251	37	69	0.000000688	0.99997135
11/21/2021	0.0251	0.0376	0.0251	37	69	0.000000688	0.99998915
11/20/2021	0.0251	0.0377	0.0251	37	69	0.000000688	0.99998953
11/19/2021	0.0251	0.0377	0.0251	38	69	0.000000688	0.99998992
11/18/2021	0.0251	0.0378	0.0251	38	70	0.000000688	0.99999151
11/17/2021	0.0251	0.0378	0.0251	38	71	0.000000688	0.99998484
11/16/2021	0.0251	0.0378	0.0251	39	71	0.000000688	0.99998303
11/15/2021	0.0251	0.0379	0.0251	37	67	0.000000688	0.99998419
11/14/2021	0.0251	0.0379	0.0251	37	67	0.000000688	0.99998417
11/13/2021	0.0251	0.0379	0.0251	37	68	0.000000688	0.99998459
11/12/2021	0.0251	0.0380	0.0251	38	68	0.000000687	0.99998501
11/11/2021	0.0251	0.0380	0.0251	37	68	0.000000687	0.99998945
11/10/2021	0.0251	0.0381	0.0251	38	68	0.000000688	0.99998982
11/09/2021	0.0251	0.0381	0.0251	32	64	0.000000688	1.00000383
11/08/2021	0.0251	0.0382	0.0251	32	64	0.000000688	0.99999585
11/07/2021	0.0251	0.0382	0.0251	32	64	0.000000688	0.99999282
11/06/2021	0.0251	0.0382	0.0251	33	64	0.000000688	0.99999319
11/05/2021	0.0251	0.0383	0.0251	33	65	0.000000688	0.99999357
11/04/2021	0.0251	0.0383	0.0251	33	65	0.000000688	0.99999410
11/03/2021	0.0251	0.0384	0.0251	32	59	0.000000688	0.99997753
11/02/2021	0.0251	0.0384	0.0251	25	53	0.000000688	0.99998598
11/01/2021	0.0251	0.0385	0.0251	26	53	0.000000688	0.99998254

 [Download .CSV \(?export=csv&class=1&year=2021&month=11\)](#)



# TEXPOOL

## Performance

### DAILY PERFORMANCE

AS OF 11-28-2021

[View Historical Daily Performance](#)

Daily Net Yield	0.0387%
Dividend Factor	0.000001060
7 Day Net Yield	0.04%
NAV	\$1.00004
Daily Assets	\$22,030,963,665.94

### MONTHLY AVERAGE PERFORMANCE

AS OF 10-31-2021

[View Historical Monthly Average Performance](#)

Average Daily Net Yield	0.0354%
Average Dividend Factor	0.000000969
Average 7 Day Net Yield	0.04%
Average WAM	40 Days
Average WAL	101 Days
Average Daily Assets	\$22,083,960,100.11
Participants	2,670

**DISCLOSURES**

Performance quoted represents past performance which is no guarantee of future results. Investment return will vary. The value of an investment, when redeemed, may be worth more or less than the original cost. Current performance may be lower or higher than what is stated.

**An investment in the Pool is not insured or guaranteed by any government or government agency. Although the manager of the Pool seeks to preserve principal, it is possible to lose money by depositing money in the Pool.**

**DISCLOSURES**

Performance quoted represents past performance which is no guarantee of future results. Investment return will vary. The value of an investment, when redeemed, may be worth more or less than the original cost. Current performance may be lower or higher than what is stated.

**An investment in the Pool is not insured or guaranteed by any government or government agency. Although the manager of the Pool seeks to preserve principal, it is possible to lose money by depositing money in the Pool.**

**For more complete information, see the investment policy and information statement available on this website. You should consider the investment's objectives, risks, charges, and expenses carefully before investing. Information about these and other important subjects is in the investment policy and information statement which you should read carefully before investing.**

Current and future portfolio holdings are subject to risk.

An AAAM rating by Standard & Poor's is obtained after Standard & Poor's evaluates a number of factors, including credit quality, market price exposure and management. Ratings are subject to change, and do not remove market risk. For more information on credit ratings, visit [standardandpoors.com](http://standardandpoors.com).

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## City Council Agenda Item # 13

**Title:** Consideration and possible action regarding a Resolution authorizing the Mayor to sign the proposed contract with AmeriWaste for solid Waste Services

**Date:** December 6, 2021

**From:** Tim Kelty, City Manager

---

**Staff Recommendation:**

Staff Recommends adoption of this Resolution authorizing the Mayor to execute a contract with AmeriWaste Solutions, Inc, out of Alvin Texas.

**Item Summary:**

Staff has worked with AmeriWaste to develop the proposed contract that reflects all aspects of the proposed and negotiated services from AmeriWaste. As discussed at the last meeting, when notice of award was given, this is for a 7-year contract for both Residential, Commercial and roll-off Solid Waste service (not industrial) within the City of Freeport, effective February 1, 2022 for residential Service and April 1, 2022 for Commercial Service. The proposed contract will allow for the city to offer up to a 20% reduction to the current residential solid waste bill.

It also allows for the city to exercise its franchise authority to provide Commercial Solid Waste Service (excluding industrial waste) This will allow the city to capture additional franchise revenue and provide for a more competitive rate to commercial customers

**Background Information:**

The city currently has a contract with Waste Connections for residential solid waste collection. That contract will expire on January 31, 2022. Staff originally went out for proposals late in the summer, and sent the request to 4 different providers. At that time only Waste Connections submitted a proposal.

With only that single proposal which did not offer the rate reduction we were looking for, that proposal was rejected, and staff sought alternate proposals.

We became aware of AmeriWaste Solutions Inc, who received a very strong recommendation for their outstanding customer service, and we requested that they provide us with a proposal.



**Special Considerations**

Under the terms of the contract there are a few changes to residential solid waste service:

- Curbside bulk waste would change from a limit of once per week of up to 2CY, to once per month for up to 5CY. The City would be divided into quadrants, and each quadrant would have a designated week to place bulk waste at the curb.
- The size of the garbage tote provided would be reduced from 95 gallons to 65 gallons. With a second tote available for an additional \$7.10 per month. Up to 5 additional items may be set curbside in addition to the tote.
- The Quarterly Curbside unlimited bulk waste pickup would change to Biannual and would be held at a centralized location.

**Financial Impact:**

The financial impact of this contract will be to allow for the reduction of Trash bills to local residents, more affordable solid waste service to commercial customers and the generation of additional franchise revenue to support the General Fund. The terms of the contract maintain the same rate for the first 2 years of the contract. Annually there after the rate will increase at a rate of 75% of the annual CPI.

**Board or 3<sup>rd</sup> Party recommendation:**

None

**Supporting Documentation:** Resolution, Contract

**RESOLUTION NO. 2021-2725**

**A RESOLUTION OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; MAKING FINDINGS OF FACT; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH AMERIWASTE GRANTING A FRANCHISE TO PROVIDE SOLID WASTE SERVICES IN THE CITY OF FREEPORT; CONTAINING A SEVERANCE CLAUSE; PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

**Whereas**, the City of Freeport, Texas, hereinafter "the City," is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

**Whereas**, the Local Government Code and the Home Rule Charter of the City authorize the City Council thereof to adopt the provisions of this Resolution; and,

**Whereas**, AmeriWaste, a company that provides solid waste disposal services, have made a proposal to provide such services to the City of Freeport;

**Whereas**, the City of Freeport is a home-rule municipal corporation with the authority to grant franchises and grant exclusive rights for the disposal of solid waste within the City; and

**Whereas**, as part of the above authority, the City seeks to select a solid waste disposal provider that will provide the best service and the best price for the citizens of Freeport; and

**Whereas**, the City solicited proposals from solid waste service providers to provide solid waste services in the City Freeport; and

**Whereas**, the City received a single proposal in response to the above solicitation, which was rejected; and

**Whereas**, the City sought out additional proposals, and received a proposal from AmeriWaste, which was accepted and recommended by the City Council; and

**Whereas**, the City Council finds that the negotiated terms contained in the proposed agreement with AmeriWaste is in the best interest of the citizens of Freeport and promotes the health, safety and welfare of the community.

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

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The City Council authorizes the Mayor to execute the attached agreement with AmeriWaste to provide solid waste services in the City of Freeport.

**SECTION 3.** In the event any section or provision of this resolution is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this resolution and such remaining sections and provisions shall remain in full force and effect.

**SECTION 4. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**SECTION 5.** this resolution shall take effect and be in force from and after its passage and adoption.

READ, PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Betty Wells, City Secretary,  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Christopher Duncan, City Attorney,  
City of Freeport, Texas

**CITY OF FREEPORT**  
**SOLID WASTE AGREEMENT**

This Agreement is made and entered into as of \_\_\_\_\_ 20\_\_ by and between the City of Freeport, Texas, a municipal corporation located principally in Brazoria County, Texas (hereinafter the "City"), and AmeriWaste Solutions, Inc., (herein after "CONTRACTOR") with an effective date of February 1, 2022 for all Residential and Light Commercial Services and an effective date of no later than April 1, 2022 for all Commercial Services.

**Section 1.**  
**Definitions of Terms**

Whenever in this Agreement the following terms are used, they shall be defined as follows:

Bulky Waste. Solid Waste not easily containerized in a Cart or Dumpster such as, but not limited to appliances, furniture, and other Solid Waste. Bulky Waste shall not include Excluded Waste.

Bulky Waste Services. Collection of Bulky Waste and Disposal of Bulky Waste at a Disposal Site or Recycling of Bulky Waste at a Recycling Facility.

Bundle. Yard Trimmings securely tied together forming an easily handled package not exceeding four feet in length or 50 lbs. in weight.

Business Day. Monday through Sunday between the hours of 8:00am to 5:00pm, excluding Federal Holidays

Cart. A receptacle, equipped with wheels and a bar, with a capacity of approximately forty-eight (48), sixty-five (65), or ninety-six (96) gallons, designed to be mechanically dumped into a loader-packer type truck via a fully automated truck arm or semi-automated truck tipper.

City. The City of Freeport, Texas and City's officers, elected officials, employees, agents, volunteers, and representatives.

City Council. The governing body of the City.

City Event. An event designated by the CM to receive City Services. The CM has the sole authority to add or eliminate City Events.

City Facility. A City-owned or operated facility. The CM has the sole authority to add or eliminate City Facilities to receive City Services.

City Manager ("CM"). The City's City Manager or a person authorized to act for the CM.

City Services. Solid Waste Services for City Events and City Facilities.

Collect or Collection. The act of removing Solid Waste for transport to a Disposal Site, removing Yard Trimmings for transport to a Yard Trimmings Facility or to a Disposal Site, and removing Bulky Waste for transport to a Disposal Site.

Commercial Refuse. All Bulky Waste, Construction Debris, Garbage, Yard Waste and Rubbish generated by a Producer at a Large Commercial Unit.

Commercial Unit. All premises, locations or entities, public or private, requiring refuse collection within the corporate limits of the City that are not classified as a residential unit or light commercial unit.

Compactor. A compaction mechanism, whether stationary or mobile, designed to attach to a Roll-off.

Contractor. Shall mean the person, corporation, or partnership performing solid waste collection and disposal.

Construction Debris. Shall mean waste building materials resulting from construction, remodeling, repair, or demolition operations, typically collected in roll-off bins without lids and which are typically disposed of at Type IV landfills.

Curbside. The location within three (3) feet of the curb of the street abutting such property that provides primary access to the Service Unit as designated by the CM unless such placement interferes with or endangers movement of vehicles and pedestrians.

Customer(s). An occupant of a Residential Unit or a Non-Residential Unit in Freeport, and that has a City utility account that is billed for Solid Waste service on a monthly basis.

Dead Animal. Animal or part of an animal equal to or greater than ten (10) pounds in weight that has expired from any cause except those slaughtered or killed for human use.

Disposal. In accordance with 30 Texas Administrative Code § 330.3, defined as “The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater”.

Disposal Site or Facility. All contiguous land, structures, other appurtenances, and improvements on the land that is licensed and permitted, as required by all governmental bodies having jurisdiction, for disposing of Solid Waste. A Disposal Site may be publicly or privately owned and may consist of several Disposal operational units.

Dumpster. A watertight receptacle, with a capacity of approximately two (2) cubic yards up to approximately eight (8) cubic yards, equipped with lid and designed to be mechanically dumped into a loader-packer type truck.

Excluded Waste. Hazardous Waste, Special Waste, and Construction or Demolition Waste.

Garbage. In accordance with 30 Texas Administrative Code § 330.3, defined as “Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.”

