



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

June 6, 2022

Frontier Waste Solutions – Bulk Waste

DESCRIPTION:

Receive a report and hold a discussion regarding residential bulk pick up by Frontier Waste Solutions.

BACKGROUND INFORMATION:

On February 1, 2017, the City entered into a five-year exclusive franchise agreement (attached) with Midwest Waste Services to collect, haul and dispose of municipal solid waste, construction and demolition waste, and recycling materials. The agreement did include bulky items in the definitions (Section 1), however they are not included in the service offering as the service is limited to cart only contents (Section 6B). The City was collecting a ten percent (10%) franchise fee from this agreement.

On September 13, 2019, Frontier Access, LLC (Frontier) acquired the assets of Midwest Waste Services, including the exclusive franchise agreement, which was assigned to Frontier. The City and Frontier entered an amended and renewed exclusive franchise agreement (attached) on May 3, 2021. The agreement became effective February 1, 2022, and expires on January 31, 2027. The City was able to increase from two (2) to four (4) annual city-wide cleanups at no impact to residential rates. The Recycling Center was deleted from the agreement, and the rates that were in place as of February 1, 2021, remained in place.

On October 4, 2021, there was a council discussion regarding including monthly bulk trash pickup services for residential customers. The City was considering a new agreement that would include bulk item collection, but this never came to fruition. **Frontier was proposing a once-a-month bulky waste collection, that would be an additional \$2.95 per month per home. Frontier has a bulky item limit of three (3) cubic yards per resident. This is the equivalent of a nine (9) foot long by nine (9) foot wide area, or 81 cubic feet total.** Residents would have to call in for bulky item collection no later than 24 hours before the scheduled bulk collection day. Frontier will still honor this proposal.

Staff researched bulky items collection for other cities and found the following.

City	Bulky Item Service Details
City of Denton	2 bulky items per week, with a \$5 fee for any additional items. Resident must call at least one business day prior to the regular scheduled collection day.
City of Corinth	10 bulky items per week. The maximum weight is 40 pounds. Bundled Carpet in 4-foot Lengths Fence Panels No Larger than 4'x6' Washing Machines, Dryers, Water Heaters and Kitchen Appliances Refrigerators/Freezers (Must be tagged certifying removal of refrigerants)
City of Azle	Bulk service is provided, for up to two (2) cubic yards, on the second service day every week.
City of Decatur	No Bulky Item Service
City of Bridgeport	Once a week collection of bulk items including furniture pieces such as couches, chairs, tables, dressers, bed frames, headboards and mattresses, washing machines, dryers, dishwashers, water heaters, stoves, microwave ovens, space heaters, lawn mowers, bicycles, strollers, boxes and other packaging.
City of Rhome	Bulky items are collected once a month and should not be larger than 3x3x6 ft and includes appliances, furniture, exercise equipment, mattresses.
City of Justin	No Bulky Item Service
City of Argyle	Bulky waste is collected one time per week on normal service days for up to two (2) cubic yards. Special pick up can be arranged for a fee for any item over two cubic yards.

This agenda item was requested by the council for discussion.

FINANCIAL CONSIDERATION:

Adding a bulky item collection will be an additional \$2.95 per month per home. Residents are currently paying \$22.33 per month for once per week waste collection. The City continues to collect a ten percent (10%) franchise fee from this agreement, and this new amount will be part of the franchise fee calculation. Staff has also attached the current rates being charged by Frontier.

RECOMMENDED MOTIONS:

None, discussion only.

ATTACHMENT(S):

1. Midwest Waste Services Agreement
2. Frontier Access Renewal Agreement
3. Frontier Waste current rates

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE
AND RECYCLING
IN THE CITY OF NEW FAIRVIEW, TEXAS**

February 1, 2017

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE
AND RECYCLING
IN THE CITY OF NEW FAIRVIEW, TEXAS**

STATE OF TEXAS

COUNTY OF WISE

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into on December __, 2016 to be effective as of February 1, 2017, by and between Midwest Waste Services, LLC, a Texas limited liability company (the "Service Provider"), and the City of New Fairview, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste and Recycling Materials (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bulky Item Any item measuring in excess of either fortyeight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and tree trimmings.

