



**AGENDA  
REGULAR MEETING  
FREEPORT CITY COUNCIL  
MONDAY, JULY 03, 2023 at 6:00 P.M.**

**Mayor:**

Brooks Bass

**Council Members:**

Jeff Pena  
Jerry Cain  
George Matamoros  
Winston Rossow

**City Manager:**

Timothy Kelty

**THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, WILL MEET ON MONDAY, THE 3RD DAY OF JULY, 2023, AT 6:00 P.M., AT THE FREEPORT, POLICE DEPARTMENT, MUNICIPAL COURT ROOM, 430 NORTH BRAZOSPORT BOULEVARD FREEPORT TEXAS**

This meeting will be live streamed via Facebook Live and may be accessed on the City of Freeport Facebook page: <https://www.facebook.com/freeporttexas>

**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.

## **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 Any item requiring additional discussion may be withdrawn from the Consent Agenda by the Mayor, Councilmember or City Manager, and acted upon separately.

1. Consideration and possible action on the approval of City Council Meeting Minutes, from June 20, 2023. **(Wells)**
2. Consideration and possible action approving the road closures from 12:00 PM-9 PM for Kidfest August 5, 2023. **(Petty)**
3. Consideration and possible action approving Employee Holiday Calendar for FY2023/2024. **(Fisher)**

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

4. **Public Hearing:** Public Hearing on Consideration and possible action regarding request for Plat of Lot 18a, block 746 of the Velasco Townsite, an addition to The City of Freeport a Replat of Lots 15,16,17,18,19,20,21, Block 746 According to the Map of Record in Volume 32, Page 14 of The Deed Records of Brazoria County, Texas. **(Roman)**
5. Consideration and possible action approving Maddox Properties LLC sales contract and development agreement. **(Kelty)**
6. Consideration and possible action approving the Engagement Letter to conduct the annual audit for FY2023/2024. **(Ezell)**
7. Consideration and possible action approving Ordinance No. 2023-2696, allowing with a Specific Use Permit the development of Mini-Storage units for C-2 Zoning District. **(Roman)**
8. Consideration and possible action on Change order #1 for Phase 2 concrete street contract with Lucas Construction. **(Petty)**

## **WORK SESSION:**

9. **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 Matamoros Ward C announcements and comments.
  - E. Councilman Rossow 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:**

- 10. Executive Session regarding; (Consultation with Attorney) Pending or potential Litigation
  - a. Veolia
  - b. Marinell Music vs. City of FreeportIn accordance with Texas Government Code Annotated, Chapter 551, Sections 551.071.

**COUNCIL BUSINESS – REGULAR SESSION:**

- 11. Take any action resulting from Executive Session.

**ADJOURNMENT:**

- 12. 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).

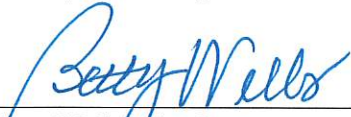
The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations 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, June 20, 2023 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 George Matamoros  
Councilman Winston Rossow

Staff: Tim Kelty, City Manager  
Lance Petty, Assistant City Manager/PWD  
David Olson, City Attorney  
Betty Wells, City Secretary  
Cathy Ezell, Finance Director  
Toby Cohen, IT Manager  
Donna Fisher, Human Resource Director  
Freeport Police Department  
Jennifer Howell, Police Chief  
Chris Motley, Fire Chief

Visitors: David McGinty Karla Clark  
John Gray Justin Pulliman  
Ron Martin Nicole Mireles  
Sam Reyna Melanie Oldham  
Ted Ross Margaret McMahan  
Kenny Hayes Con & Diane McCleester  
Pam Dancy Ron Bachman  
Brenda Laird Manning Rollerson  
Annette Muti Ona Johnson  
Sandra Wood-Wicke Ben Kelty  
Raul Ramirez Mrs. Rossow  
Desiree Pearson Tommy Pearson  
James Carter Jack Bullman

**Call to order.**

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

**INVOCATION AND PLEDGE OF ALLEGIANCE:**

Invocation and Pledge was led by City Manager Tim Kelty.

## CITIZENS' COMMENTS:

Diane McCleester 97 Dolphin, spoke of Zoning WR and said this means Waterfront Residential. She spoke of the number of STR's in the City. She said she would like to see this ordinance for STR's amended. She spoke of parking in Bridge Harbor.

Nicole Mireles 2002 North Ave. G, spoke of the last meeting and comment that was made by Councilman Pena. She spoke of the unprofessional and obscenity of his comment. Ms. Mireles spoke of a letter that was mailed out, she said these were not mailed out by Concerned Citizens of Freeport.

Karla Clark 411 Sailfish said she did a PIR after the last meeting on the registered STR, she said this list had 14 registered STR's in the City of Freeport. She spoke of allowing Bridge Harbor to make a HOA.

Pam Dancy South Front Street, spoke of the letter that came in the mail, she asked that this letter be put on the agenda. She spoke her concerns in this is the letter. She said she thinks Councilman Matamoros should step down from the EDC until this is all cleared up. She spoke of her concern on the words from Executive Session in the last meeting.

Jeff Pena 224 W. Park, asked questions about the street repair, the sewer problems throughout the City, about failed drug test, and sexual misconduct by past Police Chief, he asked about the representation of Mayor Bass for Councilman Cain, being his attorney. He spoke of a criminal investigation that is going on by BCSO from the attack and threats by Mayor Bass, he said until this is resolved he will continue to be concerned for everyone's safety, he asked that there be an armed officer in Open and Executive Session Meetings.

Justin Pulliam, Rosenberg, said he appreciates that one City Councilman on this board is concerned about the issues of the people, instead of only the political establishment. He said he learned that Police Officer K-9 Zirko died last Thursday. He said there should be cameras and property check at the handler's residents. He said he appreciates the new Chief. He said it is a 2<sup>nd</sup> degree felony if your actions cause a police animal to die. He said he hopes there will be accountability here in all areas of the City.

John Gray Brazoria County Scanner, asked for a moment of silence for Zirko. He spoke of the street speed limit signs and safety signs in the City being covered by trees. He said if any revenue has been collected, it should be returned, and these trees need to be cleaned up.

Manning Rollerson 126 West 6, asked about the Matamoros lawsuit. He said he has concern of a Councilman sitting on Council that has sued the City. He spoke of the temperament between Councilman Pena, and Mayor Bass. He said our City looks dysfunctional.

Sam Reyna 2002 North Ave G, spoke of the Overland Group, and Dollar General Market. He spoke of the TIRZ, and property taxes the city will get from the new Dollar General Market.

Rob Giesecke Port Commissioner Port Freeport, said as an entity we have not been good neighbors. He said there is a 50% turnover in commission members in the last two years. He said in the last meeting with the new board, they constituted a new position with a liaison for the City of Freeport, he said he will be fulfilling this role.

Ronnie Martin, 1850 West 8<sup>th</sup>, said he received the letter, he said it was not signed. He said this is the same as cyberbullying. He said whoever did this, is a coward. He spoke very highly of the Police Chief and said he wants to thank her.

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

Presentation of Employee of the Month for the Month of May 2023.

City Manager Tim Kelty, and Police Chief Jennifer Howell presented the Employee of the Month for the month of May to Joaquin Torres.

Presentation by Gulf Coast Transit District on the Non-Fixed Route System.

Ted Ross, Director of Operations presented to Council the Shared Ride System. He explained the scheduling will be done on an app, online, or you can call. He said this is a door to door system, and they can book a ride the same day, it is a shared ride system. He said the price for the rider will stay the same.

There was discussion by Council on a QR Code, the wait time, how this will be funded, the pickup sites in Freeport. There was discussion on the bus stops now, and the concern of still having any shelter over these stops, there was discussion on the type of vehicles that will be used.

### **COUNCIL REGULAR AGENDA**

Consideration and possible action on the approval of City Council Meeting Minutes, from June 5, 2023 and the Special Meeting on June 7, 2023.

A motion was made by Councilman Cain seconded by Councilman Matamoros with all present voting “Aye” 5-0, Council unanimously approved the City Council Meeting Minutes for June 5, 2023 and the Special Meeting on June 7, 2023.

Consideration and possible action approving Resolution No. 2023-2803 designating property owned by the City of Freeport for Parking in the downtown.

Margaret McMahan read a statement on behalf of the Main Street Board, she said the Historic Museum and Main Street Board supports this, and ask Council to approve this Resolution.

City Manager Tim Kelty presented to council Resolution No. 2023-2803 designating property owned by the City of Freeport for Parking in the downtown. He said the location is on 4<sup>th</sup> Street where old City Hall was located.

A motion was made by Councilman Cain, seconded by Councilman Matamoros with discussion that followed.

Councilman Pena asked where the restrooms will be located? Mr. Kelty said this has not been determined yet. The question was asked of who will pay for this? Mr. Kelty said the City.

Mayor Bass called the motion to a vote, with a 4-1 vote, Resolution No. 2023-2803 passed. Councilman Pena voted “Nay”.

**Public Hearing: Second reading and consideration of resolution approving an economic development agreement to be enacted by the Freeport Economic Development Corporation and Overland Group.**

Mayor Bass opened the Public Hearing at 7:25 PM.

Robert Johnson EDC Director said this project must be approved by Council, he said the EDC Board voted unanimously to approve.

There was a lengthy discussion by council on the stakeholders, the contracts, and discussion on the esthetics and landscaping. The question was asked if there needed to be approval by Planning and Zoning.

Karla Clark supports the Dollar General Market.

Nicole Mireles supports Dollar General Market.

Anette Muti supports this Dollar General Market.

Ronnie Martin said the Main Street Board supports this unanimously.

Mayor Bass closed the Public Hearing at 7:46 PM.

City Manager Tim Kelty read the resolution for the second reading.

A motion was made by Mayor Bass to approve resolution approving an economic development agreement to be enacted by the Freeport Economic Development Corporation and Overland Group, seconded by Councilman Cain with a 4-1 vote motion passed. Councilman Pena voted "Nay".

Consideration and possible action approving annual appointment of TIRZ Chairman.

City Manager Tim Kelty presented to council the annual appointment of TIRZ Chairman.

A motion was made by Councilman Pena to reappoint Shonda Marshall for the remainder of the term, seconded by Councilman Cain with all present and voting "Aye" 5-0 council unanimously approved the annual appointment of TIRZ Chairman.

Consideration and possible action approving the purchase of new fuel system.

Assistant City Manager Lance Petty presented to Council the purchase of the new fuel system. He said staff recommends approving the proposed fueling system, the cost is \$68,639.20 this will be city owned equipment, and we will go out for bids for the fuel.

Councilman Cain asked if we need three bids? Mr. Petty said no, this is through the Buy Board.

A motion was made by Councilman Cain, seconded by Councilman Rossow with all present and voting "Aye" 5-0 council unanimously approved the purchase of new fueling system.

Consideration and possible action approving street repairs.

Assistant City Manager Lance Petty presented to council the possible action approving street repairs. He said this is the Alley at East 5<sup>th</sup> North to FS 1 and for seal coating at the South Parking Lot at FS 1. He said the roads are checked daily, and this alley is falling apart. The cost for this with B3 Resources LLC will be a total of \$21,000 and staff recommends B3 Resources LLC.

A question was asked by Council if we have used B3 Resources LLLC before, Mr. Petty said yes, the T-Dock and the parking lot at Riverside. The question was asked for the location of this repair. Mr. Petty showed on the map the location. There was discussion on the seal coat being used.

A motion was made by Councilman Cain, seconded by Councilman Matamoros to approve road repair at the Alley of East 5<sup>th</sup> North of FS 1 and seal coating on South Parking Lot at FS 1 to B3 Resources, LLC with discussion that followed.

Councilman Pena asked Mr. Olson if we are required to take the lowest bid? Mr. Olson said you can take the best bargain for the City. Councilman Pena said he would recommend that the City go with Asphalt Maintenance Inc. Councilman Cain clarified his motion to B3 Recourses, LLC and Councilman Matamoros seconded.

Mayor Bass called the motion to a vote, with a 4-1 vote council approved road repair at the Alley at East 5<sup>th</sup> North of FS 1 and seal coating on South Parking Lot at FS 1 to B3 Resources. Councilman Pena voted "Nay".