Generator. Any person or entity that produces Solid Waste.

Green Waste. Grass, leaves, tree trimmings, branches and other items derived from plants. This does not include tree trunks or root balls.

Hazardous Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as “Any solid waste identified or listed as a Hazardous Waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.*, as amended.”

Heavy Trash. Refuse that is of such size and weight that it cannot be placed in a thirty-two (32) gallon container, or if it can be placed into a thirty-two (32) gallon container, its weight exceeds fifty (50) pounds. Heavy trash shall not include items or materials which cannot be safely lifted and placed upon a truck by two (2) people. Heavy trash shall include tree limbs less than four feet (4') in length and loose lumber less than four feet (4') in length provided the aggregate weight of such tree limbs and/or lumber does not exceed two hundred (200) pounds (see “Bundle” definition).

Household Hazardous Waste. Waste that would be chemically or physically classified as Hazardous Waste but is excluded from regulation as a Hazardous Waste pursuant to the regulations of the Environmental Protection Agency because it is generated by a household and generally includes fertilizers, pesticides, paint, paint-related materials, household cleaners, white goods (free of Freon), batteries, thermometers, automotive products, electronics, poop chemicals, aerosol cans, tires, fluorescent bulbs and small propane containers. Household Hazardous Waste does not include business/commercial waste, medical waste (pharmaceuticals, sharps/needles), radioactive waste, PCBs, dioxins, ammunitions, explosives, compressed gas cylinders, smoke detectors.

Light Commercial Unit. A commercial unit generating not more than four (4) ninety-six (96) gallon containers of Commercial Refuse during a calendar week.

May or Should. Not mandatory but permissible.

Refuse. A nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials, combustible rubbish, including paper, rags, cardboard, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish, including glass, crockery, tin cans, aluminum cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F), but not including construction debris.

Resident. A person who resides at a Residential Unit.

Residential Unit(s). An improved property which is used, or capable of being used, for domestic use by a single family, including a single-family dwelling, duplex, fourplex, townhouse, apartment or condominium unit. A Residential Unit shall be deemed occupied when either water or electric services are being supplied thereto. A townhouse, fourplex, duplex, or condominium dwelling, whether of single or multi-level construction, consisting of four or less contiguous or separate single-family Dwelling Units, shall be treated as a Residential Unit, except that each Dwelling Unit within any such Residential Unit shall be billed separately as a Residential Unit. Those Residential Units designated by the CM to be served by a Dumpster or Roll-off Compactor shall not be included in this definition and shall be a Non-Residential Service Unit.

Residential Waste Services. Solid Waste Services, Bulky Waste Services, and Yard Trimmings Services for Residential Units and Light Commercial Units. (See Section 9)

Roll-off. A watertight receptacle, with a capacity of approximately twenty (20) cubic yards up to approximately forty (40) cubic yards, intended to be loaded onto a motor vehicle.

Roll-off Compactor. A Roll-off with a Compactor.

Rubbish. In accordance with 30 Texas Administrative Code § 330.3, defined as “Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, Cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).”

Shall or Must. Mandatory and not merely discretionary or optional.

Solid Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as “Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- (a) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26.
- (b) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- (c) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is Hazardous Waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*)
- (d) Excluded Waste.

Solid Waste Cart. A Cart utilized exclusively for Solid Waste Services.

Solid Waste Services. Collection of Solid Waste and Disposal of Solid Waste at a Disposal Site.

Special Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as “Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and

Disposal to protect human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to human health or the environment. Special wastes are:

- (a) Hazardous Waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to household materials Which Could Be Classified as Hazardous Wastes).
- (b) Class 1 industrial nonhazardous waste.
- (c) Untreated medical waste.
- (d) Municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges.
- (e) Septic tank pumpings.
- (f) Grease and grit trap wastes.
- (g) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f).
- (h) Slaughterhouse wastes.
- (i) Dead animals.
- (j) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste.
- (k) Pesticide (insecticide, herbicide, fungicide, or rodenticide).
- (l) Discarded materials containing asbestos.
- (m) Incinerator ash.
- (n) Soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices).
- (o) Used oil.
- (p) Waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter.
- (q) Waste generated outside the boundaries of Texas that contains:
  - a. any industrial waste.
  - b. any waste associated with oil, gas, and geothermal exploration, production, or development activities; or
  - c. any item listed as a special waste in this paragraph.
- (r) Lead acid storage batteries; and
- (s) Used-oil filters from internal combustion engines.

Unit. Residential and Non-Residential Units that qualify for services

Work. The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion this Agreement and the carrying out of all duties and obligations imposed by this Agreement.



Yard Trimmings or Yard Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as “Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.”

## **Section 2. Scope of Services**

The Work to be done shall consist of providing Solid Waste Services (as defined above) which includes the collecting, processing and/or disposing, at its own cost and expense, all Solid Waste (including Garbage, Refuse, Rubbish and Heavy Trash), and Green Waste collected from every Residential, Light Commercial and Commercial Units within the corporate limits of the City as the present and future boundaries exist. CONTRACTOR shall also provide two (2) Community Household Bulky Waste collection events per year at a centralized location specified and provided by the City.

## **Section 3. Vehicles and Equipment**

1. CONTRACTOR shall provide and maintain a fleet of solid waste collection vehicles and equipment sufficient in number and capacity to perform the work and render the services required by this contract during peak and non-peak seasons. CONTRACTOR shall provide, at all times, well-maintained vehicles and equipment and keep them in good repair, clean and sanitary, and free of leaks and excessive emissions. CONTRACTOR shall contain, enclose, or tie all waste and refuse in a manner that prevents spilling, leaking or blowing. CONTRACTOR shall be responsible for immediate cleanup of all leakage, spillage, and blown debris resulting from equipment in compliance with all laws and manufacturers' specifications. CONTRACTOR'S name and telephone number shall be clearly marked on both sides of each vehicle or equipment.
2. All Dumpsters and Roll-off Containers shall be maintained by CONTRACTOR in good condition. Dumpsters will be changed, as needed, to maintain all health and safety concerns, free of charge. All other container movement will be as agreed by the CONTRACTOR and Customer. All Roll Off loads must meet TxDOT weight requirements.

## **Section 4. Collection Schedule and Frequency**

1. Residential Collections: CONTRACTOR shall schedule all residential collections by zone on either a Monday/Thursday or a Tuesday/Friday cycle. No residential collection shall be made on Saturdays or Sundays unless CONTRACTOR is directed to do so by the City. Residential Services shall occur between 7:00 a.m. and 7:00 p.m. on the scheduled collection day(s). CONTRACTOR shall pick up Heavy Trash/Bulky Waste monthly based on four (4) zones each Wednesday.
2. Light Commercial Collections: CONTRACTOR shall discuss with each light commercial unit its collection days and frequency. No commercial collection will be made prior to 7:00 a.m. if such collection is in or adjacent to a residential neighborhood.
3. Commercial Collections: CONTRACTOR shall schedule commercial collection at least once a week for Solid Waste (excluding Heavy Trash) and Green Waste, all to be contained within a dumpster. Collection of Commercial Heavy Trash and Bulky Waste is based on a price negotiated between the Contractor and the Commercial Customer.

**Section 5.  
Collection Days and Routing**

1. Collection shall occur in a routine manner following established routes.
2. CONTRACTOR shall submit route maps to the City thirty (30) days prior to implementation of service. Maps will detail each collection route for Residential Collections. CONTRACTOR shall create routes based on customer needs for Light Commercial and Commercial Collections. Should a routing schedule change be approved, CONTRACTOR shall notify Customers in the affected area of the change in schedule or routing and the anticipated effect on the collection time.
3. CONTRACTOR shall collect all items placed at the curb that are included in the Residential Waste Services on the first pass by of the Customer. CONTRACTOR may, in its sole discretion, reject any Excluded Waste provided by the Customer.

**Section 6.  
Holiday Schedule**

1. CONTRACTOR may observe New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
2. CONTRACTOR shall provide each Customer affected by a holiday at least one collection day during the Holiday week. If a Holiday falls on a Wednesday, Contractor shall adjust schedule if necessary to makeup missed bulk waste pick-up on the following Saturday.

**Section 7.  
Customer Service Office**

1. CONTRACTOR shall provide and staff an office facility to receive customer calls and to provide face to face service.
2. CONTRACTOR shall maintain a telephone line to receive customer complaints, request or comments from 8:00 AM until 5:00 PM, local time, Monday through Friday.
3. CONTRACTOR shall maintain an internet email address to receive complaints, request or comments from customers.

**Section 8.  
Performance Standards**

CONTRACTOR and employees shall adhere to the following performance standards:

1. Garbage/refuse containers shall be replaced upright within two (2) feet of Customer's placement without obstructing traffic, driveways or damaging landscaping.
2. Dumpsters, Roll-offs and Compactors shall be replaced upright within eighteen inches (18") of the Customer's placement (request), without obstructing traffic or damaging landscape but allowing for accessible pick-up by CONTRACTOR.
3. CONTRACTOR shall not leave loose material, which during collection may fall in the streets or property of Customers and will collect any loose material that is generated during the collection operations.

4. CONTRACTOR shall maintain a consistent route schedule and comply with provisions related to hours of service.
5. Collection schedules shall be consistently performed as to morning or afternoon collection times.
6. Drivers are expressly forbidden to use their emergency brake to stop a moving vehicle, except in cases of emergencies.
7. CONTRACTOR will not use vehicles that leak oil, hydraulic fluid or other substances, or present an unhygienic or unsafe appearance.
8. CONTRACTOR shall propose and implement measures to prevent spillage with the mode of collection (automated/semi-automated) used by the CONTRACTOR and CONTRACTOR shall pick up any spillage caused by CONTRACTOR or its employees.

### **Section 9. Collections**

It is hereby agreed, understood and contracted that CONTRACTOR shall perform the following acts:

1. Residential Units: CONTRACTOR shall collect and dispose of Solid Waste (excluding Heavy Trash) placed in garbage and refuse containers from each Residential Unit not exceeding sixty-five (65) gallon in size at least twice a week. Upon request from a residential customer, additional carts shall be provided for an additional monthly fee. CONTRACTOR shall collect and dispose of Green Waste from each Residential Unit placed in bags of adequate strength, and that branches, brush and similar woody material are bundled and tied in lengths not exceeding four feet (4') or having diameters not exceeding eighteen inches (18"), or overall weight exceeding fifty pounds (50 lbs.) at least once a week, except for emergencies resulting from force majeure events or Acts of God or when notified by the City to not pick up due to delinquent payment. Residents are limited to six (6) items per service day. CONTRACTOR shall provide all containers for use by all residential units, which containers shall allow Solid Waste and Green Waste to be contained, tied or enclosed so that leaking, spilling or blowing can be prevented.  
  
CONTRACTOR shall collect and dispose of Bulky Waste/Heavy Trash (including Household Appliances) from each Residential Unit at least once a month. Household appliances shall mean furniture, washing machines, dryers, stove and the like (excluding refrigerators, freezers, televisions, and computers). Residents are limited to five (5) cubic yards of Bulky Waste/Heavy Trash generated from their residence monthly. Bulky Waste/Heavy Trash exceeding the five (5) cubic yard limit shall be charged an additional fee per cubic yard over the 5 cubic yard limit, which shall be determined and evidenced by the CONTRACTOR.
2. Light Commercial Units: CONTRACTOR shall collect and dispose of Solid Waste (excluding Heavy Trash) at least once a week. CONTRACTOR shall collect and dispose of Green Waste from each Light Commercial Unit at a frequency of no less than once a week. The total amount of Solid Waste (excluding Heavy Trash), or Green Waste from any Light Commercial Unit may not exceed four (4) ninety-six (96) gallon containers per week. CONTRACTOR shall provide all containers for

use by all light Commercial Units, which containers shall allow Solid Waste and Green Waste to be contained, tied or enclosed so that leaking, spilling or blowing can be prevented.