Bundles Items not measuring in excess of either fortyeight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday or holiday.

Commercial Unit Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste Solid Waste resulting from construction or demolition activities or that is directly or indirectly the byproduct of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

Container Any receptacle, including, but not limited to, dumpsters, Roll-outs and Roll-Offs provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste or Construction and Demolition Waste. Containers are designed to hold between ninety six (96) gallons and forty (40) cubic yards of Municipal Solid Waste or Construction and Demolition Waste.

Hazardous Waste Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Clerk and agreed to by the Service Provider.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Industrial Unit - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste during, or as a result of, its operations.

Landfill Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

MultiFamily Residential Unit Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste.

Municipal Solid Waste Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.¹

Recycling Materials

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);

- (c) Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

Residential Unit - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

Roll-Off A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Roll-Out A Container with ninety-six (96) gallons of capacity. Each residential unit utilizing service hereunder is required to utilize at least one Container.

Single-Family Residential Unit Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(38) regardless of whether such waste is mixed with or constitutes Recycling Materials.

White Good Any item measuring in excess of either three (3) cubic feet in size or fifty (50) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recycling Materials, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste, Construction and Demolition Waste and Recycling Materials over, upon, along and across the present and future streets, alleys, bridges and public properties within the corporate limits of the City.

SECTION 3. TERM.

The term of this Agreement shall be for a period of five (5) years, commencing on February 1, 2017 and concluding on January 31, 2022. At the expiration of the term of this Agreement, this Agreement will be extended for successive periods of five (5) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 180 days prior to the expiration date of this Agreement or 180 days prior to any of the then applicable individual fiveyear extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year Agreement, or at the end of the subsequent five (5) year extension period, as applicable.

SECTION 4. OPERATIONS.

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste, Construction and Demolition Waste and

Recycling Materials (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Services").

B. Nature of Operations. The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recycling Materials, the title to all Municipal Solid Waste, Construction and Demolition Waste and Recycling Materials collected, hauled and disposed of by the Service Provider over, upon, along and across the present and future streets, alleys, bridges and public properties within the corporate limits of the City. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 5. SERVICE PROVIDER'S DUTIES AND OBLIGATIONS.

It shall be the duty and obligation of Service Provider to perform the following services:

A. Provisions of Equipment and Facilities. Service Provider agrees to furnish trucks, equipment, machinery, tools, personnel, labor, disposal, and any and all other items necessary and sufficient to fulfill its obligations under this Agreement, at its own expense, to adequately, efficiently and properly collect and transport Municipal Solid Waste, Construction and Demolition Waste, Recycling Materials, Bulky Items and Bundles and other refuse from Residential Units, Industrial Units and Commercial Units within the corporate limits of the City in a systematic, clean, healthful and sanitary manner.

B. Disposal of Refuse. Service Provider will dispose of in a legal manner all Municipal Solid Waste, Construction and Demolition Waste, Bulky Items, Bundles, and other refuse collected. All vehicles used by Service Provider for the collection of Municipal Solid Waste, Construction and Demolition Waste, Bulky Items, Bundles, and other refuse shall be protected at all times while in transit to prevent leakage or the blowing or scattering of refuse onto the public streets of City or property adjacent thereto. Further, such vehicles shall be clearly marked with Service Provider's telephone number and name in letters and numbers not less than four (4) inches in height.

C. Sanitation and Health. All collection equipment shall be washed and deodorized as necessary. Service Provider shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and disposal of refuse as will tend to prevent the inception and spread of infectious or contagious disease and to effectively prevent the creation of a nuisance on any property, either public or private.