Mayor Bass asked Attorney Olson about a City Agenda item referencing additional road improvement he said this was handed before Council, and asked if we can move forward? Mr. Olson said yes because of the agenda language.

Assistant City Manager Lance Petty said this is another road that has major issues. This is the alley at East 5<sup>th</sup> and Cherry Street, it runs to the dead-end, he said we got quotes from the same companies, and again we recommend the contract to B3 Resources, LLC.

A motion was made by Mayor Bass for the additional funding for road improvements at the alley at East 5<sup>th</sup> and Cherry Street, work to be done by B3 Resources, LLC for \$28, 300, seconded by Councilman Matamoros with discussion that followed.

Councilman Pena asked about the price difference between the two jobs by the same contractor. He asked that we go to the contractor and ask that the dollar amount be the same per square foot.

Mayor Bass amended his motion to for the additional funding for road improvements at the alley at East 5<sup>th</sup> and Cherry Street, to be done by B3 Resources, LLC as presented. In addition, for Mr. Petty to call and try to request B3 Resources, LLC revise estimate to go across the board or be comparable to go along with the other bid of the other alley, seconded by Councilman Matamoros with all present and voting "Aye" 5-0 council unanimously approved the motion.

Consideration and possible action approving Resolutions appointing members to the Beautification/Parks and Rec Board and the Senior Citizens Commission.

City Manager presented to council Resolutions appointing members to the Beautification/Parks and Rec Board and the Senior Citizens Commission.



A motion was made by Councilman Cain, seconded by Mayor Bass to approve Resolution No. 2023-2804 to appoint Randy Johnson, Catherine Johnson, Vince Baker, for a two-year term, and appoint Jack Bullman, David McGinty, Brianna Sidney, and Douglas Dominguez for a one-year term, with all present voting "Aye" 5-0 council unanimously approved Resolution No. 2023-2804, for Beautification Parks/Rec Board.

Ms. Laird spoke to council as to why she wants to serve on the Senior Citizen Commission.

A motion was made by Mayor Bass to approve Resolution No. 2023-2805 to appoint Brenda Laird to the Senior Citizen Commission for a two-year term, seconded by Councilman Pena with all present voting "Aye" 5-0 council unanimously approved Resolution No. 2023-2805.

### **WORK SESSION:**

Councilman Pena thanked all the citizens for coming out and for the comments made by the citizens. He spoke of the Industrial tax dollars that the City may lose and the imperativeness to try a pursue the tourism economy, to help hedge our industrial tax. He said he looks forward to the STR workshop with all the stakeholders. He spoke of the comment made by Ms. Mireles, he said it was not an attack on any one person. He asked where the next workshop will be. He asked that the request made by a resident, that the letter be placed on the agenda. Councilman Pena asked what happened to the K-9, and asked if there will be a response by the City? Mr. Kelty said there will be a statement made. Councilman Pena asked that there be security in place if we go into Executive Session. He said he is happy that the City recognized Juneteenth holiday, and hopes next year we can celebrate in a bigger way. He spoke of the board assignments on the EDC. He asked about the importance of Councilman Matamoros continuing to serve? Mr. Kelty said it is to make improvements at some of the City Parks, he is seeking contributions from various industries. He still has some work to do to get these donations. Councilman Pena thanked Mr. Giesecke, for speaking at the meeting tonight.

Councilman Cain thanked Mr. Giesecke for coming out and speaking, and for accepting the position as liaison for the City of Freeport. He spoke of Mr. Gray's comment of the trees covering the safety signs, he asked that this please get cleaned up. Councilman Cain said the heat was 109 degrees, he said please make sure the City workers are properly supplied with water and Gatorade.

Councilman Matamoros thanked all the residents who attended the Council meeting tonight as well as online, he thanked all the residents who spoke tonight. He thanked Mr. Giesecke. Councilman Matamoros said he wanted to thank Mr. Petty and his crew for getting the stop sign replaced on Ave J, and Skinner, as well as the "No Swimming" signs at the boat ramp. Councilman Matamoros made statements of the letter that was sent out. He said that there is a lot of false information in this letter. He said if there are any issues, please come to me. He touched base on a few allegations. He said there was a settlement proposed, but the EDC voted no, and it went to trial. It cost the EDC twice the amount than the settlement offered. He said he did not benefit one cent from this lawsuit. He said hopefully we can get this behind us, he said he is not suing anyone. Councilman Matamoros said please come to him with any issues.

Councilman Rossow said Ward D is doing well. He spoke of the calls he has received for the grass. He said he is receiving calls of the citation's residents are getting for the grass. He said he is here to serve, you can contact him by phone or text, or come by the house. He said he is not absent, but present every day.

Mayor Bass said he appreciates Councilman Pena and Councilman Muraira to make the motion approve the Juneteenth Holiday. He said he and Councilman Rossow were at Juneteenth in Angleton and fed 700 people celebrating Juneteenth. He thanked Rob for being here tonight, and he said he knows he will help in working with his Board of Commissioners in trying to get Cody Vasut to repeal the house bill that was passed.

Mr. Kelty announced he attended the HGAC Meeting this morning and the City of Freeport was awarded \$1.833 million dollars. He said Cathy Ezell worked very hard on this application. He said this is to fund water improvements. He said the plan is to upgrade the pumps at Ave F, as well as the rehabilitation of the ground storage tanks. Mr. Kelty said we also received two award letters for two generators, there are three other applications we are waiting on.

**Update on reports / concerns from Department heads.**

Chief Howell made a statement on the death of K-9 Officer Zirko. She said when the handler arrived to his residence on Thursday, he found K-9 Officer Zirko was deceased. She said the vet's office was contacted with the request of a necropsy, "a dog autopsy" to be performed to find the cause of death. She said there is an internal investigation being done by the City, as well as BCSO doing an external criminal investigation. She said she cannot release a lot of information. Mayor Bass said please give this the seriousness this deserves, he was a team member and we have to figure this out.

Councilman Pena asked about the alley repairs that have been done from the gas leak, and the watermain being busted he said there is still the smell of gas and he wants to know if Centerpoint can go and take another look at this? He spoke of the high grass violations, and messages from residents saying they received notice of high grass, followed by pictures of the City. He spoke of EDC property, and the old Police Station. He asked when the broken mailbox will be replaced? Mr. Petty said that, Lucas contacted the resident of date of repair. There was discussion on street repair to 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>. Mr. Petty said, it will be repaired.

**CLOSED SESSION:**

There was no closed session

**OPEN SESSION:**

Adjourn

On a motion by Councilman Cain, seconded by Councilman Matamoros, with 5-0 vote, Mayor Bass adjourned the meeting.

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Brooks Bass, Mayor

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Betty Wells, City Secretary



## City Council Agenda Item # 2

**Title:** Consideration and possible action for the KidFest Road Closures on August 5, 2023.

**Date:** July 3, 2023

**From:** Ana Silbas, Main Street Coordinator

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**Staff Recommendation:**

Main Street Staff recommends the approval of road closures for the 2023 KidFest in Historic Downtown Freeport. This free community event focuses on highlighting our designated Main Street Area in accordance to the Main Street Four Point Approach.

**Item Summary:**

The Freeport Main Street Program, in partnership with the Freeport Historical Museum, will host KidFest on Saturday, August 5, 2023 from 3pm-7pm in Downtown Freeport. The planned activities for this event include inflatables/waterslides, food, DJ, face painting, caricature artists and more. The road closure times allow for ample setup and clean up for this event.

The requested road closures on Saturday, August 5, 2023 include the following:

12:00 PM- 9:00 PM      E. Park and W. Park from 2<sup>nd</sup> Street to 4<sup>th</sup> Street (200-300 blocks)  
Road Barrels at Broad and E. Park alley  
Road Barrels at Broad and West Side of W. Park

**Background Information:**

This year will mark the 12<sup>th</sup> Annual KidFest and it remains a free event for the community. We will have a Superhero Theme for the 2023 KidFest.

**Special Considerations:** N/A

**Financial Impact:**

Freeport Main Street will seek sponsorships to help with expenses.

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

The Freeport Historical Commission & Main Street Advisory Board supports KidFest as one of its annual community events.

**Supporting Documentation:**

Map of Proposed Road Closures and Event Flyer



Road Block

Road Block

Road Block

Stage

Road Block

Freepoint Historical  
Museum and Visitor...

Road Block

Road Block

**FREERPORT MAIN STREET**  
presents

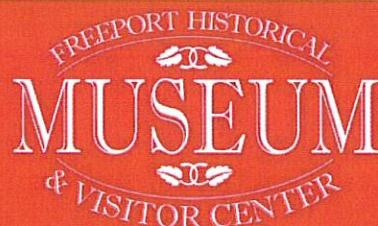
**AUGUST**  
**5**



**KIDFEST**  
**2023**

Contact: Ana Silbas,  
Main Street Coordinator  
asilbas@freerport.tx.us or  
979-871-0114

**3PM-7PM**



**FREE!**

**WITH SUPERHERO DJ GORDY**

**INFLATABLES | FOOD | MUSIC | FACE PAINTING |  
GAMES & MORE!**

**Historic Downtown Freeport-Memorial Park**

**311 EAST PARK AVENUE  
FREEPORT, TX**



## City Council Agenda Item # 3

**Title:** Consider approving the Employee Holiday Calendar for Fiscal Year 2023-2024

**Date:** July 3, 2023

**From:** Donna Fisher, Human Resources Director

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**Staff Recommendation:**

Staff recommends approving the Employee Holiday Calendar for Fiscal Year 2023-2024.

**Item Summary:**

The Employee Holiday Calendar for Fiscal Year 2023-2024 will set the dates of the paid holidays for employees.

**Background Information:**

Each year the City allots 14.5 days of paid holidays per the City's Personnel Policy.

**Special Considerations:** N/A

**Financial Impact:**

The paid holidays are included in the Fiscal Year 2023-2024 Budget.

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

**Supporting Documentation:**

Employee Holiday Calendar

# Employee Holiday Calendar

## Fiscal Year 2023 - 2024

NOTE: Holiday schedules for Fire and Police Department Employees may vary due to 24/7 coverage requirement.  
Please refer to Departmental Policies.

The City Manager may revise this employee holiday calendar at any time based on the needs of the City.

	VETERAN'S DAY	FRIDAY	NOVEMBER 10, 2023
	THANKSGIVING	THURSDAY	NOVEMBER 23, 2023
	THANKSGIVING	FRIDAY	NOVEMBER 24, 2023
	CHRISTMAS	FRIDAY	DECEMBER 22, 2023
	CHRISTMAS	MONDAY	DECEMBER 25, 2023
	NEW YEAR'S EVE - HALF DAY	FRIDAY	DECEMBER 29, 2023 (CITY HALL CLOSES at NOON)
	NEW YEAR'S DAY	MONDAY	JANUARY 1, 2024
	MARTIN L. KING DAY	MONDAY	JANUARY 15, 2024
	PRESIDENT'S DAY	MONDAY	FEBRUARY 19, 2024
	GOOD FRIDAY	FRIDAY	MARCH 29, 2024
	MEMORIAL DAY	MONDAY	MAY 27, 2024
	JUNETEENTH	WEDNESDAY	JUNE 19, 2024
	INDEPENDENCE DAY	THURSDAY	JULY 4, 2024
	LABOR DAY	MONDAY	SEPTEMBER 2, 2024
	BIRTHDAY	EMPLOYEE'S BIRTH DATE	<p>BIRTH DATE *</p> <p>*Can be used on birthday or within the work week when birthday occurs.</p> <p>**Per Local Government Code Fire/EMS Dept. observes Patriot Day on 9-11; this replaces the Birthday holiday in Fire/EMS Dept.</p>



## City Council Agenda Item # 4

**Title: Public Hearing:** Consideration and possible action regarding request for Plat of Lot 18a, block 746 of the Velasco Townsite, an addition to The City of Freeport a Replat of Lots 15,16,17,18,19,20,21, Block 746 according To the Map of Record in Volume 32, Page 14 of The Deed Records of Brazoria County, Texas.

**Date:** July 3, 2023

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

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**Staff Recommendation:**

Recommendation to Approve Replat.

**Item Summary:**

This property is located at 1409 N. Ave Q inside the Freeport City Limits. The owner is demolishing the old house and building a new house. The replatted lots 15-21 will now be known as Lot 18A.