3. Commercial Units: CONTRACTOR shall collect and dispose of Solid Waste and Green Waste from each Commercial Unit within the City. CONTRACTOR'S collection frequency shall occur according to directive of the Customer. CONTRACTOR shall provide all containers for use by all Commercial Units, which containers shall allow to be Solid Waste and Green Waste to be contained, tied or enclosed so that leaking, spilling or blowing can be prevented. Commercial Units upon or within which food is prepared, processed or served shall be provided collection services not less than twice weekly, except with the written permission from the CM or his designee. CONTRACTOR shall not place dumpsters on City right-of-way without the written permission from the CM or designee.
4. City Facilities: CONTRACTOR shall collect and dispose of Solid Waste and Green Waste and at all City Facilities as requested by the City. Solid Waste and Green Waste at each site shall be placed in bins or dumpsters provided by the CONTRACTOR. A list of City Facilities is attached and incorporated as Exhibit A. These services shall be at no cost to the City excluding Roll-off Services. CONTRACTOR shall provide up to fifteen (15) Roll-offs with a capacity of thirty (30) cubic yards to the City upon request during each calendar year at no cost to the City.
5. Special Collections and Services: Upon written request and/or reasonable verbal notice from City, CONTRACTOR shall collect and dispose of Solid Waste and perform similar services resulting from Special Events. Such events shall be civic oriented and will be held at various places and at various times of the year. Services for events may include carts, dumpsters and trash boxes. This service shall be of no cost to the City limited to up to three (3) events per year.
6. Community Bulky Waste Collection: CONTRACTOR shall provide a minimum of two (2) community bulky waste collection event per year on agreed upon Saturdays at a location specified and provided by the City whereby CONTRACTOR shall accept Household Bulky Waste from residents and employees of the City. CONTRACTOR shall organize and implement all details of the event, including complying with all applicable Federal, State and local laws in conducting the event and in the packaging, removing and disposing of all waste collected. CONTRACTOR agrees to remove and clean up any spill or other release of waste collected at the event and to restore the affected event site facilities to their original condition. The City agrees to assist with the event by providing street barriers for traffic control and by supplementing CONTRACTOR'S advertising with information posted on the City's website and social media accounts. All appliances that contain Freon must include a certification that all Freon has been removed by a certified technician.

#### **Section 10. Customer Rates**

Subject to adjustments described in Section 11, CONTRACTOR shall perform Scope of Services identified in this Agreement in accordance with the rate schedule, attached and incorporated as Exhibit B. Upon the second anniversary of the effective date of this contract, the rate schedule shall be updated annually based on the CPI Adjustment. and the Fuel Adjustment. An updated Exhibit B shall be incorporated into the Agreement at the start of each new year. For all Residential Customers and Light Commercial Customers, the City shall bill the Customers directly, collect all customer fees and compensate CONTRACTOR according to the rate schedule in Exhibit B. For all Commercial Customers, CONTRACTOR shall bill the Customer directly and collect all customer fees, sales tax amounts and franchise fees and remit the required amounts to the City within the required timeframe.

**Section 11.**  
**Annual Customer Rate Adjustment**

1. CPI Adjustment: Following the second year of the agreement and each year thereafter, the City shall automatically adjust the base rate for all Customers. The rate of adjustment (hereinafter "CPI Adjustment") shall equal 75% of the Consumer Price Index-All Urban Consumers from the previous calendar year as published by the United States Department of Labor, Bureau of Statistics. The CPI Adjustment shall be calculated before any Fuel Adjustment calculation or other rate adjustment calculation.
2. Fuel Adjustment: Following the second year of the agreement and each year thereafter, the City shall also automatically adjust the base rate for all Customers based on changes in diesel fuel prices on January 1<sup>st</sup> of the current year and in accordance with the Fuel Schedule, attached and incorporated as Exhibit C. The rate of fuel adjustment (hereinafter "Fuel Adjustment") shall be as determined by reference to the Energy Information Administration of the US Department of Energy's ("EIA/DOE") Weekly Retail on Highway Diesel Prices for the Gulf Coast and Exhibit C. The City shall round the fuel adjustment rate to the nearest cent. The EIA/DOE currently publishes diesel fuel prices on their website.

**Section 12.**  
**Franchise Fees and Remuneration**

1. For Residential and Light Commercial Units: The City shall bill Residential and Light Commercial Units directly. The City shall pay CONTRACTOR on a monthly basis; such remittance to be received by the CONTRACTOR by the 15th of the month following the month service was rendered. The parties agree that the remittance shall be based on the number of Residential and Light Commercial Units billed by the City for the month of service that was rendered. The City shall use the billing reports ending on the last day of the preceding month in order to determine the total number of Residential Units.
2. For Commercial Units: CONTRACTOR shall bill Commercial Unit Customers directly. CONTRACTOR shall remit to the City a monthly franchise fee of ten percent (10%) within twenty-five (25) days of previous service month. The franchise fee will be calculated based on the gross Commercial revenues (excluding sales tax and the franchise fee itself) generated in the City from all Commercial Units. The franchise fee is subject to adjustment by the City during the term of this Agreement. In addition, CONTRACTOR shall supply a report showing the gross revenues collected and used for calculating the franchise fee. Report shall also include a listing of dumpsters, roll off containers, and any other collections by size, frequency, company name, location address and any other pertinent information.

**Section 13.**  
**Safety**

CONTRACTOR shall perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with Occupational Safety and Health Administration (OSHA) and other laws, as they apply to its employees. CONTRACTOR shall be responsible for instructing its employees concerning safe working habits and shall be responsible for compliance with all OSHA regulations.

#### **Section 14. Insurance**

CONTRACTOR shall comply with every condition contained herein. CONTRACTOR shall provide and maintain the minimum insurance coverage set forth below during the term of this Agreement with the City. Policy must be with an insurance company or companies with an A -rated, best -rated or better, licensed to write such insurance in the State of Texas.

1. Commercial General Liability Insurance, at minimum combined single limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent successful proposers, and contractual liability each at \$500,000 per occurrence. Coverage must be written on an occurrence form.
2. Automobile liability insurance shall be no less than \$1,000,000 combined single limit each accident for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.
3. Policies shall be endorsed to provide the City of Freeport a thirty-(30) day notice of cancellation, material change in coverage, or non-renewal of coverage. Applicable policies shall also be endorsed to name the City of Freeport as an additional insured on General Liability and Auto.
4. Waiver of Subrogation, in favor of the City, with respect to General Liability, Auto and Workers' Compensation (or equivalent).
5. Workers' Compensation Insurance (or equivalent) at statutory limits, including employer's liability coverage at minimum limits. In addition to these, the Proposer must meet each stipulation required by the Texas Workers Compensation Commission; (Note: if you have questions concerning these requirements you should contact the TWCC at (512) 440-3789).

#### **Section 15. Ownership of Waste**

Title to Solid Waste shall pass to CONTRACTOR when placed in CONTRACTOR'S collection vehicle, removed by CONTRACTOR from a Cart, Dumpster or Roll Off, or removed by CONTRACTOR from the customer's premises, whichever last occurs. CONTRACTOR shall not be required to collect or dispose of any materials or substances that may not lawfully be disposed of at a Type I or Type IV Landfill permitted by the Texas Commission on Environmental Quality. Title to and liability for Excluded Waste shall not pass to CONTRACTOR.

#### **Section 16. Spillage**

It is understood and agreed that CONTRACTOR shall not be required to clean up, collect or dispose of any loose or spilled Solid Waste not caused by CONTRACTOR rendering of the Services, or be required to collect and dispose of any excess Solid Waste or Green Waste placed outside of the Containers by any Customers. CONTRACTOR may report the location of such conditions to the City so that the City can issue proper notice to the Customer instructing the Customer or occupant to properly

contain such Solid Waste and/or Green Waste. Should excess Solid Waste and/or Green Waste continue to be placed outside the Containers, the City may require the Customer to increase the frequency of collection of such or require Customer to utilize a Container with sufficient capacity so that the excess Solid Waste and/or Green Waste will be regularly contained. CONTRACTOR shall be compensated for these additional services and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

**Section 17.  
Litter and Odor Control**

It is understood and agreed that CONTRACTOR shall clean up any litter larger than three inches (3") within a ten-foot radius of Collection Area caused by the provision of services. Collection equipment shall be maintained as to prevent odors. CONTRACTOR shall routinely clean collection equipment to maintain a standard of cleanliness.

**Section 18.  
Disposal Site**

CONTRACTOR shall dispose of all Solid Waste and Green Waste collected under this Agreement at a permitted Disposal Site. The Disposal Site shall be licensed and permitted as required by all governmental bodies having jurisdiction for disposing of solid waste.

**Section 19.  
Personnel**

CONTRACTOR shall provide all personnel required to perform the scope of services during the term of this Agreement, including the following:

1. CONTRACTOR shall provide 24-hour representative that is authorized to make decisions and act on its behalf, accessible to the City twenty-four (24) hours a day.
2. CONTRACTOR will hire and maintain Qualified personnel to provide the scope of services, including an operation manager.
3. CONTRACTOR will hire personnel who normally or regularly come into direct contact with the public. CONTRACTOR shall ensure such personnel bear some means of individual identification, such as uniform with name badges, name tags, or identification cards.
4. CONTRACTOR shall ensure all appropriate personnel have a valid commercial driver's license.
5. CONTRACTOR shall retain any necessary temporary labor; and
6. CONTRACTOR shall require that all personnel shall serve the public in a courteous and helpful manner. The City may require that any personnel that is discourteous, belligerent, profane, or in any way intimidating toward Customers be barred from further work under this Agreement.

**Section 20.  
Subcontractors**

1. CONTRACTOR shall not subcontract any task under the Agreement without the written consent of the City except for the Roll-off Services with will be provided by Waste Masters of Texas. CONTRACTOR shall submit a list of any additional potential subcontractors for advance approval of the City.
2. Subcontractors shall be considered employees of CONTRACTOR under the terms of this Agreement. CONTRACTOR shall properly supervise and instruct subcontractor to assure that the subcontractor complies with all requirements of this Agreement in performing any work hereunder.

**Section 21.  
Recordkeeping and Reporting**

CONTRACTOR shall be responsible for maintaining and submitting electronic monthly and annual reports to the City. Monthly reports shall be submitted to the City no later than thirty (30) days following the end of the reporting period. All records shall be available to City at reasonable times and places throughout the Agreement and for a period of five (5) years after last or final payment. Reports will have information specified below and be in electronic format:

1. Document solid waste and bulky waste tonnage delivered to disposal facility.
2. Document commercial collection activity by container size and frequency of pick up.
3. Document complaints, requests and comments, on a daily basis, including the address, time and date for each and the reason, and resolution.
4. Such other documents and reports, as the City may reasonably require, to verify compliance with the Agreement or to meet the City's reporting requirements.
5. Other recordkeeping and reporting requirements as agreed upon by City and CONTRACTOR; and
6. Detailed commercial billings, collections and franchise fees assessed in Excel format.

**Section 22.  
Complaints**

1. CONTRACTOR shall manage customer complaints, including incoming phone calls, and emails addressing concerns, and resolving issues.
2. All Customer complaints about services shall be made and routed directly to CONTRACTOR and shall be given prompt and courteous attention.
3. CONTRACTOR shall resolve all complaints within twenty-four (24) hours of receipt of such complaint and report monthly to City.
4. In the case of alleged missed collections, CONTRACTOR shall make every effort to collect the material on the same day; but it must be collected within one business day after the complaint is received.
4. Any complaint from a Customer that is not resolved to Customer's satisfaction may be managed by the City. CM shall contact CONTRACTOR to review the complaint. CONTRACTOR shall have five (5) business days from the date CM contacted them to review the complaint to



demonstrate that the complaint was resolved consistent with the performance standards outlined in this Agreement. If CONTRACTOR cannot demonstrate that it met the performance standards outlined in this Agreement within the five (5) business day period, then the complaint shall be considered by the City to be unresolved, and the City shall have the authority to assess liquidated damages on CONTRACTOR. CONTRACTOR may appeal any liquidated damages assessment to the City Manager in writing within five (5) business days of the date of the decision of the CM. The City Manager's decision shall be final.

### **Section 23 Termination**

1. Termination by the City: The City may terminate the Agreement in the event of default by CONTRACTOR and failure by CONTRACTOR to cure such default after receiving notice thereof, as provided in this subsection. Default by the CONTRACTOR shall occur if CONTRACTOR fails to observe or perform all of its duties under this Agreement. Should such a default occur, the City may deliver a written notice to CONTRACTOR describing such default and the proposed date of termination. Such date may not be sooner than sixty (60) days following receipt of the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If, thirty (30) days prior to the proposed date of termination, CONTRACTOR cures such default to the satisfaction of the City, the proposed termination shall be ineffective. If CONTRACTOR fails to cure such default to the satisfaction of the City prior to the proposed date of termination, this Agreement is deemed terminated on such date.
  - a. The following, by way of example but not limitation, may be considered grounds for cancellation, in whole or part:
    - Failure of CONTRACTOR to perform or observe any of the obligations, agreement, and conditions required to be performed or observed.
    - Failure of the CONTRACTOR to commence work operations within the time specified in the Agreement.
    - Failure of the CONTRACTOR to provide and maintain sufficient labor and equipment to properly execute working operations.
    - Evidence that the CONTRACTOR has abandoned the work.
    - Evidence that the CONTRACTOR has become insolvent, bankrupt, or otherwise financially unable to carry out the work satisfactorily.
    - Failure on the part of the CONTRACTOR to comply with the terms of the Agreement or any requirements given by the City provided for in this document; or
    - Indication that the CONTRACTOR has made an unauthorized assignment of the Contract or any funds due there from for the benefit of any creditor or for any other purpose.
  - b. Upon the effective date of termination as contained in the notice, CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue all service in connection with this Agreement.