**Background Information:**

The owner on record at the Brazoria County Appraisal District is Cynthia J. Martinez of Freeport, TX.

**Special Considerations:**

N/A

**Financial Impact:**

N/A

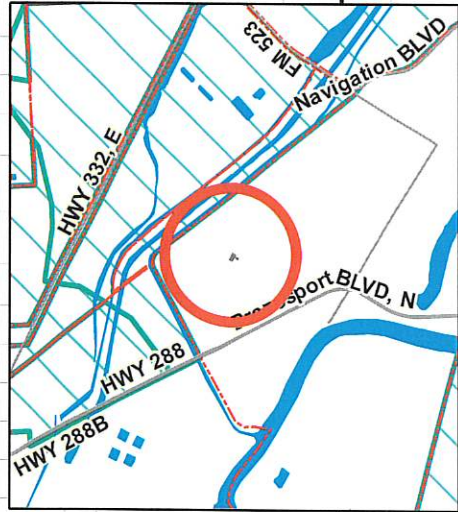
**Board or 3<sup>rd</sup> Party recommendation:**

On June 27, 2023, the Planning and Zoning Commission voted to approve this replat.

**Supporting Documentation:**

See attached.





0 15 30 60 90 120 150 Feet

Author: Laura Cramer  
 Document Path: S:\GIS Data\261604  
 200ft w template 061323.mxd

# Replat Property Location Map

## Property ID: 261604

**Legend**

- 261604
- 200' Buffer
- Roads
- Water
- Buffered Parcels
- Parcels
- City of Freeport ETJ



## City Council Agenda Item # 5

**Title:** Consideration and Possible Action approving the Real Estate Contract with Jim Maddox Properties, LLC

**Date:** July 3, 2023

**From:** Tim Kelty, City Manager

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**Staff Recommendation:** Staff Recommends approval of the Real Estate Contract with Jim Maddox Properties, LLC for the sale of approximately 19 acres west of Skinner street for the residential development of 122 lots for new home construction.

**Item Summary:** The Real Estate contract would authorize the sale of the property to the developer for the appraised value of \$150,000. to the developer, Jim Maddox Properties, LLC. Under the terms of the Real Estate contract, the Developer and the City would have to close on the property by February of next year following a 120-day inspection period, unless extended with payment of additional earnest money.

In accordance with the Real Estate Contract, a number of things MUST occur prior to closing, including:

1. Entering into a mutually acceptable Development Agreement approved by the City Council.
2. Creation of a Public Improvement District (PID) and Tax Increment Reinvestment Zone (TIRZ), both requiring City Council's action prior to approval. (The cost of creation of both the PID and TIRZ shall be borne by the developer regardless of whether they close on the property.)
3. The buyer shall provide the city with evidence of the Buyers' ability to finance all infrastructure improvements.

Additionally, during the inspection period, the engineer will:

1. Complete engineering for construction of all infrastructure improvements.
2. Submit for city approval the re-platting and rezoning of the property to a Planned Unit Development (PUD).
3. Attempt to acquire remaining scattered twelve 25' lots throughout the development area

**Background Information:** The Developer has been active in discussions on this proposed project with the City and EDC for approximately two years. Developer made a presentation followed by discussion during the February 17<sup>th</sup> City Council Meeting. Following the meeting, an appraisal of the land was prepared and the purchase price offered by Developer has been adjusted to match the appraised value. Developer is ready to proceed with further engineering and development documentation upon an approved purchase and sale contract.

At the May 15 City Council meeting approved the Letter of Intent and Term sheet connected with this project, and on June 2 the full certified appraisal, prepared on behalf of the city by MB Lane and

Associates, was emailed to all Councilmembers. This Real Estate Contract was developed by the City Attorney based on the information from those documents.

**Special Considerations:** The EDC and City Manager have done extensive vetting of this project since its initial proposal in May 2021, and is in favor of this project and this Developer to provide much-needed quality single-family housing that is harmonious with the surrounding residential area.

**Financial Impact:** Approximately \$33,500,000 increase in assessed property value, generating an estimated additional \$201,000 in additional property tax revenue for the City (at current tax rate of \$0.60/\$100). In addition to the increased property tax revenue, the City will benefit from having an additional 120 new water and sewer customers and approximately 400 new residents living and supporting local businesses and associated sales tax.

**Board or 3<sup>rd</sup> Party recommendation:** EDC recommends approval. The City attorney has reviewed and has no objections to the proposed Real Estate Contract.

**Supporting Documentation:** Real Estate Contract, previously approved Letter of Intent and Term Sheet, Pre-approval letter (Certified Appraisal, emailed previously, not attached).

## REAL ESTATE CONTRACT

**WHEREAS**, the City of Freeport (the "CITY") is a home-rule municipal corporation and political subdivision of the State of Texas, located in Brazoria County, Texas that owns the following real property in Brazoria County:

Approximately 19 gross acres in Freeport, Texas, as depicted in Exhibit A attached hereto (the "Property"); and

**WHEREAS**, Jim Maddox Properties, LLC (the "BUYER") is a Texas limited liability company; and

**WHEREAS**, the CITY desires to sell the Property to the BUYER, and BUYER desires to buy the Property from the CITY, upon the conditions set forth herein:

**NOW, THEREFORE, THE CITY AND BUYER AGREE AS FOLLOWS:**

### **1 GENERAL**

This contract for sale of the Property (or this "Agreement") is made and entered into as of the date shown below (the "Effective Date"), by and between the CITY and BUYER. Subject to the and upon the terms and conditions herein set forth, the CITY agrees to sell and convey to BUYER, and BUYER agrees to buy from the CITY, the Property, together with all right, title, and interest of the CITY in and to all (a) improvements upon the Property, (b) appurtenances belonging or in anywise pertaining solely to the Property including, but not limited to, all of the CITY's right, title and interest in and to the centerline of adjacent streets, alleys, rights-of-way, and any adjacent strips or gores of real estate between the Property and any adjacent streets, alleys and rights-of-way, (c) executed agreements affecting the Property, but only to the extent that the same are assignable to BUYER and BUYER elects to take assignment thereof by notice to the CITY (the "Property Agreements"), and (d) the CITY's right, title, and interest, if any, in and to the following items, to the extent that the same are assignable and pertain to the ownership, operation, or development of the Property: all plans, specifications, engineering data, architectural data, construction and cost information, entitlements, permits, and all other documents owned or held by the CITY (collectively, the "Intangible Property").

### **2 EARNEST MONEY AND PURCHASE**

#### **2.1 Earnest Money.**

Within three (3) business days of execution of the Agreement by both parties, BUYER shall deposit the sum of ONE THOUSAND DOLLARS (\$1,000.00) as earnest money, hereinafter "Earnest Money," which shall be applied to the Purchase Price at the time of Closing (defined below). The Earnest Money shall be placed in an escrow account with Fidelity National Title, 1900 W. Loop S., Suite 100, Houston, Texas 77027, Attn: Erika Norris, Email: erika.norris@fnf.com, Telephone: (713) 986-0714 ("Title Company"). A portion of the Earnest Money in the amount of \$100.00 (the "Independent Consideration") shall be earned by the CITY upon execution and delivery of this Agreement by the parties. The parties hereby mutually acknowledge and agree

that the Independent Consideration represents adequate bargained for consideration for the CITY's execution and delivery of this Agreement and BUYER's right to inspect the Property pursuant to the terms of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and is nonrefundable in all events, but shall be applied as a credit against the Purchase Price (defined below) at the Closing.

## **2.2 Contingency.**

- A. The CITY's and BUYER's obligations herein are expressly contingent upon the City Council's approval of this Agreement.
- B. Closing is expressly contingent upon the satisfaction of the following conditions:
  - 1. The CITY and BUYER entering into a mutually acceptable Development Agreement to serve the Property, and unless otherwise agreed by the CITY and BUYER, the Development Agreement shall contain the terms set forth in the term sheet attached hereto as Exhibit B.
  - 2. The CITY's creation of both a Public Improvement District ("PID") pursuant to Chapter 372, Texas Local Government Code, as amended, and a tax increment reinvestment zone ("TIRZ") in accordance with Chapter 311 of the Texas Tax Code, as amended coterminous with the boundaries of the Property. The TIRZ shall grant the authority for the CITY convey the Property to BUYER, and revenue from both the TIRZ and the PID shall be utilized to subsidize the cost of developing infrastructure for the proposed development of the Property by BUYER. The details and structure of the PID shall be subject to the approval of BUYER. The cost of the creation of the TIRZ and the PID shall be reimbursed to the CITY by the BUYER regardless of whether the CITY's sale of the Property to BUYER is consummated hereunder; provided, that BUYER shall not be obligated to reimburse the CITY for such TIRZ and PID costs if the sale hereunder is not consummated due to the default of the CITY and in no event shall BUYER be liable for any TIRZ and PID costs incurred by the CITY after the termination of this Agreement.
  - 3. BUYER providing to the City reasonable evidence of Buyer's ability to finance all infrastructure improvements on the Property. Such evidence shall be in the form of a bank set-aside letter, letter of credit, surety bond or some other form mutually agreed upon by BUYER and the CITY during the Inspection Period (as defined below).
  - 4. The representations and warranties of the CITY contained in this Agreement shall be true and correct in all material respects as of the Closing Date as though made at and as of the Closing Date, and the CITY shall have timely performed all of its obligations and covenants under this Agreement requiring performance at any time prior to or as of the Closing.
- C. Legislative Discretion. The CITY shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement

including, but not limited to, the creation of the PID and TIRZ. Nothing contained in this Agreement, however, shall be construed as creating a contractual obligation that controls, waives, or supplants the City Council's legislative discretion.

**2.3 Purchase Price.**

The purchase price of the above-reference Property shall be ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), hereinafter "Purchase Price," which sum (less the Earnest Money and any Inspection Period Extension Payments (as defined below), if applicable) shall be paid in full at the Closing of the Property, subject to any applicable adjustments or prorations set forth herein.

**2.4 Interest on Earnest Money.**

BUYER may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will become part of the Earnest Money.

**2.5 Title Policy and Survey.**

A. Title Policy. The BUYER shall have the right to obtain a title policy for the Property (the "Title Policy") as the BUYER deems appropriate at the BUYER's expense.

B. Title Objection Matters.

Prior to the expiration of the Inspection Period, BUYER may object in writing to any title or survey matters, including, without limitation, any liens, encumbrances or other title exceptions revealed by the title commitment for the Property issued by the Title Company (the "Title Commitment") or survey matters revealed by the Existing Survey (as defined below) or any update thereto or new survey of the Property (any such matters to which BUYER so objects, the "Objection Matters"). On or before the fifth (5<sup>th</sup>) business day following the CITY's receipt of BUYER's Objection Matters, the CITY shall notify BUYER in writing whether the CITY elects to cure such Objection Matters (the "CITY's Response Notice") prior to or at the Closing (and the CITY's failure to timely provide such a notice shall be deemed an election by the CITY not to cure such Objection Matters). If the CITY elects to cure such Objection Matters, then the CITY shall keep BUYER informed of the status of the CITY's efforts to cure such Objection Matters. All Objection Matters that the CITY affirmatively elects to cure shall be cured by the CITY prior to or at Closing. If CITY elects not to cure such Objection Matters, BUYER may either (a) approve those Objection Matters that the CITY has not agreed to cure, or (b) terminate this Agreement by delivering a written notice to the CITY within five (5) business days after the expiration of the Inspection Period, in which event the Earnest Money shall be promptly returned to BUYER, and the parties hereto will have no further obligations hereunder, except for any obligations which expressly survive the termination of this Agreement.

If any new items are disclosed by any updated Title Commitment or any new or updated survey, then BUYER will have five (5) business days (the “New Objection Period”) to deliver a written notice to the CITY of any new objections (“New Objection Matters”) that BUYER may have to such new items. If BUYER timely delivers written notice of the New Objection Matters to the CITY (the “New Objection Notice”), the CITY may (but shall have no obligation to), within five (5) business days after receipt of the New Objection Notice (the “Additional Cure Period”), agree to cure any New Objection Matters prior to or at Closing. If, within the Additional Cure Period, the CITY does not provide written notice to BUYER agreeing to cure all of the New Objection Matters, then BUYER may either (a) approve those New Objection Matters that the CITY has not agreed to cure, or (b) terminate this Agreement by delivering a written notice to the CITY within five (5) business days after the expiration of the Additional Cure Period, in which event the Earnest Money shall be promptly returned to BUYER, and the parties hereto will have no further obligations hereunder, except for any obligations which expressly survive the termination of this Agreement.

- C. Survey. Within five (5) days after the Effective Date of this Agreement, the CITY shall furnish to BUYER and the Title Company a full-sized copy of the CITY’s existing survey (“Existing Survey”), if any, of the Property. Should the Title Company require that the Existing Survey be updated or a new survey of the Property be obtained, BUYER shall obtain such updated or new survey at BUYER’s expense, subject to reimbursement by CITY at the time of Closing in an amount not to exceed TEN THOUSAND DOLLARS (\$10,000.00) (the “Reimbursement Cap”). The CITY agrees to permit BUYER access to the Property to prepare a new or updated survey. The legal description for the Property in the conveyance documents shall be consistent with the survey of the Property approved by BUYER and the CITY.

## **2.6 Inspection Period.**

BUYER shall have the right, at its sole cost and expense and within a period of one hundred eighty (180) days (the “Inspection Period”) following the Effective Date of this Agreement, to conduct or cause to be conducted any and all tests, inspections, reviews, assessments, or evaluations of the Property, including without limitation engineering, hydrology, topographic, soils, zoning, wetlands and environmental inspections (including Phase I and/or Phase II environmental site assessments to be performed by an environmental consultant selected by BUYER), and economic feasibility and financial availability analyses (collectively, the “Inspections”) as BUYER deems necessary, desirable or appropriate in order to determine whether the Property is suitable for purchase by BUYER. As used herein, the term “Phase I and/or Phase II environmental site assessments” includes BUYER’s right to perform intrusive soil sampling/investigation to the land and improvements constituting the Property.

The CITY shall allow BUYER and its authorized agents, representatives, consultants and engineers, reasonable access to the Property and to all information pertaining thereto in the possession of or within the control of the CITY for the purpose of the Inspections. The CITY shall reasonably cooperate with BUYER in facilitating the

Inspections and shall use reasonable efforts to obtain any consents that may be necessary for BUYER to perform the Inspections and shall use its reasonable efforts to secure such cooperation from existing tenants of the Property.

In the event BUYER terminates this Agreement pursuant to Section 2.7 below, BUYER shall promptly restore the Property to its previous condition possible immediately prior to the Inspections (which obligation shall survive the termination of this Agreement) and upon such restoration of the Property, neither party shall have any further right nor obligations hereunder except as otherwise expressly provided herein. In the event this Agreement is terminated, BUYER will return to the CITY all documents and analyses received from the CITY during the Inspection Period.

BUYER shall have two (2) options to extend the Inspection Period by sixty (60) days each by depositing ONE THOUSAND DOLLARS (\$1,000.00) per extension with the Title Company (each, an "Inspection Period Extension Payment", and collectively, the "Inspection Period Extension Payments"). The Inspection Period Extension Payments shall be non-refundable to BUYER for any reason other than the default of the CITY but will be applied to the Purchase Price at the time of Closing.

## **2.7 Termination.**

BUYER may terminate this Agreement for any reason by notifying the CITY before the end of the Inspection Period. If BUYER is satisfied with the results of its Inspections, in BUYER's sole discretion, BUYER shall deliver written notice of such satisfaction (an "Approval Notice") to the CITY prior to the expiration of the Inspection Period. In the event BUYER fails to timely deliver an Approval Notice or in the event Buyer delivers written notice to CITY of its election to terminate this Agreement prior to the expiration of the Inspection Period, this Agreement shall terminate, and, in the event of such termination, neither BUYER nor the CITY shall have any continuing rights or obligations hereunder, except those which expressly survive termination of this Agreement, and the Title Company shall promptly return the Earnest Money to BUYER without further instruction from the CITY.

## **2.8 Environmental Assessments.**

BUYER shall receive the Property in "AS-IS" condition. **BUYER assumes all responsibility after Closing for any and all environmental matters relating to the Property and agrees to release the CITY from any possible liability relating to environmental matters on the Property. BUYER shall perform all appropriate inquiries to verify condition of the Property prior to Closing.**

## **2.9 Closing.**

A. The Closing of the purchase and sale of the Property (the "Closing") shall be held at the Title Company within forty-five (45) business days from the expiration of the Inspection Period, or at such other time and date as the parties may agree (the "Closing Date"), but in no case before satisfying the contingencies as provided by Section 2.2 of this Agreement.

B. At Closing, the CITY shall:



1. Deliver to BUYER the duly executed and acknowledged Special Warranty Deed (the "Deed"), in such form as mutually agreed upon by BUYER and the CITY, at the CITY's sole cost and expense, conveying good and indefeasible title to the Property, free and clear of any and all liens, and encumbrances.
  2. Deliver the CITY's duly executed counterpart to an Assignment and Assumption Agreement (the "Assignment"), in such form as mutually agreed upon by BUYER and the CITY, assigning the Property Agreements and Intangible Property to BUYER.
  2. Deliver sole and exclusive possession of the Property to BUYER.
  3. Deliver to BUYER, at BUYER's cost, a Title Policy insuring indefeasible title issued by Title Company, in BUYER's favor in the full amount of the Purchase Price, insuring BUYER's fee simple interest in the Property subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to Closing.
  4. Pay the CITY's expenses and attorneys' fees.
  5. Reimburse BUYER for the cost incurred to obtain any new or updated survey of the Property, such amount not to exceed the Reimbursement Cap.
  6. Deliver such other further documents as may reasonably be required to consummate the transaction evidenced by this Agreement.
- C. Upon such performance by the CITY at Closing, BUYER shall:
1. Pay all Closing costs and escrow fees.
  2. Pay BUYER's expenses or attorneys' fees.
  3. Pay the costs of any Inspections performed by BUYER.
  4. Pay for the cost of the Title Policy.
  5. Pay all other Closing costs related to the conveyance of the Property.
  6. Pay recording fees for conveyance of the Property.
  7. Pay the balance of the Purchase Price.
  8. Deliver BUYER's duly executed counterpart to the Assignment.
  9. Deliver such other further documents as may reasonably be required to consummate the transaction evidenced by this Agreement.
- D. Broker/Realtors' Fees
- None.

**2.10 Possession.**

Sole and exclusive possession of the Property shall be delivered to BUYER at Closing.

## **2.11 Sales Expenses.**

The following expenses shall be paid at or prior to Closing:

- (a) BUYER shall be responsible for the expenses associated with any environmental assessments performed by BUYER during its Inspections; preparation of the Deed; the Title Company's escrow fee; and other expenses stipulated to be paid by BUYER under other provisions of this Agreement. BUYER shall reimburse the CITY for the cost of establishing the TIRZ and the PID regardless of whether the CITY's sale of the Property to BUYER is consummated hereunder; provided, that BUYER shall have no obligation to reimburse the CITY for such costs if the sale hereunder is not consummated due to the default of the CITY.
- (b) The CITY shall be responsible for the following expenses associated with the Property: releases of existing liens, including prepayment penalties and recording fees; release of the CITY's loan liability; taxes assessed prior to January 1, 2021; tax statements or certificates; and other expenses stipulated to be paid by the CITY under other provisions of this Agreement.

## **2.12 Prorations.**

Current taxes, any rents, maintenance fees, and assessments for the Property shall be prorated through the Closing Date. The CITY is a tax-exempt entity and as such does not owe taxes on the Property during its ownership of the Property. The BUYER alone shall be liable for any taxes and assessments assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER of the Property. If the amount of the ad valorem taxes for the year in which the sale is closed is not available on the Closing Date, proration of the taxes shall be made on the basis for the taxes assessed in the previous year.

## **2.13 Escrow.**

The Earnest Money is deposited with Title Company with the understanding that the Title Company is not (a) a party to this Agreement and does not have any liability for the performance or non-performance of any party to this Agreement, (b) liable for interest on the Earnest Money, or (c) liable for any loss of Earnest Money caused by the failure of a financial institution in which the Earnest Money has been deposited unless the financial institution is acting as the Title Company. If either party makes demand for the payment of the Earnest Money, Title Company has the right to require from all parties a written release of liability of the Title Company for disbursement of the Earnest Money. Any refund or disbursement of Earnest Money under this Agreement shall be reduced by the amount of unpaid expenses incurred on behalf of the party receiving the Earnest Money, and Title Company shall pay the same to the creditors thereto. At Closing, the Earnest Money shall be applied to the Purchase Price. Demands and notices required by this paragraph shall be in writing and delivered by hand delivery or by certified mail, return receipt requested.

#### **2.14 Financing.**

BUYER is fully and solely responsible for obtaining any required financing for purchase of the Property.

#### **2.15 Mineral Estate Not Conveyed.**

The CITY's ownership interest, if any, in the mineral estate of the Property conveyed herein shall in all things be reserved to the CITY; provided, that the CITY waives its right to enter the surface of the Property for any reason, including, without limitation, for the exploration, development or production of oil, gas, or other minerals from the mineral estate owned and retained by the CITY, it being expressly understood that the only manner in which said mineral estate may be produced is from a surface location not within the boundary of the Property and only at a depth of no less than 500 feet below the surface of the Property.

#### **2.16 Special Provisions.**

From and after the Effective Date until the earlier of the Closing Date or the date on which this Agreement terminates:

- (a) The CITY shall maintain and operate the Property in substantially the same manner as CITY has heretofore done;
- (b) The CITY shall not, without BUYER's approval, (i) enter into any new Property Agreement or terminate or amend or otherwise modify any existing Property Agreement in a manner that would bind or encumber the Property or BUYER after Closing; or (ii) enter into any lease of the Property;
- (c) The CITY shall not amend (except as necessary to cure an Objection Matter) or create any title exceptions, such as easements or liens encumbering the Property (unless caused by BUYER), without BUYER's prior written approval, which may be given or withheld in BUYER's sole and absolute discretion; and
- (d) The CITY shall not materially alter the physical condition of the Property.

### **3 DEVELOPMENT**

#### **3.1 Use.**

The Property shall be developed into single-family residential and associated infrastructure to serve its development. The Property shall be used and developed for the purpose intended by the signed Development Agreement to be executed by the parties at Closing.

#### **3.2 Tax Exempt Entities.**

The Property may not be resold or leased to a tax-exempt entity by BUYER.

### **3.3 Indemnity.**

BUYER SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION (COLLECTIVELY, "LOSSES") FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF BUYER'S INSPECTIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION LOSSES ARISING FROM ANY ACTS OR OMISSIONS OF BUYER'S SUBCONTRACTORS AGENTS, CONSULTANTS, SURVEYORS, EMPLOYEES, AND REPRESENTATIVES. **NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL BUYER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, AND IN NO EVENT SHALL BUYER BE LIABLE TO THE CITY FOR ANY LOSS OR DAMAGE SUFFERED OR INCURRED BY THE CITY AS A RESULT OF (I) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR ANY OF ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES, OR (II) ANY EXISTING CONDITION OR MATTER REVEALED BY OR DURING BUYER'S INSPECTIONS.**

### **3.4 Release.**

The BUYER assumes full responsibility for the Inspections 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 (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the BUYER's Inspections 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 in the event of injury, death, property damage, or loss suffered by the BUYER, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on or with respect to the Property.

## **4 MISCELLANEOUS**

### **4.1 Right of Assignment.**

Except as to an assignment to an affiliate of BUYER, which assignment may be made without the CITY's prior written consent but with five (5) days' written notice of such assignment to the CITY, BUYER may sell or assign all interest in the Property to another party or parties with the express prior written approval of the CITY. Any sale or assignment must be absolute and shall fully assign all duties, liabilities, and obligations of BUYER to the Assignee. If BUYER fails to assign all duties, liabilities, and obligations to any assignee, BUYER shall be liable to the CITY for remaining duties, liabilities, and/or obligations.