- c. Within thirty (30) days after the date of termination, CONTRACTOR shall submit a statement to the City showing in detail the services performed under this Agreement to the date of termination. The City agrees to compensate CONTRACTOR for that portion of the prescribed charges for which the services were actually performed under this Agreement and not previously paid.
  - d. In addition to, or in lieu of, the termination procedure set forth above, the City may take any or all of the following actions in the event of a default by CONTRACTOR:
    - The City determines and notifies CONTRACTOR such default poses an immediate threat to the health or safety of any person or to any property interest, and if CONTRACTOR has not cured such default within twenty-four (24) hours after receipt of such notice, the City shall have the right to perform or cause to be performed all or part of the work necessary to cure such default. In the event that the City performs such work, or caused it to be performed, CONTRACTOR shall compensate the City for cost thereof. The City shall have the right to deduct any such compensation due to the City from any sums otherwise due and owing CONTRACTOR.
    - The City may withhold all or part of any sums which would otherwise be due to CONTRACTOR, but which relate to such default, either until such time as such default is cured or if such default cannot be cured, forever.
    - In the event that CONTRACTOR shall fail to perform any of the material provisions of this CONTRACT, the City shall promptly notify the CONTRACTOR of its noncompliance, stating with particularity the facts relating thereto and the period of time CONTRACTOR has to comply. Thereafter, if the event or condition is not corrected or otherwise made to comply with the terms of this Agreement within the period of time specified by this section 25 (1), the same shall constitute an act of noncompliance; or
    - The City may seek reasonable damages and/or attorneys' fees (if damages have been incurred) for breach of agreement and apply the cash bond proceeds to said claims.
2. Termination by CONTRACTOR: CONTRACTOR may terminate its performance under this Agreement only in the event of default by the City and a failure by the City to cure such default after receiving notice thereof. Default by the City shall occur if the City fails to observe any of its material duties under this Agreement. Should such a default occur, CONTRACTOR may deliver a written notice to the City describing such default, specifying the provisions of the Agreement under which CONTRACTOR considers the City to be in default, giving sufficient details of the alleged breach to enable the City to cure and the proposed date of termination. Such date may not be sooner than sixty (60) days following receipt of the notice. CONTRACTOR, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the City cures such default, then the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, CONTRACTOR may terminate its performance under this Agreement as of such date.

**Section 24.  
Sales Tax**

CONTRACTOR agrees to provide the City with adequate assurance that all sales taxes collected in Freeport by CONTRACTOR will be deposited with the State.

**Section 25.  
Liquidated Damages, Licenses, Permits**

1. **Liquidated Damages:** In the event CONTRACTOR breaches its obligations under this agreement, the City and CONTRACTOR agree that the damages that the City will incur are and will be impractical and extremely difficult (if not impossible) to establish. In a reasonable effort to ascertain the City's damages, the City and CONTRACTOR have agreed that the damages listed in the schedule below are a reasonable forecast of just compensation for the damages the City will incur and are not penalties. CONTRACTOR shall have the right to appeal an assessment of liquidated damages to the City Manager. CONTRACTOR shall notify the City Manager of an appeal within ten (10) business days of receipt of the liquidated damage assessment.

Omission/Incident	Amount of Liquidated Damages
Commencement of collection prior to 7:00 a.m. except as expressly permitted herein	\$50 per incident (each truck on each route is one incident)
Failure to clean-up and collect Contractor caused spillage	\$50 each incident to a maximum of \$500 per truck per day for Cart or Container
Failure to complete a City residential block. An incomplete block is where more than five houses within the same block for either trash or bulk are not collected and not reported to the City with just cause.	\$50 per incident
Days incomplete. Days are incomplete if more than four blocks are not collected on the scheduled day and not reported to the City with just cause.	\$500 when not completed on the scheduled day; \$1500 when incomplete days are not recovered by the next calendar day
Failure to deliver or replace Garbage Carts for any reason with (5) business days of notification	\$10 per container per incident
Any collection misses, at the same address, within one year after Contractor's receipt of 2nd notice regarding no collection	\$50 per incident
Failure to submit complete and accurate monthly and annual reports by specified deadlines	\$100 each

2. **Licenses and Permits:** CONTRACTOR shall obtain and pay for all licenses, permits and certificates required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of CONTRACTOR'S operation herein.

**Section 26.**  
**Term of Agreement; Geographic Boundaries**

1. The term of this Agreement shall be for a period of seven (7) years, commencing on February 1, 2022, and concluding on January 31, 2029.
2. At the expiration of the term of this Agreement, the City shall have the option to extend this Agreement for one (1) additional period of three (3) years provided that the City provides the CONTRACTOR with written notice of its intent to extend this Agreement at least 180 days prior to the expiration date of the Agreement, (January 31, 2029), by registered mail, return receipt requested, and CONTRACTOR has not provided prior written notice of its intent to terminate at least 180 days prior to expiration of the initial five year term of this Agreement (January 31, 2029).
3. If CONTRACTOR provides prior notice of termination for such purposes, or if the City fails to exercise its option to extend this Agreement for an additional three-year term, this Agreement will cease to be renewed and will terminate on January 31, 2029, unless terminated early as provided herein. The City reserves the option to renew this Agreement for up to three (3) additional three (3) year terms in accordance with the provisions of this Agreement.
4. CONTRACTOR shall have the sole and exclusive right, license, and privilege to provide the services provided for in this Agreement within the geographic boundaries of the City, as those boundaries exist on the date of this Agreement. If the City annexes additional land into its corporate limits during the term of this Agreement and the annexed land has or will require such services, CONTRACTOR shall, upon written request of the City, provide such services for the annexed land in accordance with the terms and conditions of this Agreement.
5. In no event shall any person be permitted to independently contract for the collection of any solid waste excluding waste from Industrial units and waste resulting from State or Federal declared disasters.

**Section 27.**  
**Impediments**

CONTRACTOR shall only be responsible for providing Solid Waste service to Customers whose Carts, Dumpsters, or Compactors are accessible to CONTRACTOR. If there is an impediment to collection, such as house repair/construction, street repair/construction, vehicles parked in the street, utility repair/construction, CONTRACTOR shall notify the City of any such impediment including specific locations. CONTRACTOR shall be required to put forth a good-faith effort to collect all Solid Waste.

**Section 28.**  
**Silence of Specifications**

The apparent silence of these specifications as to any detail or the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretation of these specifications shall be made on the basis of this statement.

**Section 29.**  
**Force Majeure**

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended, and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not limited to, acts of God, acts of war, accident, explosion, fire, riots, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations. In the event of a natural disaster or terrorist act, CONTRACTOR and the City shall negotiate the payment to be made to CONTRACTOR. Further, when the parties reach such agreement, the City shall grant CONTRACTOR variances in routes and schedules, as deemed necessary.

**Section 30.  
Governing Law**

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement and venue for any legal action or proceeding arising under or relating to the Agreement herein shall lie exclusively in Brazoria County, Texas. CONTRACTOR agrees that the City has not, and does not, waive any immunities or exemptions, defenses, or sovereign immunity, to which the City, its officers and employees, are entitled by law.

**Section 31.  
INDEMNITY AND RELEASE**

**CONTRACTOR ASSUMES ALL RISKS OF LOSS OR INJURY TO PROPERTY OR PERSONS CAUSED BY ITS WILLFUL OR NEGLIGENT ACTS OR OMISSIONS IN THE PERFORMANCE OF THE SERVICES. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) CAUSED BY A WILLFUL OR NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS AND EMPLOYEES. HOWEVER, CONTRACTOR SHALL NOT BE LIABLE FOR ANY LEGAL PROCEEDINGS CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES AND ATTORNEYS' FEES CAUSED BY AN EXCLUSIVELY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS.**

**CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES,**

**RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE FIRM'S WORK TO BE PERFORMED HEREUNDER.**

**THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE AND REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY INSURANCE AND REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY RELEASED HEREUNDER, THE FIRM, OR ANY THIRD PARTY.**

**Section 32.  
Severability**

In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition herein contained, provided that such invalidity does not materially prejudice either CONTRACTOR or the City in their respective rights and obligations contained in the valid terms, covenants, or conditions herein.

**Section 33.  
Entire Agreement**

This Agreement constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Agreement.

**Section 34.  
Third Parties**

Nothing contained in the Agreement shall be constructed to provide rights to third parties.

**Section 35.  
Notices**

All notices and reports required to be given hereunder shall be deemed given to the parties when mailed, postage prepaid, to the parties following the respective addresses:

When to the City: City of Freeport  
200 W Second St  
Freeport, TX 77541  
Attn: City Manager

When to the CONTRACTOR: AmeriWaste Solutions, Inc.,  
P.O. Box 2074  
Alvin, Texas 77512  
Attn: President

**Section 36.  
Exhibits**

- Exhibit A – Schedule of City Facilities
- Exhibit B – 2022-2023 Rate Schedule
- Exhibit C – Fuel Schedule

In witness hereof, CONTRACTOR and the CITY have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**AMERIWASTE SOLUTIONS, INC.**

\_\_\_\_\_  
Janell Marin, President

**CITY OF FREEPORT, TEXAS (the “City)**

\_\_\_\_\_  
Brooks Bass, Mayor

Attest:

\_\_\_\_\_  
Betty Wells, City Secretary

Approved as to form:

# Exhibit A

## City Facilities

1. Bryan Beach – (2) 20 Yard Roll Off Containers
2. Public Works – 510 S Ave A - (2) 20 Yard Roll Off Containers
3. Public Works – 510 S Ave A – (2) 20 Yard Roll Off Containers - Recycling
4. Old Police Department – Ave A & Division – (1) Roll Off Container
5. FCH – 110 Skinner – 6 Yard Dumpster
6. FMP – 421 N Brazosport Blvd – 6 Yard Dumpster
7. Velasco House – 110 Skinner – 6 Yard Dumpster
8. Riverside Park – 1200 N Ave B – 6 Yard Dumpster
9. SFA Park – 1300 Ave M – 6 Yard Dumpster
10. Police Department – 430 N Brazosport Blvd – 6 Yard Dumpster
11. Fire Station 1 – 101 E 4<sup>th</sup> St – 6 Yard Dumpster
12. City Hall – 200 W 2<sup>nd</sup> St – 6 Yard Dumpster
13. Golf Course – 830 Slaughter Rd – 6 Yard Dumpster
14. Recreation Center – 803 Mystery Ln – 6 Yard Dumpster
15. Museum – 311 E Park Ave - Polycart



# Exhibit B

## 2022-2023 Rate Schedule

(NO SALES TAX OR FRANCHISE FEES INCLUDED)

### RESIDENTIAL SOLID WASTE COLLECTION RATES (1) 65 Gallon Cart provided per Residential Unit

\$17.50	Rate per Residential Unit
\$7.10	Per Additional Cart
\$30.00	Bulk waste in excess of 5 cy monthly limit

### LIGHT COMMERCIAL SOLID WASTE COLLECTION RATE

Container Size	Weekly Collection Frequency			
	2	2nd Cart	3rd Cart	4th Cart
96-gallon cart	\$32.50	\$24.37	\$16.25	\$16.25

### COMMERCIAL DUMPSTER FEES

Container Size	Weekly Collection Frequency						
	1	2	3	4	5	6	7
2 CY	\$61.42	\$100.66	\$139.90	\$179.14	<del> </del>	<del> </del>	<del> </del>
4 CY	\$83.86	\$127.87	\$171.91	\$219.10	<del> </del>	<del> </del>	<del> </del>
6 CY	\$103.73	\$165.48	\$216.27	\$282.54	\$349.07	\$405.60	<del> </del>
8 CY	\$112.25	\$195.40	266.07	\$348.75	\$421.42	\$494.09	<del> </del>