## 4.2 Notices.

Any notice required or permitted to be delivered by this Agreement shall be in writing and shall be either (a) personally delivered to the parties named below by a commercial messenger service regularly retaining receipts for such delivery; (b) sent by registered or certified mail, return receipt requested, effective upon deposit; (c) delivered by a reputable overnight courier service, effective upon delivery thereof to the carrier; or (d) sent by electronic mail effective upon successful transmission, and shall be addressed to the CITY or BUYER, as the case may be, at the addresses set forth below:

If to CITY:           City of Freeport  
                          Attn: Tim Kelty, City Manager  
                          200 W. 2nd Street  
                          Freeport, TX 77541

With copy to:       David Olson  
                          Olson & Olson, LLP  
                          Wortham Tower  
                          2727 Allen Parkway, Suite 600  
                          Houston, TX 77019  
                          Email: DOlson@OlsonLLP.com

If to BUYER:         Jim Maddox Properties, LLC  
                          Attn: Jim Maddox  
                          1980 Post Oak Blvd., Suite 2020  
                          Houston, TX 77056  
                          Email: jim@maddoxproperties.com

Jarrard Development LLC  
Attn: Brian Jarrard  
5005 Riverway Dr., Suite 210  
Houston, TX 77056  
Email: brian@jarrdev.com

With copy to:       Coats Rose, P.C.  
                          Attn: John Cannon and Caroline Cho  
                          9 Greenway Plaza, Suite 1000  
                          Houston, TX 77046  
                          Email: jcannon@coatsrose.com  
                          Email: ccho@coatsrose.com

## 4.3 Default.

If BUYER fails to comply with this Agreement, the BUYER shall be in default, and the CITY may terminate this Agreement and receive the Earnest Money and any Inspection Period Extension Payment, if applicable, as liquidated damages, and the parties shall be released from further obligations or liabilities to each other under the

terms and provisions of this Agreement, except for those obligations or liabilities that expressly survive termination. If the CITY fails to comply with this Agreement, the CITY shall be in default and the BUYER may either (a) enforce specific performance, or (b) terminate this Agreement, whereupon the Earnest Money and any Inspection Period Extension Payment, if applicable, shall be promptly returned to BUYER by the Title Company, and the parties shall be released from further obligations or liabilities to each other under the terms and provisions of this Agreement, except for those obligations or liabilities that expressly survive termination.

#### **4.4 Representations.**

The CITY represents that as of the Closing Date there will be no liens, assessments, or Uniform Commercial Code or other security interest against any of the Property which will not be satisfied out of the Sales Price, other than ad valorem taxes. If any representation in this Agreement is untrue on the Closing Date, this Agreement may be terminated by BUYER and the Earnest Money shall be refunded to BUYER. All representations contained in this Agreement shall survive the closing.

#### **4.5 DISCLAIMER OF WARRANTIES.**

**BUYER ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE SET FORTH IN THE DEED DELIVERED AT CLOSING AND AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS-IS" AND "WITH ALL FAULTS."**

- (a) THE CITY EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT the CITY HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION:**
  - (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY**
  - (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND**
  - (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS.**
- (b) BUYER REPRESENTS THAT IT IS NOT RELYING ON ANY INFORMATION THE CITY HAS PROVIDED REGARDING THE**

**PROPERTY AND IMPROVEMENTS THEREON AND HAS MADE OR WILL MAKE:**

- (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY BUYER, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS; AND**
- (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.**

**THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM THE CITY TO BUYER OF THE DEED.**

**4.6 Non-Waiver.**

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder to exercise any right or remedy occurring as a result of any future default or failure of performance.

**4.7 Third-Party Beneficiaries.**

There are no third-party beneficiaries to this Agreement.

**4.8 Restrictive Covenants/Deed Restrictions.**

Any restrictive covenants, deed restrictions, representations, warranties, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the Closing Date, shall survive the Closing and shall not be merged by deed or otherwise be extinguished.

**4.9 Severability.**

If a provision in this Agreement is unenforceable for any reason, to the extent the unenforceability does not destroy the basis for the bargain among the parties, the unenforceability does not affect any other provision of this Agreement, and this Agreement is to be construed as if the unenforceable provision is not a part of the Agreement.

**4.10 Choice of Law.**

This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts of law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each party hereby submits

to the jurisdiction of the state and federal courts in the State of Texas and to venue in HARRIS COUNTY, Texas.

**4.11 No Right to Arbitration.**

Notwithstanding anything to the contrary contained in this Agreement, the BUYER and the CITY hereby agree that no claim or dispute between the BUYER and the CITY arising out of or relating to this Agreement shall be decided by any arbitration proceeding, including, without limitation, any proceeding under the Federal Arbitration Act (9 U.S.C. § 1-14), or any applicable state arbitration statute, including, but not limited to, the Texas General Arbitration Act, provided that in the event that the BUYER is subjected to an arbitration proceeding notwithstanding this provision, the CITY consents to be joined in the arbitration proceeding if the CITY's presence is required or requested by the BUYER for complete relief to be recorded in the arbitration proceeding.

**4.12 Amendment.**

This Agreement may be amended only by an instrument in writing signed by the parties.

**4.13 Merger; Prior Agreement.**

This Agreement, its exhibits, and any closing documents delivered at closing are the entire agreement of the parties concerning the sale and development of the Property by the CITY to the BUYER. There are no representations, warranties, agreements, or promises pertaining to the Property or the sale of the Property by the CITY to the BUYER, and the BUYER is not relying on any statements or representations of any agent of the CITY, that are not in those documents.

**4.14 Authority.**

The persons executing this Agreement on behalf of the parties hereby represent that such persons have full authority to execute this Agreement and to bind the party he/she represents. The persons executing this Agreement do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Agreement in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

**4.15 Time of Essence.**

Time is of the essence to this Agreement.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties in multiple copies, each of which shall be deemed to be an original, but all of which shall constitute but one and the same Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2023, the date of execution by the CITY.

[SIGNATURES FOLLOW]



**FOR CITY OF FREEPORT**

\_\_\_\_\_  
Tim Kelty, City Manager

Dated: \_\_\_\_\_

**ATTEST:**

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

**FOR BUYER:**  
JIM MADDOX PROPERTIES, LLC

By: \_\_\_\_\_  
James W. Maddox, Manager

Dated: \_\_\_\_\_

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS,  
COUNTY OF BRAZORIA.**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2023, by Tim Kelty, City Manager of THE CITY OF FREEPORT for and on behalf of THE CITY  
OF FREEPORT.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

(SEAL)

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS,  
COUNTY OF BRAZORIA.**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2023, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

(SEAL)

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS,  
COUNTY OF HARRIS.**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2023, by James W. Maddox, Manager of Jim Maddox Properties, LLC, a Texas limited liability  
company.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

(SEAL)

# Exhibit A

## Depiction of the Property

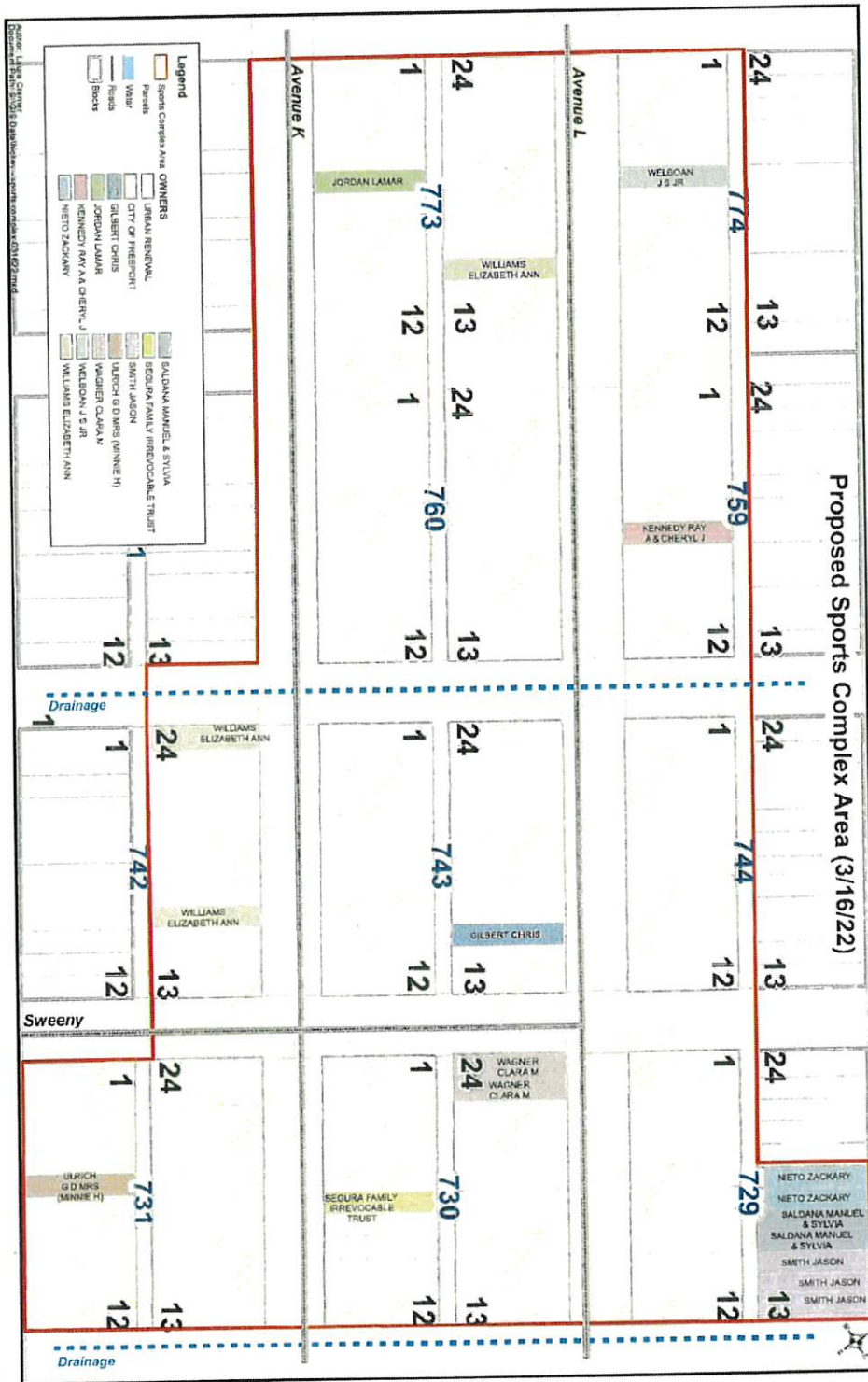


Exhibit B

Development Agreement Term Sheet

**PROPOSED TERM SHEET**  
May 3, 2023

**PROPOSED ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FREEPORT ("CITY") AND MADDOX PROPERTIES, OR ITS ASSIGNS ("DEVELOPER").**

This Term Sheet sets forth proposed terms for a possible Economic Development Agreement to be entered into between the City and the Developer for development of property currently within the City's corporate limits of approximately 125 new single-family homes with the goal of future new development in the immediate area ("Development Area"), **EXHIBIT A**. The parties expressly represent that any transaction between the parties and the acceptance of these proposed terms is subject to the negotiation and execution of a definitive written contract.

**I. City Commitments**

- a) Execution of a Purchase and Sale Contract between City and Developer upon approval of by City Council to be considered on June 5, 2023.
- b) Execution of a Development Agreement with City and completion of the TIRZ Creation upon approval by City Council to be considered no later than September 30, 2023.
- b) Establishment of a Public Improvement District per Chapter 372 of the Texas Local Government Code with a not to exceed tax rate of \$1.25.
- c) Creation of a co-terminus Tax Increment Reinvestment Zone ("TIRZ") per Chapter 311 of the Tax Code equal to fifty percent (50%) of the City's tax increment to offset any PID assessment and reimbursement eligible expenses under Chapter 311 including public infrastructure and development grants.
- e) City will work with Developer to establish design standards for proposed development consistent with City Code and/or other applicable zoning.
- f) Waiver of Re-platting and rezoning fees related to the proposed development.
- g) City confirms there is capacity in its existing water, sanitary sewer and drainage facilities and allows Developer to connect upon approval by City's Engineer of Developer's construction plans.

**I. Developer Commitments**

- a) Developer agrees to purchase the land by May 31, 2024, subject to execution of an acceptable Development Agreement with City.
- b) Developer will prepare and submit development plans for the City to review prior to beginning construction.
- c) Within 30 days after closing on the purchase of the property, Developer will submit petition for creation of the Public Improvement District.
- d) The Developer understands that the proposed agreement is performance based and that failure to make any improvements will not produce any substantial TIRZ increment and, subject to commercially reasonable notice and cure rights, will result in immediate termination of the agreement.

I have reviewed and accept the term sheet as presented:

CITY:

[Signature]  
Name

5/15/23

Date

Mayor, City of Houston, Tx  
Title

DEVELOPER:

[Signature]  
Name

16 MAY 23

Date

Jim Maddox

**Maddox Properties, LLC**  
1980 Post Oak Blvd., Suite 2020  
Houston, TX 77056  
(713) 818-5188  
[jim@maddoxproperties.com](mailto:jim@maddoxproperties.com)

May 11, 2023

Mr. Tim Kelty  
City Of Freeport  
200 W. 2nd Street  
Freeport, TX 77541

**RE: Letter of Intent to Purchase and Develop Approximately 19 Acres of Land in Freeport, Texas**

Dear Mr. Kelty:

This **“Letter”** sets forth the general terms and conditions upon which **Maddox Properties** or its assignee (**“Purchaser”**) would purchase the Property from **City of Freeport** (**“Freeport”**) (defined as **“Seller”**) subject to the drafting and execution of a mutually acceptable Purchase Agreement embodying, among others, the following terms:

1. **Property**                    +/-19 Gross Acres in Freeport, Texas, as depicted in Exhibit A (**“the Property”**).  
  
The Property shall include all executed agreements affecting the Property, all plans, specifications, engineering data, architectural data, construction and cost information, all entitlements and permits, and all other documents pertinent to the purchase, operation and development of the Property to the extent such items are assignable.
2. **Purchase Price**            The **“Purchase Price”** shall be an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00) paid in cash.
3. **Earnest Money**            Within three (3) business days of execution of the Agreement, Purchaser shall deposit the sum of One Thousand Dollars (\$1,000.00) (the **“Deposit”**) which shall be applied to purchase price at time of closing. The Deposit shall be placed in an escrow account with Fidelity National Title.
4. **Closing**                    The **“Closing”** shall occur no later than Forty-Five (45) business days after Seller’s receipt of a Feasibility Approval Notice.
5. **Feasibility**                    Purchaser shall have a period of one hundred twenty (180) days to review, at Buyers sole discretion, the condition and suitability of the Property for Buyers intended use, including but not limited to development costs, financial and market feasibility, condition of title and the physical condition of the property (the **“Feasibility Period”**). Purchaser shall have the right to meet with all applicable jurisdictions, agencies, and consultants during the Feasibility Period to complete its review. If Purchaser satisfies itself as to the condition of the Property it shall, no later than the end of the Feasibility Period, issue a written notice of approval (**“Feasibility Approval Notice”**). Should Purchaser fail to deliver the Feasibility Approval Notice by the expiration of the Feasibility Period, Buyer shall be deemed to have elected to cancel escrow and the Deposit and escrowed funds and interest shall be retained by the Seller.

6. **Feasibility Extension**

Purchaser shall have (2) two options to to extend the Feasibility Period by Sixty (60) Days each with the payment of One Thousand Dollars (\$1,000.00) per extension. Feasibility Extension Payments shall be non-refundable to Purchaser but shall be applied to Purchase Price at Closing.

7. **Survey**

Within Five (5) Days, Seller shall supply Purchaser with a full-sized copy of its existing Survey. Should the Title Company require an updated Survey to be performed, Purchaser shall cause to have a Survey performed at its expense, to be reimbursed by Seller at closing up to \$10,000.00.

8. **Right of Access**

Following Seller's execution of this Letter, Purchaser and its agents and employees shall have the right to enter the Property for the purpose of conducting such investigations it deems necessary to determine the condition and suitability of the Property.

9. **Brokerage Fee**

None.

10. **Agreement**

Upon signature by Purchaser and Seller of this Letter, the parties shall use their best commercial efforts to diligently pursue the drafting of a mutually acceptable Agreement incorporating those clauses necessary and typical for a transaction of this type and required by local statute or state law in addition to the terms and conditions included therein. It is understood and agreed that this letter does not contain all the essential terms that Seller and Purchaser expect will be part of the Agreement.

11. **Assignment**

Purchaser shall have the right to assign its rights and obligations under this Letter or the Agreement to an entity which it is related.

12. **Use**

The Property shall be developed into single-family residential and associated infrastructure to serve for its development.

15. **Development Agreement**

Purchaser and Seller will use their best commercial efforts to diligently pursue the drafting of a mutually acceptable Development Agreement to serve the Property.

16. **TIRZ and PID Creation**

Seller shall promptly initiate the creation of both a TIRZ and a PID for the entire boundary of the Property. Specifically, the TIRZ shall grant the authority for the City of Freeport to sell the Property to Buyer, and revenue from both the TIRZ and the PID shall be utilized to subsidize the cost of developing infrastructure for the proposed project. The details and structure of the PID shall be approved by the Buyer. The cost of the creation of the TIRZ and the PID shall be reimbursed to the Seller from the Buyer regardless of whether the Seller closes on the sale of the property.

17. Proof of Funds

Closing shall be contingent upon satisfactory evidence of Purchaser's ability to finance all infrastructure improvements on the Property. Evidence shall be in the form of a bank set-aside letter, letter of credit, surety bond or some other form mutually agreed upon during the feasibility period.

18. Non-Binding

This Letter shall only constitute a letter of understanding for the purchase of the Property and is not contractual in nature and shall not bind any party hereto or create any legal or other obligations relating to the Property or otherwise, notwithstanding any negotiations undertaken with respect to the proposed Agreement. No binding agreement shall exist between the parties unless and until the parties are satisfied in their respective sole and absolute discretion with all of the terms and conditions of the Agreement and that the Agreement has been executed.

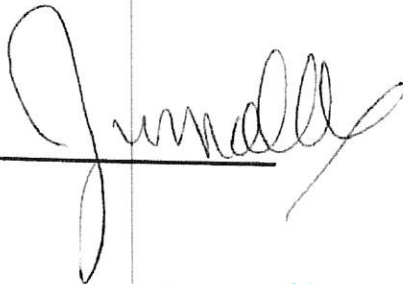
It is understood and agreed that there shall be no recourse by either party against the other in the event that the parties do not agree on the terms and conditions of the Agreement. In such event, each party hereto will and does hereby release the other from all claims with respect to the letter or such negotiations.

If the terms of this Letter are acceptable to Seller, Seller should execute a copy of this where indicated below and return it to Purchaser within ten (10) business days from the date first written above ("the Expiration"). If Seller is unable to execute this Letter prior to the Expiration, it shall be null and void and of no further effect.

Sincerely,

Jim Maddox Properties

By: Jim Maddox  
Jim Maddox, Manager



Seller agrees in principle to the foregoing this 15 day of May, 2023.

SELLER:

BY: [Signature]

Its: Mayor, City of Freeport, Tx  
Brooks Bass



17. **Proof of Funds**

Closing shall be contingent upon satisfactory evidence of Purchaser's ability to finance all infrastructure improvements on the Property. Evidence shall be in the form of a bank set-aside letter, letter of credit, surety bond or some other form mutually agreed upon during the feasibility period.

18. **Non-Binding**

This Letter shall only constitute a letter of understanding for the purchase of the Property and is not contractual in nature and shall not bind any party hereto or create any legal or other obligations relating to the Property or otherwise, notwithstanding any negotiations undertaken with respect to the proposed Agreement. No binding agreement shall exist between the parties unless and until the parties are satisfied in their respective sole and absolute discretion with all of the terms and conditions of the Agreement and that the Agreement has been executed.

It is understood and agreed that there shall be no recourse by either party against the other in the event that the parties do not agree on the terms and conditions of the Agreement. In such event, each party hereto will and does hereby release the other from all claims with respect to the letter or such negotiations.

If the terms of this Letter are acceptable to Seller, Seller should execute a copy of this where indicated below and return it to Purchaser within ten (10) business days from the date first written above ("the Expiration"). If Seller is unable to execute this Letter prior to the Expiration, it shall be null and void and of no further effect.

Sincerely,

Jim Maddox Properties

By: Jim Maddox  
Jim Maddox, Manager

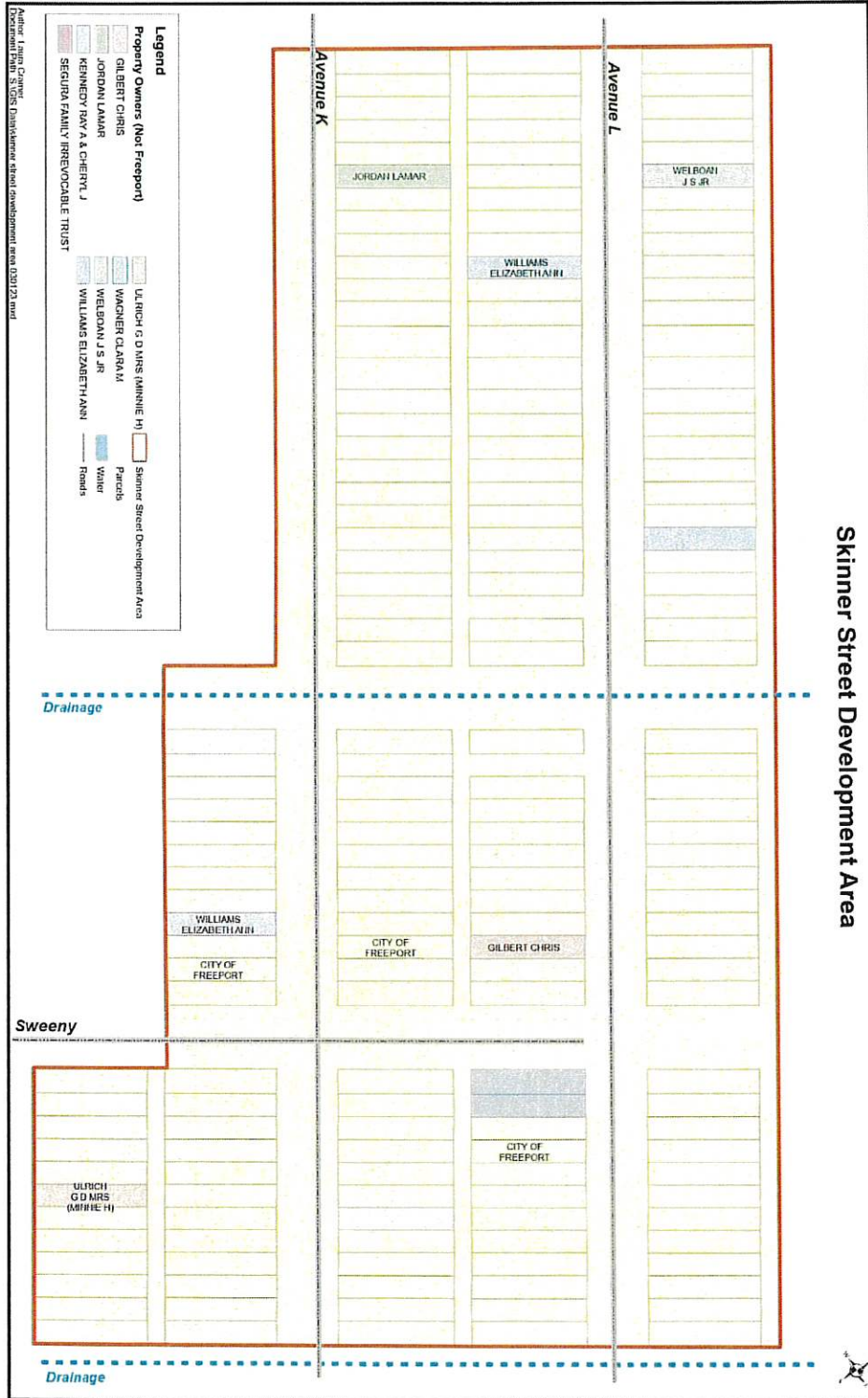
Seller agrees in principle to the foregoing this 15 day of May, 2023.