### City of Freeport – Roll-off Fees (inclusive of delivery, haul, and disposal)

<b>20 Yard</b>	<b>\$350.00</b>
<b>30 Yard</b>	<b>\$450.00</b>
<b>40 Yard</b>	<b>\$550.00</b>

# Exhibit B

## 2022-2023 Rate Schedule

(continued)

### ROLL-OFF CONTAINER FEES

Roll-Off Size	Haul Rate (does not include disposal)
20 CY	\$365.00
30 CY	\$390.00
40 CY	\$440.00

### COMPACTOR CONTAINER FEES

Size	Haul Rate (does not include disposal)
20 CY	\$435.00
30 CY	\$485.00
35 CY	\$535.00
40 CY	\$585.00
42 CY	\$635.00

### MISCELLANEOUS FEES

Roll-off delivery – one-time charge	\$100.00	per delivery
Roll-off Rental Fee	\$100.00	per month
Roll-off Rental Fee	\$3.00	per day
Dry Run Fee	\$175.00	
Tire Disposal Fee	\$15.00	per tire
Disposal Rate Type I Landfill per ton	\$38.00	per ton
Disposal Rate Type IV Landfill per CY	\$17.50	per cubic yard

# Exhibit C

## Fuel Schedule

<b>Fuel Fee Structure</b>				
Adjustment Period				
Once/Quarter (1st day of Qtr)				
	Feb/May/Aug/Nov		com/CY	ind/haul
	every \$0.25 decrease thereafter additional			
	\$0.42	\$0.66	(\$0.10)	(\$2.00)
	\$0.67	\$0.91	(\$0.50)	(\$14.00)
	\$0.92	\$1.16	(\$0.40)	(\$12.00)
	\$1.12	\$1.41	(\$0.30)	(\$10.00)
	\$1.42	\$2.41	(\$0.20)	(\$8.00)
			(\$0.10)	(\$6.00)
base price (6-5-17 EIA)	\$2.42	\$3.41	\$0.00	\$0.00
	\$3.42	\$3.66	\$0.10	\$6.00
	\$3.67	\$3.91	\$0.20	\$8.00
	\$3.92	\$4.16	\$0.30	\$10.00
	\$4.17	\$4.41	\$0.40	\$12.00
	\$4.42	\$4.66	\$0.50	\$14.00
	every \$0.25 increase thereafter additional			
			\$0.10	\$2.00



## City Council Agenda Item # 14

**Title:** Consideration of approving Resolution No. 2021- 2726. Authorizing the mayor to sign an amend to an economic development agreement with the Cundieff Family Partnership

**Date:** December 6, 2021

**From:** Tim Kelty, City Manager

**Staff Recommendation:**

Staff recommends approval of the resolution and amending the Economic Development Agreement.

**Item Summary:**

This amendment grants Mr. Cundieff up to 90 additional days to install the required 5 decorative street lights, and requires that the sidewalk for each platted lot shall be constructed on or before completion of each residential structure on said lot.

**Background Information:**

City Council approved a 380 Economic Development Agreement with the Cundieff Family Partnership LTD a year ago. According to that agreement, the Cundieffs would plat and develop a 9-lot subdivision on Second Street, doing all necessary grading and dirt work, and installing all necessary public infrastructure as proposed. At this point all grading and infrastructure has been completed with the exception of Installation of 5 street lights and the 5-foot sidewalk.

The Decorative light poles and lamps have been ordered but supply chain issues have slowed delivery. Additionally, they have requested that the sidewalks be allowed to be installed upon completion of each home so that it is not damaged by equipment during construction of each home.

**Special Considerations:**

According to their original Agreement they estimated they would spend \$105,746 for the infrastructure improvements, and would be eligible for reimbursement for a maximum of that amount from incremental revenue resulting from increases to assessed value due to the development. At this point they have turned in receipts documenting \$112,000 already spent, but are not requesting any increase to the original agreed reimbursement maximum.

**Financial Impact:** None

**Board or 3<sup>rd</sup> Party recommendation:**

N/A

**Supporting Documentation:**

Resolution, Agreement, Original agreement approved

**RESOLUTION NO. 2021-2726**

**A RESOLUTION OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; MAKING FINDINGS OF FACT; AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE CUNDIEFF FAMILY PARTNERSHIP, LTD.; PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

**Whereas**, the City of Freeport, Texas, hereinafter "the City," is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

**Whereas**, Chapter 380 of the Local Government Code and the Home Rule Charter of the City authorize the City Council thereof to adopt the provisions of this Resolution; and,

**Whereas**, the City of Freeport executed a development agreement with the Cundieff Family Partnership Ltd. (the Developer) on December 7, 2020; and

**Whereas**, the development agreement contained certain performance requirements and deadlines within the agreement; and

**Whereas**, the Developer has encountered certain material supply delays and seeks to amend the development agreement to accommodate for material supply delays, and also delay other performance deadlines not related to material supply delays; and

**Whereas**, the City Council of the City has determined and does here now declare that the adoption of this resolution is necessary to the health, safety and general welfare of the existing inhabitants of the City by increasing the taxable value of the now vacant land which will be developed and ensuring that the development includes public infrastructure that improves lighting and pedestrian traffic.

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

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The City Council authorizes the Mayor to execute the attached amendment to the development agreement with the Cundieff Family Partnership Ltd.

**SECTION 3.** In the event any section or provision of this resolution is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this resolution and such remaining sections and provisions shall remain in full force and effect.

**SECTION 4. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**SECTION 5.** this resolution shall take effect and be in force from and after its passage and adoption.

READ, PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Betty Wells, City Secretary,  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Christopher Duncan, City Attorney,  
City of Freeport, Texas

**AMENDMENT OF  
ECONOMIC DEVELOPMENT  
AGREEMENT**

STATE OF TEXAS                   §  
  §  
COUNTY OF BRAZORIA         §

This **AGREEMENT** (“Amendment”) is an **AMENDMENT** to the Economic Development Agreement executed on December 7, 2020 by and between the **CITY OF FREEPORT** (the “City”), a Texas home-rule city; **CUNDIEFF FAMILY PARTNERSHIP, LTD** (“Developer”) and **ELLIOTT CUNDIEFF**. (“Guarantor”).

**WHEREAS**, the original Economic Development Agreement referenced above contained certain specific performance requirements and deadlines to be performed by Developer as material conditions to receipt of the economic incentives contained therein; and

**WHEREAS**, Developer has requested a delay of certain deadlines contained therein; and

**WHEREAS**, the City of Freeport agrees to enter into this agreement amending the original economic development agreement granting additional time for Developer to complete certain performance requirements; and

**WHEREAS**, this amendment only affects the specific provisions contained herein, and all other terms of the original economic development agreement remain in full force and effect requiring Developer timely complete the duties and obligations set forth therein.

**NOW, THEREFORE**, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

**ARTICLE I  
RECITALS**

Recitals. The recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.



**ARTICLE II  
AMENDED TERMS**

- A. **Installation of Street Lights**  
Developer is granted an additional 90 days to:

“Install Five (5) streetlights in the public right of way that match the ornamental lighting poles and lighting hardware already installed in the 800 block of Second Street.”

as required in Article II and Article V of the original economic development agreement. The parties agree that the new date of required performance to install streetlights is on or before March 7, 2022.

- B. **Construction of sidewalk**  
Developer shall granted additional time to:

“Construct public sidewalks at a minimum width of five (5) feet wide”

as required in Article II and Article V of the original economic development agreement. Specifically, the required sidewalk for each platted lot shall be constructed on or before the completion of construction of any residential structure on said lot.

AGREED AND EXECUTED on this \_\_\_\_\_ day of December, 2021

**City of Freeport, Texas:**

**Cundieff Family Partnership, Ltd.**

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

\_\_\_\_\_  
Elliot Cundieff, Co-General Partner

**Elliot Cundieff**

\_\_\_\_\_  
Jacqueline Cundieff, Co-General Partner

\_\_\_\_\_  
In his individual capacity as Guarantor

**ATTEST:**

Betty Wells, Clerk

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**ECONOMIC DEVELOPMENT  
AGREEMENT**

STATE OF TEXAS

§

COUNTY OF BRAZORIA

§

§

This **ECONOMIC DEVELOPMENT AGREEMENT** ( "Agreement") is made as of this 7<sup>th</sup> day of December, 2020 by and between the **CITY OF FREEPORT** (the "City"), a Texas home-rule city; **CUNDIEFF FAMILY PARTNERSHIP, LTD** ("Developer") and **ELLIOTT CUNDIEFF**. ("Guarantor").

**WHEREAS**, Developer owns approximately 2.42 acres of real property located within the City of Freeport, located at the 800 Block of West. Second Street, Freeport, Texas. A legal description of said real property is contained in Exhibit "A", attached hereto and incorporated herein. The real property described in Exhibit A shall be referred to as the "Property" in this agreement.

**WHEREAS**, Developer has communicated its plan to replat and develop the Property and to construct public infrastructure on said Property.

**WHEREAS**, the City of Freeport agrees to enter this agreement in reliance upon the written and oral representations of Developer to develop the Property in accordance with his representations.

**WHEREAS**, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, in accordance with Chapter 380, Texas Local Government Code, the City hereby desires to establish such a program to provide incentives and financial assistance to DEVELOPER to encourage and promote the development of the Property thereby enhancing and stimulating business and commercial activity, increasing the tax base and increasing employment within the City; and

**WHEREAS**, DEVELOPER has agreed, in exchange and as consideration for funding by the City in the manner provided herein, to satisfy and comply with certain terms and conditions, including the construction of the Project as defined herein; and

**NOW, THEREFORE**, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

**ARTICLE I**

**RECITALS**

Recitals. The recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

**ARTICLE II**  
**THE PROJECT**

- A. Project. The DEVELOPER agrees to take action and construct the following "Project":
1. Replat the Property;
  2. Conduct all dirt work and other lot preparation to make ready each lot for residential construction;
  3. Grant a utility easement to the CITY along Second Street;
  4. Relocate and construct utility infrastructure, including but not limited to water, sewer, and electric service into the newly granted easement;
  5. Install utility poles and lines within the newly granted Second Street easement exceeding the standard height;
  6. Construct public sidewalks at a minimum width of five (5) feet wide;
  7. Maintain and keep in good condition all trees present on the Property. If a tree dies or is damaged during construction, Developer agrees to replace with the same species of tree in line with the existing trees;
  8. Install Five (5) street lights in the public right of way that match the ornamental lighting poles and lighting hardware already installed in the 800 block of Second Street.
  9. Construct the above improvements and public infrastructure in accordance with Exhibit B (the "Project Plan") attached, which contains drawings of the proposed improvements and public infrastructure, as well as specific standards governing this Project. I.e. specification and location of lights, measurements and standards of sidewalk concrete and soil preparation, height and type of electric poles, compaction and drainage of soil for building sites, location of proposed easement, location and specifications of water and sewer improvements, location of trees etc.
  10. Deed and deliver ownership of all public infrastructure, including but not limited to the utility easement in the location and dimensions acceptable to the City, sidewalks, lighting, water, sewer and drainage improvements. Deed and delivery of the above items will be accepted by the City only after inspection and approval by the City. Deed of the easement shall be made by written document, in a form acceptable to the City and filed with the County Clerk.
  11. Construct and incur all costs to insure connection of existing utilities to adjoining property owners.

The Project is to be constructed in substantial accordance with and incurring the specific costs as set forth in "Exhibit B" (the "Project Plan") attached hereto and incorporated herein for all purposes.

B. Public Purpose. The City finds that the benefits provided by the DEVELOPER and described in this Article 2 promote economic development in the City and stimulate business and commercial activity in the municipality. In consideration of the Economic Development Grant, described below in Article III of this agreement, the DEVELOPER

agrees complete the Project, which will produce the following economic benefits to the City:

1. All sales tax revenues and property tax revenue generated from the Project that exceeds amount of property tax reimbursements contained in this agreement.
2. Addition of public infrastructure that benefits the community at large.

### ARTICLE III ECONOMIC INCENTIVES

A. Economic Development Grant. CITY shall pay to DEVELOPER an economic development grant pursuant to Chapter 380 of the Texas Local Government Code to reimburse "Qualified Reimbursable Expenses" in the amount not to exceed the sum of **One Hundred Five Thousand Seven Hundred Forty-Six and 00/100 Dollars (\$105,746.00)** in the form of Fifteen (15) annual payments ("Economic Development Grant Payments"). The amount of each annual payment shall be equal to Fifty percent (50%) of all property taxes collected by the City of Freeport on the Property in excess of the Base Property Tax Valuation of **Six Hundred Thirty-Four Thousand, Two Hundred Seventy and 00/100 Dollars (\$634,270.00)**. The Base Property Tax Valuation represents the valuation of the property for the tax year of 2019. The first Economic Development Grant Payment shall be made from Annual Property Taxes Collected from the Property for the tax year beginning January 2021. (The First Development Grant Payment shall be delivered to Developer in 2022, after collection of 2021 property taxes).