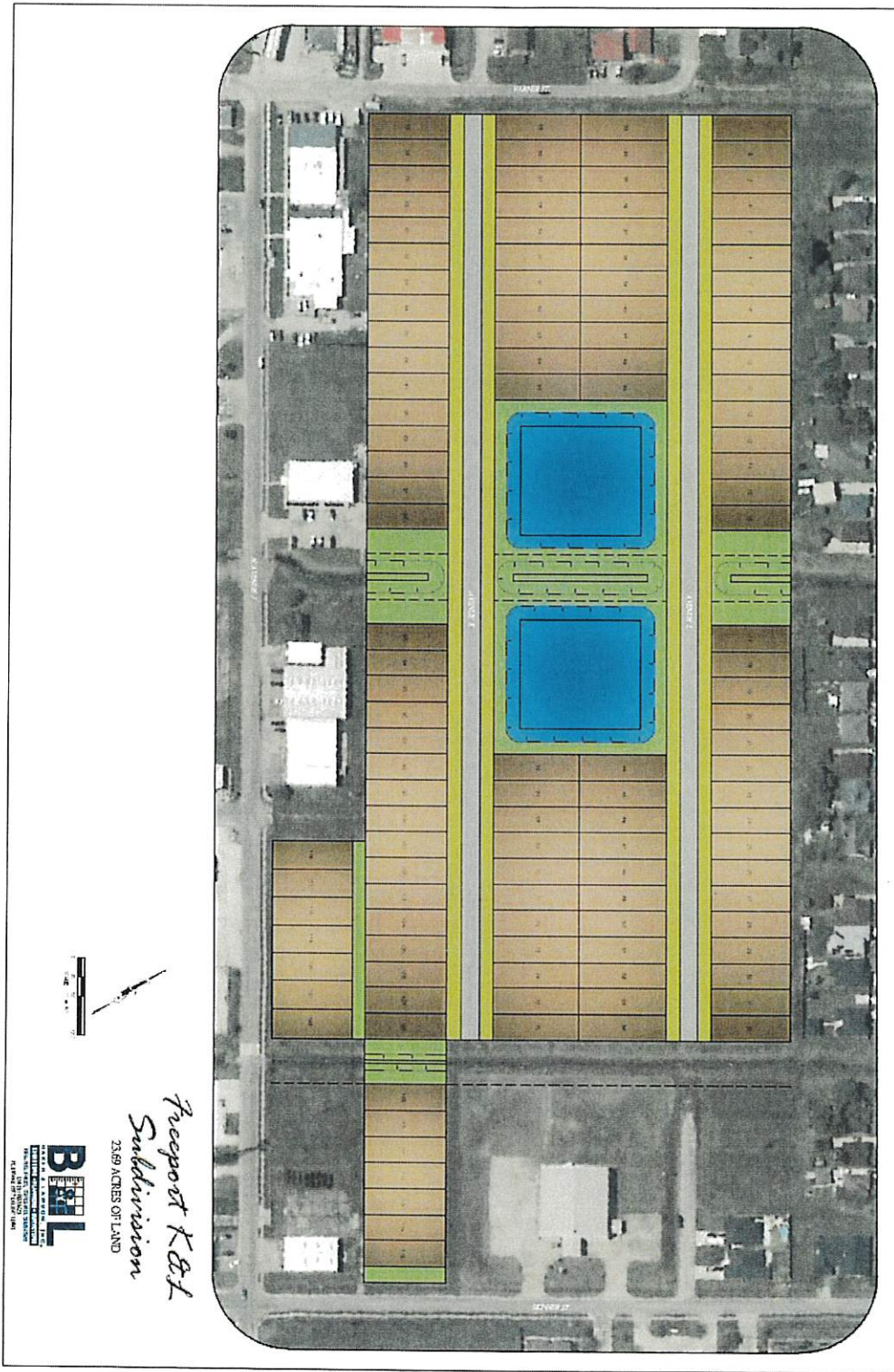
SELLER:

BY: [Signature]

Its: Mayor, City of Freeport, Tx  
Brooks Bass

# Exhibit A







June 15, 2023

Mayor Brooks Bass  
City of Freeport  
200 W. 2<sup>nd</sup> St.  
Freeport, TX 77541

Subject: Proof of Financing – Freeport Subdivision

Dear Mayor Bass,

This letter is to certify that Texas Capital Bank has pre-approved (subject to a formal application, full underwriting, and appraisal) an Acquisition and Development Loan for the proposed development of approximately 130 single-family residential lots in Freeport, Texas, of an amount up to approximately \$5,000,000.00.

Our Bank has enjoyed a 25-year history of financing similar projects for Mr. Holcomb, including development loans with Principal Balances as high as \$17,000,000, without any instances of default or late payments. In addition, Mr. Holcomb has maintained cash deposits at our bank in excess of approximately \$2,000,000 over the last 15 years. Currently, Mr. Holcomb has no debt to this bank.

We look forward to working with the parties involved to ensure a smooth transaction and another successful project.

Please contact me at 512-618-2587 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Gremmer".

Barbara Gremmer  
Vice President

\*Please note none of the information contained herein is to be construed as a formal commitment to provide financing. Any commitment to provide financing will only be provided in writing after completion of the due diligence process to our satisfaction.

1330 Post Oak Blvd., Suite 1700  
Houston, TX 77056  
832.308.7000



## City Council Agenda Item # 6

**Title:** Consideration of Engagement Letter to Conduct audit for FY2022-2023.

**Date:** July 3, 2023

**From:** Cathy Ezell Finance Director

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**Staff Recommendation:**

Staff recommends Council authorize the City Manager and Mayor to accept and sign the Engagement Letter with BrooksWatson & Co.

**Item Summary:**

The City went out for Request for Qualifications (RFQ's) for auditing services. The City advertised on April 25, 2023 and May 1, 2023 with the RFQ's being due May 11, 2023. The City received four RFQ's. City Manager, Finance Director, and the Mayor scored the RFQ's. The following three firms were interviewed by City Manager, Finance Director, and the Mayor on June 12, 2023:

- Whitley Penn
- BrooksWatson
- Patillo Brown & Hill

The timing of our audit will be scheduled for performance and completion as follows:

Document internal control and preliminary tests	October 2023
Perform year-end internal control testing and substantive audit procedures	January 2024
Issue audit report	March 2024

They will complete the audit, the single audit, and help transition to the Annual Comprehensive Financial Report (ACFR).

**Background Information:**

The City has used Whitley Penn to audit the past five fiscal years. It is standard practice to go out for RFQ's at least every five years.

**Special Considerations:** N/A

**Financial Impact:**

The fee for the audit services will be based on the amount of time required and the difficulty of the work involved which is estimated to be \$68,000. This amount is less than prior years and reflects the actual costs for the audit.

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

**Supporting Documentation:**

Engagement Letter from BrooksWatson & Co.



BROOKSWATSON & CO.  
CERTIFIED PUBLIC ACCOUNTANTS

June 27, 2023

To the Honorable Mayor and  
Members of City Council  
Freeport, Texas

The following represents our understanding of the services we will provide the City of Freeport, Texas.

You have requested that we audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Freeport, Texas, as of September 30, 2023, and for the year then ended and the related notes to the financial statements, which collectively comprise the City of Freeport, Texas's basic financial statements as listed in the table of contents.

In addition, we will audit the entity's compliance over major federal award programs for the year ended September 30, 2023. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the entity's major federal award programs.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, pension information, and budgetary comparison information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

- 1) Management's discussion and analysis
- 2) Budgetary Comparison Information
- 3) Pension and OPEB schedules

Supplementary information other than RSI will accompany the City of Freeport, Texas's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and perform certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- 1) Individual nonmajor fund financial statements and schedules
- 2) Combining statements

Also, the document we submit to you will include the following other additional information that will not be subject to the auditing procedures applied in our audit of the financial statements:

- 1) Introductory section
- 2) Statistical section

#### **Schedule of Expenditures of Federal Awards**

We will subject the schedule of expenditures of federal awards to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements as a whole.

#### **Data Collection Form**

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, schedule of expenditure of federal awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit



clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the earlier of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

### **The Objective of an Audit**

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in accordance with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)* and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

### **General Audit Procedures**

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)*. Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements,

or contractual agreements. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

### **Internal Control Audit Procedures**

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance (whether caused by errors, fraudulent financial reporting, misappropriation of assets, detected abuse, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective and *Government Auditing Standards* does not require auditors to detect abuse.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Our responsibility as auditors is, of course, limited to the period covered by our audit and does not extend to any other periods.

### **Compliance with Laws and Regulations**

#### **Audit of Major Program Compliance**

Our audit of the City of Freeport, Texas's major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the Uniform Guidance, and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the entity has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal award programs. Our procedures will consist of determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of those procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Also, as required by the Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the entity's major federal award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the entity's major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

### **Management Responsibilities**

Our audit will be conducted on the basis that management and those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
3. For identifying, in its accounts, all federal awards received and expended during the period and the federal programs under which they were received, including federal awards and funding increments received prior to December 26, 2014 (if any), and those received in accordance with the Uniform Guidance (generally received after December 26, 2014);
4. For maintaining records that adequately identify the source and application of funds for federally funded activities;
5. For preparing the schedule of expenditures of federal awards (including notes and noncash assistance received) in accordance with the Uniform Guidance;

6. For the design, implementation, and maintenance of internal control over federal awards;
7. For establishing and maintaining effective internal control over federal awards that provides reasonable assurance that the nonfederal entity is managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards;
8. For identifying and ensuring that the entity complies with federal statutes, regulations, and the terms and conditions of federal award programs and implementing systems designed to achieve compliance with applicable federal statutes, regulations, and the terms and conditions of federal award programs;
9. For disclosing accurately, currently, and completely the financial results of each federal award in accordance with the requirements of the award;
10. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented;
11. For taking prompt action when instances of noncompliance are identified;
12. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
13. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
14. For submitting the reporting package and data collection form to the appropriate parties;
15. For making the auditor aware of any significant contractor relationships where the contractor is responsible for program compliance;
16. To provide us with:
  - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
  - b. Additional information that we may request from management for the purpose of the audit;
  - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
17. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole;
18. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
19. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;

20. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance;
21. For the accuracy and completeness of all information provided;
22. For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and
23. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With regard to the supplementary information and schedule of expenditures of federal awards referred to above, you acknowledge and understand your responsibility (a) for the preparation of the supplementary information and schedule of expenditures of federal awards in accordance with the Uniform Guidance, (b) to provide us with the appropriate written representations regarding the supplementary information and schedule of expenditures of federal awards, (c) to include our report on the schedule of expenditures of federal awards in any document that contains the schedule of expenditures of federal awards and that indicates that we have reported on such schedule, and (d) to present the supplementary information and schedule of expenditures of federal awards with the audited financial statements, or if the schedule will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information and schedule of expenditures of federal awards no later than the date of issuance by you of the schedule and our report thereon.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

We will assist the City with the preparation of the annual comprehensive financial report, and propose adjusting or correcting journal entries to be reviewed and approved by the City's management, which is considered to be a nonattest service. We will not assume management responsibilities on behalf of the City of Freeport, Texas. However, we will provide advice and recommendations to assist management of the City of Freeport, Texas in performing its responsibilities. With respect to this and any other nonattest services we perform, the City of Freeport, Texas's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the

services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

### **Reporting**

We will issue a written report upon completion of our audit of the City of Freeport, Texas's basic financial statements. Our report will be addressed to the governing body of the City of Freeport, Texas. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

### **Other**

We understand that your employees will prepare all confirmations we request and will locate any documents or support for any other transactions we select for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

### **Provisions of Engagement Administration, Timing and Fees**

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

The timing of our audit will be scheduled for performance and completion as follows:

	Begin	Complete
Document internal control and preliminary tests		September 30th
Observe physical inventories (if necessary)		n/a
Mail confirmations		October 1st
Perform year-end audit procedures		January/February
Issue audit report		March

Mike Brooks is the engagement partner for the audit services specified in this letter. His responsibilities include supervising BrooksWatson & Co., PLLC's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

Our fees are based on the amount of time required at various levels of responsibility, plus actual out-of-pocket expenses for confirmations. Invoices will be rendered monthly and are payable upon presentation. Our fee for the financial statement audit and preparation of the Annual Comprehensive Financial Report ("ACFR") is \$62,500. We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use the City's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit. Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

Our fees for the uniform guidance audit is \$5,500, including one major program (>\$750,000) and \$3,500 for each additional major program, for each year.

We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use the City of Freeport, Texas's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit.

## **Other Matters**

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

The audit documentation for this engagement is the property of BrooksWatson & Company, PLLC, and constitutes confidential information. However, we may be requested to make certain audit documentation available to regulators and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of BrooksWatson & Company, PLLC's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.



At the conclusion of our audit engagement, we will communicate to City Council the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements compliance over major federal award programs including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Respectfully,

A handwritten signature in black ink that reads "Brooks Watson & Co." in a cursive, slightly slanted font.

Brooks Watson & Co.  
14950 Heathrow Forest Pkwy | Ste 530  
Houston, TX 77032

\*\*\*\*\*

RESPONSE:

This letter correctly sets forth our understanding.

The City of Freeport, Texas

Acknowledged and agreed on behalf of the City of Freeport, Texas by:

Management

Name: \_\_\_\_\_

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

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

Mayor or Council Representative

Name: \_\_\_\_\_

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

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



## City Council Agenda Item # 7

**Title:** Consideration and possible action on allowance for the development of Mini-Storage units in the C-2 Zoning District with a Specific Use Permit.

**Date:** July 3, 2023

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

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**Staff Recommendation:**

Staff recommends to approve modification of ordinance to allow Mini-Storage Units in the C-2 Zone with a Specific Use Permit.

**Item Summary:**

There has been a citizen request made to allow for the development of Mini-Storage Units in the C-2 Zone. City Ordinance currently prohibits this, as it is not a Permitted Use.

**Background Information:**

The current Zoning Ordinance does not have Mini-Warehouse Self Storage as a permitted use in the C-2 Zone. This type of business is currently only allowed in C-3 and Industrial Zones. This would affect a proposed Mini-Warehouse development which would be located at 1915 N. Brazosport Blvd. Current City Ordinance prohibits this development, since it is in a C-2 Zone.

The Planning and Zoning Commission voted to approve an ordinance change on May 23, 2023. Their recommendation was to allow Mini-Warehouse Storage Units in the C-2 Zone as a Permitted Use. (Vote For – Eric Hayes, Karla Clark, Pam Dancy; Vote Against – Jim Saccomano, Andrew Dill)

The item came before City Council on June 5, 2023, and Council recommended that this item go back before the Planning and Zoning Commission for more discussion.

On June 27, 2023, the Planning and Zoning Commission voted to approve this ordinance change. Their recommendation is to allow Mini-Warehouse Storage Units in the C-2 Zone with a Specific Use Permit.

**Special Considerations:**

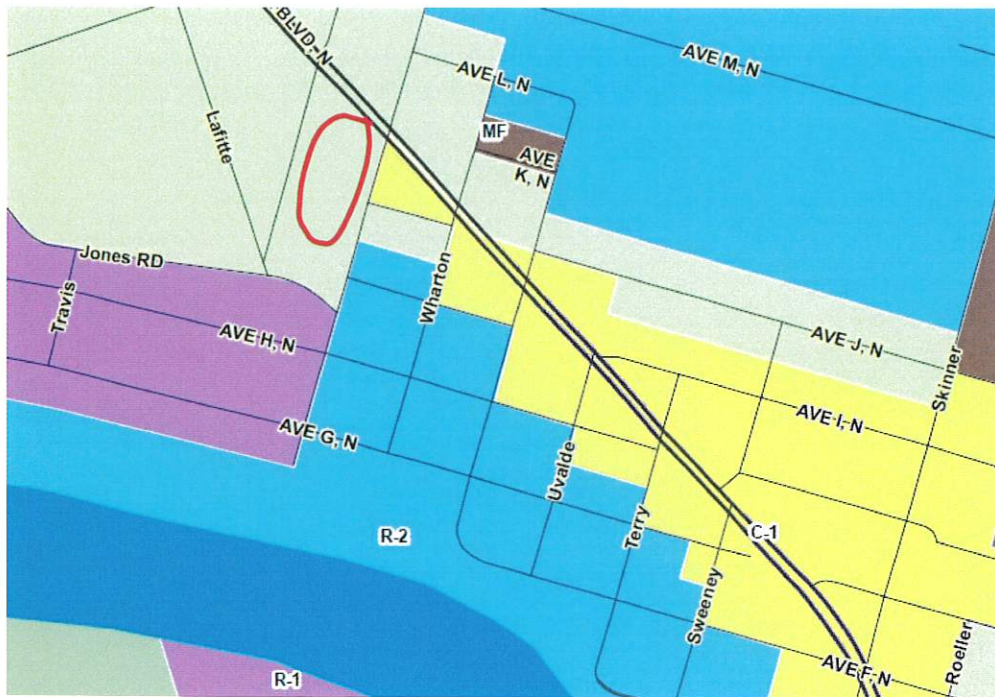
**Financial Impact:**

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

On June 27, 2023, the Planning and Zoning Commission voted to approve this ordinance change. Their recommendation is to allow Mini-Warehouse Storage Units in the C-2 Zone with a Specific Use Permit.

**Supporting Documentation:** Ordinance

Table 155.401-1, Permitted Uses by District														
Use Category	Land Use <sup>1</sup>	Residential					Mixed-Use and Non-Residential					Use-Specific Standards <sup>2</sup>	Parking <sup>3</sup> (155.600)	
		R1	R2	MH	W-R	MF	DT	C-1	C-2	C-3	W-1			IN
Self-Service Storage	Boat or Recreational Vehicle Outdoor Storage	--	--	--	--	--	--	--	--	P	P	P	--	1 / 350 sq ft office area plus 1 per 2,500 sq ft outdoor storage
	Mini-Warehouse	--	--	--	--	--	--	--	P	--	--	P	--	1 / 350 sq ft office area plus 1 / 20 storage stalls



**ORDINANCE NO. 2023-2696**

**AN ORDINANCE AMENDING THE CITY OF FREEPORT'S ZONING ORDINANCE BY AMENDING SECTIONS 155.401 – LAND USE TABLE, SPECIFICALLY TABLE 155.401-1, PERMITTED USES BY DISTRICT, BY REVISING THE MINI-WAREHOUSE USE IN THE “SELF-SERVICE STORAGE” CATEGORY IN THE GENERAL COMMERCIAL DISTRICT (SYMBOL “C-2”), BY PERMITTING SUCH MINI-WAREHOUSE USE BY “SPECIFIC USE” (SYMBOL “S”) FOR SUCH DISTRICT; CONTAINING A PREAMBLE; CONTAINING A SEVERANCE CLAUSE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AND PROPERLY PUBLISHED FOR HEARING AS REQUIRED BY LAW AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.**

**WHEREAS**, the City of Freeport (the “City”) recognizes that mini-warehouse storage units may be appropriate for certain property located in the General Commercial District (“C-2”);

**WHEREAS**, the City Council seeks to allow that use of such mini-warehouse storage units through a specific use permit in C-2 District in order to ensure the appropriate development of such units and protect the general aesthetics for the surrounding properties;

**WHEREAS**, the City may establish by ordinance, general rules and regulations governing the zoning of land within its corporate limits in order to promote the health, safety, and general welfare of the City and to promote the safe, orderly and healthful development of the City; and

**WHEREAS**, the City Council has determined, based upon the findings stated above, that the regulations established by this Ordinance are necessary for the good government, peace and order the City; and

**WHEREAS**, City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Local

Government Code (the Open Meetings Act).

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

**Section 1.** The findings and recitations set out in the preamble to this ordinance are found to be true and correct and they are hereby adopted by the City Council and made part hereof for all purposes.

**Section 2.** Section 155.401 – Land Use Table of the Code of Ordinances of the City is hereby amended by revising the Mini-Warehouse use in the “Self-Service Storage” category under Commercial and Office to now be designated as “Specific Use” or “S,” specifically by adding same to Table 155.401-1, Permitting Uses by District.

**Section 3.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgement or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

**Section 4.** All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

**Section 5.** This Ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

**READ, PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

**ATTEST:**

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

**APPROVED AS TO FORM ONLY:**

\_\_\_\_\_  
David W. Olson, Interim City Attorney



## City Council Agenda Item # 8

**Title:** Consideration and Possible Action on Change Order #1 for Phase II Concrete Street Contract with Lucas Construction

**Date:** July 3, 2023

**From:** Lance Petty, Assistant City Manager

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**Staff Recommendation:**

Staff recommends approving change order #1 for Phase II concrete street contract with Lucas Construction

**Item Summary:**

With approval of change order, Lucas Construction is asking for an additional 21 calendar days to replace an 8" asbestos water line located on Avenue A from De Zavalla to Fisher to include approximately 400 feet of C900 PVC 8" water pipe, (2) 8" isolation valves, (6) water services, (1) 6" valve and (1) new fire hydrant. The original contract is 240 calendar days. The 21 additional calendar days will allow sufficient time to complete the water line replacement. The cost for the water line replacement is \$89,550.00. This expenditure will be covered with funds available in the current contract for fast track paving and will not increase the original contract price.

**Background Information:**

During the demo phase of Avenue A, from De Zavalla to Fisher of Phase II concrete streets reconstruction, Lucas Construction exposed an 8" water line that currently is in conflict with the storm water box. This water line consists of asbestos material and has had previous repairs made to it. Due to the condition and type of material, this line needs to be replaced prior to installing the concrete road. Lucas Construction is asking for an additional 21 calendar days to be added to the contract of 240 days to replace the water line.

**Special Considerations:**

If approved, the completion of the proposed water line replacement will prevent issues in the future under the new concrete street.



**Financial Impact:**

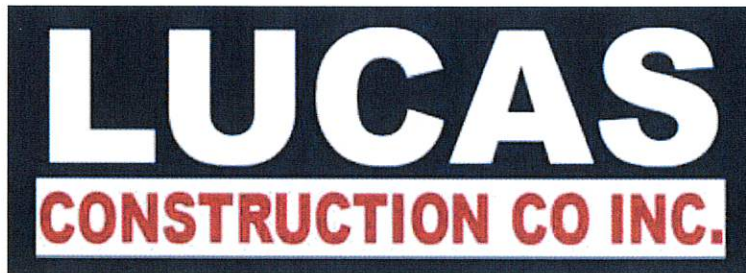
The proposed cost of the water line replacement is \$89,550.00. This expenditure will be covered with funds available in the current contract for fast track paving and will not increase the original contract price.

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

The proposal has been reviewed by City Staff

**Supporting Documentation:**

Change order for an additional 21 calendar days to existing contract and costs associated for water line replacement from Lucas Construction



June 28<sup>th</sup>, 2023  
Freese & Nichols, Inc  
10497 Town and Country Way, Suite 600  
Houston, TX 77024  
Attn: Mr. Scott Kirby  
Re: City of Freeport Streets Reconstruction Phase II – Change Order No. 3 Ave A Waterline Work

Mr. Kirby,

Lucas Construction Company, Inc. proposes to provide labor, materials, equipment, layout, supervision, and insurance in order to complete the following additional work:

CO3-1	Furnish and install (2) 8"x8" TS&Vs	2.0 EA	\$7,000/EA	\$14,000
CO3-2	Furnish and install 400 LF of 8" C900, including fittings		\$125/LF	\$50,000
CO3-3	Furnish and install FH assembly, including 8x6 tee and 6" gate valve			\$8,050
CO3-4	Furnish and install 5 short side service leads		\$1,100/EA	\$5,500
CO3-5	Furnish and install (2) line stops		\$5,000/EA	\$10,000
CO3-6	Cut, cap, and abandon existing 8" waterline (2)		\$1,000/EA	<u>\$2,000</u>
			Total add to contract =	\$89,550
CO3-7	Reduce extra work item #10 by 1,194 SY x \$75/SY			(\$89,550)
			<b>Net Change in Contract Amount =</b>	<b>\$0.00</b>

Exclusions: engineering, plans, materials testing, grout fill, flowable fill, new water meters, landscaping, irrigation, sleeves, and any utility relocations that may be necessary.

Notes:

- 1.) All fittings to be MJ restrained fittings
- 2.) All pressure testing is included. Bac-t testing costs to be covered by the City of Freeport.
- 3.) Additional calendar days requested for this work: 21 days

Please feel free to call me at 832-671-2374 or Willis Lucas at 281-316-9990 with any questions or concerns.

Sincerely,

*Jimmy McGinnis*

Jimmy McGinnis  
Project Manager  
Lucas Construction