B. "Qualified Reimbursable Expenses" are defined as actual expenses paid by Developer set forth generally in Exhibit B in the amount not to exceed the sum of **One Hundred Five Thousand Seven Hundred Forty-Six and 00/100 Dollars (\$105,746.00)**. DEVELOPER must submit an itemized request of reimbursable expenses to City within 6 months of the execution of this Agreement. Said itemized request must include proof of payment by DEVELOPER of expenses to third parties, along with an itemized invoice or receipt detailing the expense. The City shall review the request of reimbursable expenses submitted by DEVELOPER, and make a determination whether said expenses are qualified within 90 days of receipt from DEVELOPER.

C. City shall abandon the existing utility easement on the Property by written document, filed with the County Clerk. City shall retain the existing levee easement.

### ARTICLE IV REPRESENTATIONS

A. Representations of the Developer. The Developer hereby represents that:

1. Developer is a duly authorized, partnership created and existing in good standing under the laws of the State of Texas, and is duly qualified and authorized to carry out its obligations

described in this Agreement.

2. Developer has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

3. This Agreement has been duly authorized, executed and delivered by the Developer and, constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

4. The execution, delivery, and performance of this Agreement by the Developer does not require the consent or approval of any person which has not been obtained.

B. Representations of the City. The City hereby represents that:

1. The City is duly authorized, created and existing under the laws of the State of Texas, and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

2. The City has the power, authority and legal right to enter into and perform this Agreement.

3. This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

4. The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

C. Representations and Agreement of guarantor. Guarantor signs in his individual capacity and as personal guarantor of performance of all terms of this agreement. Guarantor agrees to be personally liable for any breach or failure by Developer in this agreement.

D. No partnership or agency created. Each party agrees and represents that the City and the Developer are not agents, partners or venturers of the other with respect to the Project, and that nothing in this Agreement shall be construed to create any such relationship.

## ARTICLE V DEFAULT

A. The following shall constitute an event of default by the Developer

- i. if Developer fails to complete construction of the Public Improvements and the Project within 12 months of the Effective Date of this Agreement;
- ii. if Developer does not complete the construction of the Public Improvements in accordance with the City's standards for construction and requirements contained in Exhibit B;
- iii. if Developer does not perform any other of its obligations hereunder in compliance with this Agreement.

B. In the event of default by the Developer, the City may take the following action:

- i. In addition to the other rights given the City under this Agreement, the City may cease payments hereunder; or
- ii. In addition to the other rights given the City under this Agreement, further seek actual damages incurred by the City for any such default, i.e. the cost to construct public infrastructure not completed by Developer according to the standards set forth in Exhibit B.

C. If the City fails to timely make payments in accordance with this Agreement, the Developer may seek damages for such failure to pay equal to the amount unpaid, plus accrued interest. The Developer shall have no recourse against the ad valorem tax base of the City or any other funds of the parties other than as specified herein or damages relating to nonpayment thereof. The Developer may not compel the City to issue bonds or other ad valorem tax supported debt in order to make the payments required under this Agreement.

D. Any party to this Agreement that believes that the other party this Agreement has defaulted in the performance of any condition, term, or obligation owed to that party under this Agreement shall within ten (10) business days after discovery of said default, give written notice of the default to the defaulting party, specifying in detail the provision or provisions of this Agreement that have allegedly been breached and what specific action must be taken to cure or correct the default. Should the party receiving the notice fail to commence to cure the default within thirty (30) days or such longer period as may be allowed by the non-breaching party, the non-breaching party may suspend this Agreement until such default is cured.

## ARTICLE V MISCELLANEOUS PROVISIONS

Inspections, Audits. Developer agrees to allow for entry on the property and inspection of all work and improvements by City personnel without necessity of administrative warrant or probable cause. Developer further agrees to keep records of all contracts with third party material and labor providers, and receipts and documents showing payment for materials and labor to third party providers with respect to performance of this Project.

Personal Liability of Public Officials, Legal Relations. No director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement.

**Indemnity.** DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY INJURY OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, THE ACTS OF DEVELOPER OR ITS AGENTS OR EMPLOYEES. DEVELOPER SHALL PROVIDE A DEFENSE OF SUCH CLAIMS AT ITS OWN EXPENSE WITH LEGAL COUNSEL APPROVED BY THE CITY.

**Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

**Construction and Interpretation.** Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neutral genders, and vice versa, and (ii) use of the words "including," "such as," or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation," or "but not limited to," are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement or matter.

**Captions.** The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

**Counterparts.** This Agreement may be executed in several counterparts; each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

**Assignability.** DEVELOPER may not assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity unless DEVELOPER receives prior written approval and consent by the City.

**Authority.** As a condition precedent to the approval of an assignment, the DEVELOPER shall provide proof acceptable to the City, that the assignee is in good standing with the Secretary of State and Comptroller of Public Accounts of Texas and is not delinquent in payment of any taxes or other assessments due the State of Texas, Brazoria County, or the City of Freeport on any other property.

**Severability.** If any provision hereof shall be finally declared void or illegal by any court or



administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees. This Agreement may be executed in multiple counterparts

Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and expressly made part of this Agreement as if copied verbatim.

Notice. Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by facsimile, (iii) sent by registered or certified mail, postage prepaid, or (iv) sent by commercial overnight carrier, and addressed to:

If to the City:

City of Freeport  
Attn: City Manager  
200 W. Second Street  
Freeport, Texas 77541

With Copy to:

Christopher Duncan, City Attorney  
104W.Myrtle, Ste. 218  
Angleton, TX 77515

If to the DEVELOPER:

Cundieff Family Partnership Ltd.  
1415 W. 2nd Street  
Freeport, Texas 77541

If to the Guarantor:

Elliot Cundieff  
1415 W. 2nd Street  
Freeport, Texas 77541

or such other address or addresses which any party may be notified in writing by any other party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed, or (d) the date of receipt by facsimile (as reflected by electronic confirmation);

provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the party to whom such notice is given.

**Force Majeure.** In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided. Force Majeure shall not include the current COVID-19 Pandemic.

**Forum Selection.** This Agreement and the relationship between the Parties shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the Parties shall exclusively be the appropriate State District Court in Brazoria County, Texas. DEVELOPER specifically consents to and waives any objections to, personal jurisdiction in Brazoria County, Texas.

**Effective Date.** This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

**Preamble.** The findings of fact, recitations and provisions set forth in the preamble to this Agreement are true and are adopted and made a part of the body of this Agreement, binding the Parties hereto, as if the same were fully set forth herein.

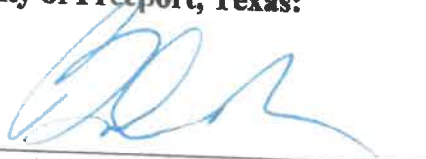
**Representation of Authority.** The City represent and warrant to the DEVELOPER that they are duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained therein, and have the legal authority to make a grant to the DEVELOPER as provided in this Agreement. The DEVELOPER represents and warrants that such party is duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained herein, and is a proper party to this Agreement.

**Signature Warranty Clause.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the Parties, respectively.

Legal Contest. This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph thereof shall become unenforceable by reason of judicial decree or determination the parties hereto mutually agree to the extent possible to ensure that all other provisions of the agreement including the intent of the Agreement be honored and performed.

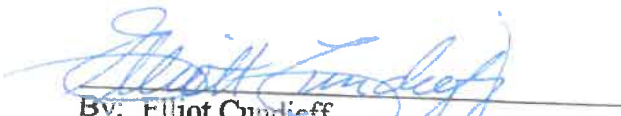
Economic Incentives Constitute a Program. This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.

**City of Freeport, Texas:**



Brooks Bass, Mayor  
City of Freeport, Texas

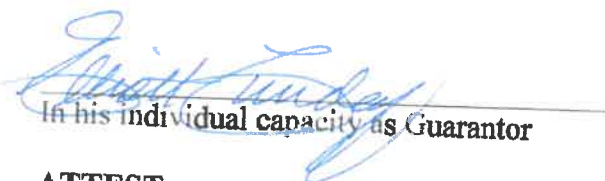
**Cundieff Family Partnership, Ltd.**



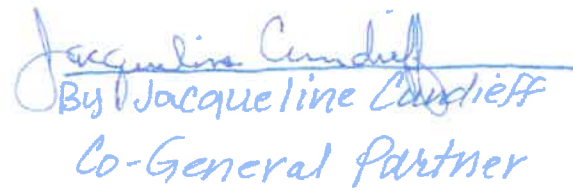
By: Elliot Cundieff

As: Co-General Partner

**Elliot Cundieff**



In his individual capacity as Guarantor



By Jacqueline Cundieff  
Co-General Partner

**ATTEST:**



Betty Wells, Clerk



## City Council Agenda Item # 15

**Title:** Consideration and possible action to approve first amendment to Interlocal Agreement for Animal Control and Protection Services with SPCA of Brazoria.

**Date:** December 6, 2021

**From:** Tim Kelty, City Manager

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**Staff Recommendation:** Staff recommends approval of the amendment to this interlocal agreement.

**Item Summary:** This amendment sets a fixed annual cost for each participating City for continued participation in this agreement. This is being done at the request of the SPCA to formalize and simplify the cost allocation to each city, and the requirement to maintain a single financial account for the SPCA and participating cities.

Staff from all three cities has had lengthy discussion with the SPCA and is supportive of the proposed amendment to the contract until it expires in February 2023. The amendment if adopted would set our annual cost at \$119,200 as budgeted, and allow money generated by operations of the Shelter to be deposited into a single SPCA account, rather than a shelter account, negating the need for separate sets of financial books and audits. Any expenses incurred by the shelter would be paid directly from the SPCA's account.

In turn, the SPCA shall submit shelter reports to each city consisting of:

- a. Monthly accounting of animals
- b. Annual Financial Statement
- c. Annual Budget
- d. Annual Audit
- e. Proof of Insurance

**Background Information:** On March 1, 2003 the Cities of Clute, Freeport and Lake Jackson entered into an interlocal agreement with the SPCA to provide for animal control services for the three cities. About 5 years ago the implementation and administration of that interlocal agreement got off track and the SPCA took over much of the policy making and control of the facility operations and costs at the Shelter began to skyrocket out of control.

For the previous two years the cities have paid a fixed amount not based on the original contract.

**Special Considerations:** The current contract, not being followed expires in February 2023, and Lake Jackson has elected to withdraw completely, build their own shelter and operate their own animal control service for their city.

Staff is in the process of working with Clute to develop a shelter plan to be located in either Clute or Freeport, with one city as the primary agency and the other as a participating agency.

Based on the data available the Freeport/Clute Shelter would need to be designed to be able to accommodate a maximum of 14 dogs and 25 cats per week. However, the average number of animals received would only average about 9 dogs and 15 cats per week.

**Financial Impact:** none

**Board or 3<sup>rd</sup> Party recommendation:** This agreement has been approved by Lake Jackson and is currently under consideration by Clute

**Supporting Documentation:** Lease agreement amendment. Budget and animal intake and disposition information.

**RESOLUTION NO. 2021-2727**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR ANIMAL CONTROL AND PROTECTION PROGRAM ADMINISTRATIVE SERVICES.**

**WHEREAS**, on March 1, 2003, the Cities of Freeport, Clute, and Lake Jackson (Cities) and the Society for the Prevention of Cruelty to Animals of Brazoria County (SPCA), and the Southern Brazoria County Animal Shelter (Shelter) entered into an interlocal agreement for the administration of animal control and protection services; and

**WHEREAS**, the parties now wish to amend the agreement to provide a streamlined accounting approach.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT THAT:**

**SECTION 1.** The City Council makes a specific finding that the facts and findings set forth in the preamble above are true and correct.

**SECTION 2.** The Mayor is hereby authorized to execute the first amendment to interlocal agreement for animal control and protection program administration services on behalf of the City of Freeport, Texas.

**SECTION 3. PROPER NOTICE AND MEETING.** It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**READ, PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF DECEMBER, 2021.**

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Betty Wells, City Clerk  
City of Freeport, Texas

\_\_\_\_\_  
Christopher Duncan, City Attorney  
City of Freeport, Texas

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR ANIMAL CONTROL  
AND PROTECTION PROGRAM ADMINISTRATION SERVICES**

**WHEREAS**, on March 1, 2003, the Cities of Freeport, Clute, and Lake Jackson (Cities) and the Society for the Prevention of Cruelty to Animals of Brazoria County (SPCA), and the Southern Brazoria County Animal Shelter (Shelter) entered into an interlocal agreement for the administration of animal control and protection services; and

**WHEREAS**, the parties now wish to amend the agreement to provide a stream lined accounting approach.

**NOW, THEREFORE**, in consideration of the recitals set forth above and the premises contained herein, the parties agree to amend the agreement as follows:

**I. FUNDING AND USE OF FUNDING**

1.1 Freeport agrees to pay a flat fee of \$119,200.00 to the SPCA to operate the shelter.

1.2 Clute agrees to pay a flat fee of \$85,600.00 to the SPCA to operate the shelter.

1.3 Lake Jackson agrees to pay a flat fee of \$261,737.00 to the SPCA to operate the shelter.

1.4(a) Payments shall be paid in either monthly increments no later than the 15<sup>th</sup> of each month or in a single lump sum annual amount due. *Any annual payment made to the SPCA shall be prorated based on the number of months of service provided*

(b) The SPCA shall submit an operating budget for the Animal Shelter to the Cities before October 1<sup>st</sup> of each year.

1.5(a) The Parties agree that any money paid to the SPCA by the Parties and any money generated by operation of the Shelter shall be placed in the SPCA's account. Any expenses incurred by operation of the Shelter or the shelter's facility and the development of Programs for the Shelter shall be paid from the SPCA account. All surplus revenues shall be retained by the SPCA.

1.6 The SPCA shall submit the following Shelter reports to each city:

(a) Monthly accounting of animals for each city, including numbers brought in, average number being held, average days being held, numbers euthanized, and numbers adopted.

(b) Annual Financial Statement

(c) Annual Budget

(d) Annual Audit

(e) Proof of Insurance

All other terms of the contract shall remain the same and in effect. If any conflict arises between this amendment and the original terms of the contract, this amendment shall control.

**EXECUTED** to be effective the \_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF FREEPORT, TEXAS**

**ATTEST**

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

**CITY OF CLUTE, TEXAS**

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

**CITY OF LAKE JACKSON, TEXAS**

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

**SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS**

BY: \_\_\_\_\_  
President, SPCA

**SOUTHERN BRAZORIA COUNTY ANIMAL SHELTER**

BY: \_\_\_\_\_  
Chair



# Shelter Budget Estimate

{Oct 1, 2021 - Sept 30, 2022}

Shelter Income Estimate	Income		
	Monthly	Annual	YTD Actuals (Updated Octly)
<b>Adoption/Intake Fees</b>			
<i>Adoption Fees</i>	\$3,500	\$42,000	\$0
<i>Owner Surrender Fees</i>	\$500	\$6,000	\$0
<i>Reclaim Fees</i>	\$500	\$6,000	\$0
<b>Donations</b>			
<i>Donations / Fundraising</i>	\$15,000	\$180,000	\$0
<b>City Contributions</b>			
<i>Lake Jackson</i>	\$21,811	\$261,732	\$0
<i>Clute</i>	\$7,133	\$85,596	\$0
<i>Freeport</i>	\$10,422	\$125,064	\$0
<b>Total Income*</b>	<b>\$58,866</b>	<b>\$706,392</b>	<b>\$0.00</b>

Shelter Expense Estimate	Expenses		
	Monthly	Annual	YTD Actuals (Updated Octly)
<b>Labor</b>			
<i>Payroll - Shelter &amp; Cattery (Combined)</i>	\$40,800	\$489,600	\$0
<i>941 Payroll Tax Expense USE</i>	\$3,000	\$36,000	\$0
<i>SUTA Tax Expense USE</i>	\$400	\$4,800	\$0
<b>Utilities</b>			
<i>Electrical</i>	\$1,205	\$14,460	\$0
<i>Water</i>	\$971	\$11,652	\$0
<i>Animal Waste Disposal</i>	\$100	\$1,200	\$0
<i>Exterminator</i>	\$175	\$2,100	\$0
<i>Telephone / Internet</i>	\$300	\$3,600	\$0
<b>Animal Care Supplies</b>			
<i>Food</i>	\$1,000	\$12,000	\$0
<i>Litter</i>	\$175	\$2,100	\$0
<i>General Supplies</i>	\$500	\$6,000	\$0
<b>Medical Expenses</b>			
<i>Diagnostic Testing</i>	\$500	\$6,000	\$0
<i>Medication</i>	\$1,500	\$18,000	\$0
<i>Vaccines</i>	\$1,500	\$18,000	\$0
<i>Microchip</i>	\$700	\$8,400	\$0
<i>Personal Protective Equipment</i>	\$1,000	\$12,000	\$0
<i>Misc Medical Supplies (Needles)</i>	\$400	\$4,800	\$0
<b>Outsourced Vet Services (General)</b>			
<i>General (e.g. ACO injured Intakes)</i>	\$3,500	\$42,000	\$0
<b>Employee Relations</b>			
<i>Employee Training</i>	\$450	\$5,400	\$0
<i>Employee Gifts/Meals</i>	\$125	\$1,500	\$0

<b>Community Relations</b>			
<i>Fliers</i>	\$50	\$600	\$0
<i>Community Informational Material</i>	\$25	\$300	\$0
<i>SPCA Booth Supplies</i>	\$125	\$1,500	\$0
<b>Rent</b>			
<i>Storage Building</i>	\$110	\$1,320	\$0
<i>Cattery Rent</i>	\$1,200	\$14,400	\$0
<b>Office Supplies</b>			
<i>General</i>	\$300	\$3,600	\$0
<i>Copier Rental</i>	\$300	\$3,600	\$0
<b>Building &amp; Equipment</b>			
<i>Repairs &amp; Maintenance</i>	\$1,000	\$12,000	\$0
<b>Software Expenses</b>			
<i>ShelterLuv</i>	\$300	\$3,600	\$0
<i>Kindful</i>	\$166	\$1,992	\$0
<i>Website Hosting</i>	\$10	\$120	\$0
<b>Professional Fees</b>			
<i>General Fees (Square3/RNM)</i>	\$200	\$2,400	\$0
<i>Accountant Fees</i>	\$6,778	\$81,336	\$0
<i>Legal Fees (Lawyer)</i>	\$0	\$0	\$0
<i>Bank and Merchant Fees</i>	\$1,510	\$18,120	\$0
<i>Dr. Sanchez Fee</i>	\$500	\$6,000	\$0
<b>Automobile Fees</b>			
<i>Maintenance</i>	\$100	\$1,200	\$0
<i>Fuel</i>	\$208	\$2,496	\$0
<i>License &amp; Registration</i>	\$10	\$120	\$0
<b>Insurance</b>			
<i>General Liability</i>	\$662	\$7,944	\$0
<i>Vehicle</i>		\$0	\$0
<i>Workers Comp</i>	\$1,072	\$12,864	\$0
<b>Total Expenses*</b>	<b>\$72,927</b>	<b>\$875,124</b>	<b>\$0</b>
<b>Net Income**</b>	<b>(\$14,061)</b>	<b>(\$168,732)</b>	<b>(\$0)</b>

\*This is under normal shelter operation. Does NOT include COVID-related income reductions, or outbreaks such as Distemper

\*\*Net Income is balanced out monthly with contributions by the SPCA of Brazoria County.

**Payroll**

<b>Titles</b>	<b># of staff</b>	<b>Biweekly \$</b>	<b>basis</b>
<b>Shelter Directors/managers</b>	<b>1 Director/1 Manager</b>	<b>\$3,200</b>	
<b>vet techs</b>	<b>2</b>	<b>\$2,240</b>	<b>@\$14.00 per hour</b>
<b>animal care givers</b>	<b>13</b>	<b>\$12,480</b>	<b>@\$11.00 per hour</b>
<b>front desk</b>	<b>2</b>	<b>\$1,920</b>	<b>@\$12.00 per hour</b>
<b>Intake</b>	<b>1</b>	<b>\$960</b>	<b>@\$12.00 per hour</b>
<b>% vet oversight</b>	<b>0.25</b>	<b>\$1,153</b>	<b>based on 5/ hours rounds at shelter /week</b>
<b>cleaner</b>	<b>1</b>	<b>\$800</b>	<b>@\$10.00/hour</b>
		<b>\$22,753</b>	

# Shelter Budget Estimate

Shelter Income Estimate	YTD Actuals 2020
<b>Adoption/Intake Fees</b>	
<i>Adoption Fees</i>	\$75,367
<i>Owner Surrender Fees</i>	\$6,355
<i>Reclaim Fees</i>	\$12,912
<b>Donations</b>	
<i>Donations / SPCA contributions</i>	\$250,000
<b>City Contributions</b>	
<i>Lake Jackson</i>	\$246,672
<i>Clute</i>	\$85,600
<i>Freeport</i>	\$125,067
<b>Total Income*</b>	<b>\$801,973.00</b>

Shelter Expense Estimate	YTD Actuals (Updated Only)
<b>Labor</b>	
<i>Payroll - Shelter &amp; Cattery (Combined)</i>	\$423,540
<i>941 Payroll Tax Expense USE</i>	\$32,477
<i>SUTA Tax Expense USE</i>	\$4,124
<b>Utilities</b>	
<i>Electrical</i>	\$11,155
<i>Water</i>	\$9,077
<i>Animal Waste Disposal</i>	
<i>Exterminator</i>	\$316
<i>Telephone / Internet</i>	\$2,312
<b>Animal Care Supplies</b>	
<i>Food</i>	\$17,022
<i>Litter</i>	
<i>General Supplies</i>	\$19,838
<b>Medical Expenses</b>	
<i>Diagnostic Testing</i>	
<i>Medication</i>	
<i>Vaccines</i>	
<i>Microchip</i>	
<i>Personal Protective Equipment</i>	
<i>Misc Medical Supplies (Needles)</i>	\$19,491
<b>Outsourced Vet Services (General)</b>	
<i>General (e.g. ACO injured intakes)</i>	\$42,625
<b>Employee Relations</b>	
<i>Employee Training</i>	\$500
<i>Employee Gifts/Meals</i>	\$1,093

<b>Community Relations</b>	
<i>Fliers</i>	
<i>Community Informational Material</i>	
<i>SPCA Booth Supplies</i>	
<b>Rent</b>	
<i>Storage Building</i>	\$3,683
<i>Cattery Rent</i>	\$14,400
<b>Office Supplies</b>	
<i>General</i>	\$18,005
<i>Copier Rental</i>	
<b>Building &amp; Equipment</b>	
<i>Repairs &amp; Maintenance</i>	\$26,835
<b>Software Expenses</b>	
<i>ShelterLuv</i>	
<i>Kindful</i>	
<i>Website Hosting</i>	
<b>Professional Fees</b>	
<i>General Fees (Square3/RNM)</i>	
<i>Accountant Fees</i>	\$82,800
<i>Legal Fees (Lawyer)</i>	\$26,913
<i>Bank and Merchant Fees</i>	\$3,294
<i>Dr. Sanchez Fee</i>	\$6,000
<b>Automobile Fees</b>	
<i>Maintenance</i>	\$930
<i>Fuel</i>	\$1,512
<i>License &amp; Registration</i>	\$78
<b>Insurance</b>	
<i>General Liability</i>	
<i>Vehicle</i>	
<i>Workers Comp</i>	\$13,748
<b>Total Expenses*</b>	<b>\$781,768</b>
<b>Net Income**</b>	<b>\$20,205</b>

\*This is under normal shelter operation. Does NOT include COVID-related income reductions, or outbreaks such as Distemper

\*\*Net Income is balanced out monthly with contributions by the SPCA of Brazoria County.

# Shelter Budget Estimate

Shelter Income Estimate	YTD Actuals 2019
<b>Adoption/Intake Fees</b>	
<i>Adoption Fees</i>	\$69,000
<i>Owner Surrender Fees</i>	\$7,448
<i>Reclaim Fees</i>	\$17,831
<b>Donations</b>	
<i>Donations / SPCA Contribution</i>	\$330,000
<b>City Contributions</b>	
<i>Lake Jackson</i>	\$175,000
<i>Clute</i>	\$80,000
<i>Freeport</i>	\$125,000
<b>Total Income*</b>	<b>\$804,279.00</b>

Shelter Expense Estimate	YTD Actuals (Updated Qtrly)	
<b>Labor</b>		
<i>Payroll - Shelter &amp; Cattery (Combined)</i>	\$522,243	
<i>941 Payroll Tax Expense USE</i>	\$39,951	
<i>SUTA Tax Expense USE</i>	\$4,687	
<b>Utilities</b>		
<i>Electrical</i>	\$11,769	
<i>Water</i>	\$10,945	
<i>Animal Waste Disposal</i>		not tracked
<i>Exterminator</i>		not tracked
<i>Telephone / Internet</i>	\$3,410	
<b>Animal Care Supplies</b>		
<i>Food</i>		
<i>Litter</i>	\$34,943	food and litter was combined
<i>General Supplies</i>	\$10,034	
<b>Medical Expenses</b>		
<i>Diagnostic Testing</i>		
<i>Medication</i>	\$19,795	
<i>Vaccines</i>	\$4,262	
<i>Microchip</i>	\$15,484	
<i>Personal Protective Equipment</i>		not tracked
<i>Misc Medical Supplies (Needles)</i>	\$19,052	
<b>Outsourced Vet Services (General)</b>		
<i>General (e.g. ACO injured intakes)</i>	\$9,000	
<b>Employee Relations</b>		
<i>Employee Training</i>		not tracked
<i>Employee Gifts/Meals</i>		not tracked

**Community Relations**

*Fliers*

*Community Informational Material*

*SPCA Booth Supplies*

**Rent**

*Storage Building*

\$3,126

*Cattery Rent*

\$14,000

**Office Supplies**

*General*

\$18,281

combined

*Copier Rental*

**Building & Equipment**

*Repairs & Maintenance*

\$12,909

**Software Expenses**

*ShelterLuv*

*Kindful*

*Website Hosting*

**Professional Fees**

*General Fees (Square3/RNM)*

*Accountant Fees*

\$18,507

*Legal Fees (Lawyer)*

\$0

*Bank and Merchant Fees*

\$8,300

*Dr. Sanchez Fee*

\$6,000

**Automobile Fees**

*Maintenance*

\$3,990

*Fuel*

\$2,392

*License & Registration*

\$78

**Insurance**

*General Liability*

\$0

*Vehicle*

\$0

*Workers Comp*

\$11,891

**Total Expenses\***

**\$805,049**

**Net Income\*\***

**(\$770)**

\*This is under normal shelter operation. Does NOT include COVID-related income reductions, or outbreaks such as Distemper

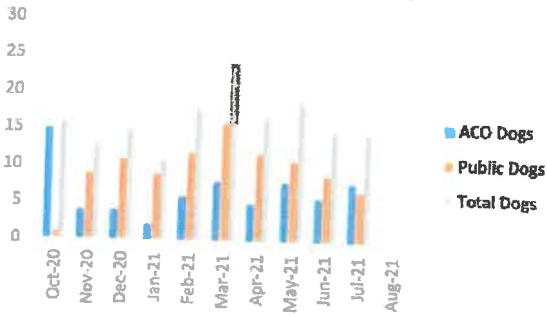
\*\*Net Income is balanced out monthly with contributions by the SPCA of Brazoria County.





# Clute Intake

Clute DOG Intake by Date/Type



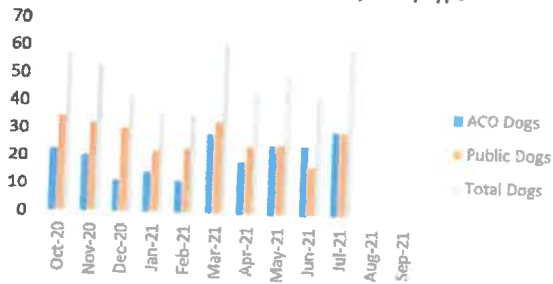
Clute CAT Intake by Date/Type



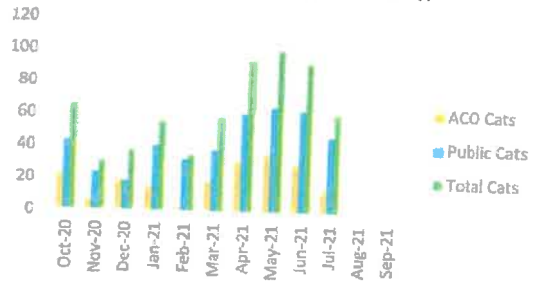
Month/Year	Dogs			Cats			Other		
	ACO Dogs	Public Dogs	Total Dogs	ACO Cats	Public Cats	Total Cats	ACO Other	Public Other	Total Other
Oct-20	15	1	16	4	26	30			0
Nov-20	4	9	13	12	13	25			0
Dec-20	4	11	15	0	14	14			0
Jan-21	2	9	11	3	6	9			0
Feb-21	6	12	18	1	4	5			0
Mar-21	8	16	24	6	17	23			0
Apr-21	5	12	17	8	22	30			0
May-21	8	11	19	16	29	45			0
Jun-21	6	9	15	18	31	49	1		1
Jul-21	8	7	15	16	27	43			0
Aug-21			0			0			0
Sep-21			0			0			0
Oct-21			0			0			0
Nov-21			0			0			0
Dec-21			0			0			0
Jan-22			0			0			0
Feb-22			0			0			0
Mar-22			0			0			0
Apr-22			0			0			0
May-22			0			0			0
Jun-22			0			0			0
Jul-22			0			0			0
Aug-22			0			0			0
Sep-22			0			0			0
Oct-22			0			0			0
Nov-22			0			0			0
Dec-22			0			0			0
<b>Total</b>	<b>66</b>	<b>97</b>	<b>163</b>	<b>84</b>	<b>189</b>	<b>273</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Total Animals</b>	<b>437</b>								

# Lake Jackson Intake

Lake Jackson DOG Intake by Date/Type



Lake Jackson CAT Intake by Date/Type



Month/Year	Dogs			Cats			Other		
	ACO Dogs	Public Dogs	Total Dogs	ACO Cats	Public Cats	Total Cats	ACO Other	Public Other	Total Other
Oct-20	23	35	58	22	44	66	1		1
Nov-20	21	33	54	7	24	31			0
Dec-20	12	31	43	19	19	38			0
Jan-21	15	23	38	15	41	56	1		1
Feb-21	12	24	36	3	33	36			0
Mar-21	29	34	63	19	39	58			0
Apr-21	19	25	44	32	62	94	1		1
May-21	25	26	51	36	66	102			0
Jun-21	25	18	43	30	64	94			0
Jul-21	31	31	62	14	48	62	4		4
Aug-21			0			0			0
Sep-21			0			0			0
Oct-21			0			0			0
Nov-21			0			0			0
Dec-21			0			0			0
Jan-22			0			0			0
Feb-22			0			0			0
Mar-22			0			0			0
Apr-22			0			0			0
May-22			0			0			0
Jun-22			0			0			0
Jul-22			0			0			0
Aug-22			0			0			0
Sep-22			0			0			0
Oct-22			0			0			0
Nov-22			0			0			0
Dec-22			0			0			0
<b>Total</b>	<b>212</b>	<b>280</b>	<b>492</b>	<b>197</b>	<b>440</b>	<b>637</b>	<b>7</b>	<b>0</b>	<b>7</b>
<b>Total Animals</b>	<b>1136</b>								

## 2020-2021 Outcomes

Month/Year	Adoptions	Transfers	Return to Owner	Deceased	Euthanized	Other	Comment
Oct-20	181	86	37	13	7	13	
Nov-20	171	60	36	13	6	0	
Dec-20	178	54	20	1	7	4	
Jan-21	187	119	26	6	10	0	
Feb-21	126	65	17	0	6	0	
Mar-21	141	46	42	5	4	0	
Apr-21	142	99	29	18	11	0	
May-21	130	48	33	32	19	2	Panluek
Jun-21	144	46	28	33	20	13	Panluek
Jul-21	252	73	38	14	20	5	
Aug-21			0			0	
Sep-21			0			0	
Oct-21			0			0	
Nov-21			0			0	
Dec-21			0			0	
<b>Total</b>	<b>1652</b>	<b>696</b>	<b>306</b>	<b>135</b>	<b>110</b>	<b>37</b>	

\*Cells below will pre-fill based on data entered in workbook. Ok to type in the yellow cells.

Month/Year	Total Intakes	Total Adopt/TRF/RT O	Total Dcs/Euth/Oth	In vs Out	Comment
Oct-20	239	304	33	(98)	
Nov-20	179	267	19	(107)	
Dec-20	151	252	12	(113)	
Jan-21	149	332	16	(199)	
Feb-21	134	208	6	(80)	
Mar-21	227	229	9	(11)	
Apr-21	274	270	29	(25)	
May-21	311	211	53	47	Panluek
Jun-21	257	218	66	(27)	Panluek
Jul-21	264	363	39	(138)	
Aug-21	0	0	0	0	
Sep-21	0	0	0	0	
Oct-21	0	0	0	0	
Nov-21	0	0	0	0	
Dec-21	0	0	0	0	
Jan-22	0	0	0	0	
Feb-22	0	0	0	0	
Mar-22	0	0	0	0	
Apr-22	0	0	0	0	
May-22	0	0	0	0	
Jun-22	0	0	0	0	
Jul-22	0	0	0	0	
Aug-22	0	0	0	0	
Sep-22	0	0	0	0	
Oct-22	0	0	0	0	
Nov-22	0	0	0	0	
Dec-22	0	0	0	0	
<b>Total</b>	<b>2185</b>	<b>2654</b>	<b>282</b>	<b>(751)</b>	



## City Council Agenda Item # 16

**Title:** Consideration of approving Resolution No. 2021-2728 appointing qualified person(s) to fill the remaining term(s) for vacancies on the Freeport Economic Development Corporation Board.

**Date:** December 6, 2021

**From:** Tim Kelty, City Manager

**Staff Recommendation:**

Staff recommends selection of individuals and approval of the proposed resolution to appoint a qualified person or persons to the Freeport Economic Development Corporation Board.

**Item Summary:**

The Economic Development Corporation has two vacancies due to removal of previous board members. One of those members term expired in May 2022, and one in May 2023. These appointments would be to fill out the remainder of those term and would be up for consideration for reappointment to a new 2-year term at those times. At the time this memo was prepared the city had receive applications from: (List Names) Stoney Burke, Melanie Oldham.

**Background Information:**

The EDC is the most active board in Freeport appointed by the City Council. Current membership on the board includes Jeff Pena, Mingo Marquez, David McGinty, Josh Mitchel and Shondra Marshall.

**Special Considerations:**

Appointments to the EDC are not required to be residents of the city of Freeport.

**Financial Impact:**

N/A

**Board or 3<sup>rd</sup> Party recommendation:**

N/A

**Supporting Documentation:**

Resolution: 2021-2728

RESOLUTION NO. 2021-2728

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, APPOINTING QUALIFIED PERSONS TO THE FREEPORT ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS TO FULFILL THE REMAINDER OF TWO-YEAR TERMS; PROVIDING FOR THE DUTIES OF OFFICE; AND PROVIDING FOR THE TAKING OF THE OATHS OF OFFICE REQUIRED BY LAW.

WHEREAS, two officers of Freeport Economic Development Corporation board of directors are currently vacant, one of which expires May 31, 2022 and one which expires May 31, 2023; and,

WHEREAS, according to City Ordinance the City Council of the City shall appoint seven (7) board members to serve on the Board, each for a two-year term; and,

WHEREAS, the City Council of the City desires to appoint the below named qualified person(s) to fill the vacant positions on the board to fill out the remaining term terms, said appointments as members of said board.

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

**SECTION ONE (1): APPOINTMENT(s)**

The City Council of the City hereby nominates, constitutes and appoints the following named qualified persons to the Freeport Economic Development Corporation Board of Directors to fulfill the remaining term(s) as appointed, to wit:

Name: \_\_\_\_\_ Term expiration 5/31/2022

Name: \_\_\_\_\_ Term Expiration 5/31/2023

**SECTION TWO (2): DUTIES**

The above named appointees shall perform all of the duties imposed on members of the Freeport Economic Development Corporation Board of Directors by law and the ordinances and resolutions of the City.

**SECTION THREE (3): OATH OF OFFICE**

Before engaging in the performance of the duties of office, each of such appointees shall take the Constitutional Oath of Office and signed the affidavit required by law.

READ, PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Brooks Bass, Mayor  
City of Freeport, Texas

ATTEST:  
\_\_\_\_\_  
Betty Wells, City Secretary  
City of Freeport, Texas