D. Routes and Schedules. Service Provider agrees to establish daily routes and special schedules for the collection of Municipal Solid Waste, Construction and Demolition Waste, and other refuse as necessary to fulfill the requirements of this Agreement.

E. Labor Force and Equipment Service Provider shall employ only supervisors and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons employed by the Service Provider in or

about or on the work who shall misconduct themselves or not be in the proper performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider.

F. Free Services. For no charge, Service Provider shall furnish City with (i) 2 Roll-Outs at City Hall to be serviced weekly and (ii) four (4) thirty-yard Roll-Offs for two City-wide cleanups to be held once in the spring and once in the fall at a place designated by City.

SECTION 6. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.

A. Single-Family Residential Units. The Service Provider will collect Municipal Solid Waste from Single-Family Residential Units and Handicapped Residential Units once per week; provided, that (i) such Municipal Solid Waste is placed at the curb in Roll-Outs provided by the Service Provider and (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day; provided, however, that Handicapped Residential Units shall not be required to place their Roll-Outs at the curb, and the Service Provider shall collect Municipal Solid Waste from such Roll-Outs as agreed upon between the Service Provider and such Handicapped Residential Unit.

B. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste or Recycling Materials placed inside the Roll-Outs provided by the Service Provider. Municipal Solid Waste or Recycling Material in excess of the Roll-Outs' limits, or placed outside or adjacent to the Roll-Outs, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste continues, the City shall require the Residential Unit to utilize an additional Roll-Out so that the excess or misplaced Municipal Solid Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 11 hereto.

SECTION 7. COMMERCIAL, INDUSTRIAL AND MULTIFAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste from Commercial, Industrial and MultiFamily Residential Units. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste or Construction and Demolition Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 11 hereto.

SECTION 8. RECYCLING CENTER. In cooperation with the City, Service Provider agrees to establish and maintain a recycling center at City Hall where residents of the City may deposit their Recyclable Materials. Service Provider shall, as needed, deliver such Recyclable Materials to a materials recovery facility.

SECTION 9. INTENTIONALLY DELETED.

SECTION 10. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 11. RATES AND FEES.

Subject to adjustment, as provided in Section 12 hereto, the rates and fees to be charged and received by the Service Provider are provided in Attachment 1.

SECTION 12. RATE ADJUSTMENT.

A. CPI-U Adjustment. On each anniversary date of this Agreement, the rates and fees hereunder shall automatically increase or decrease in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the index entitled "CPI-U 'Dallas-Fort Worth, Texas area'" published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 12.A. The amount of the increase or decrease under this Section 12.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 12.A., at any time during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations due to, or directly resulting from, among other things, increased fuel costs, ad valorem taxes, or revised federal, state or local laws, ordinances or regulations. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

C. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

D. Fuel Cost Adjustment. With respect to each month in which the price of diesel fuel exceeds \$4.00 per gallon, the Service Provider may impose a fuel surcharge on the next month's invoice in an amount equal to the following:

70 Monthly Truck Hours × 6 Gallons per Hour × Amount by which the price of diesel fuel for such month exceeds \$4.00

For purposes of the above formula, the price of diesel fuel for any given month shall be equal to the average of the three then most recently published Weekly Retail On-Highway Diesel Prices for the Gulf Coast Region as published by the United States Energy Information Administration at <http://www.eia.gov/oog/info/wohdp/diesel.asp> or any subsequent URL or other publication. Notwithstanding anything to the contrary contained herein, the franchise fee payable hereunder shall not apply to the fuel surcharge or sales taxes.

SECTION 13. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human waste, auto parts, used tires, concrete, dirt, gravel, rock or sand from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's Roll-Off Services.

SECTION 14. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances that will enable the Service Provider to provide the Services set forth herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Monthly Statement. On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under Section 11 hereto from all Residential, Commercial and Industrial Units requiring the collection, hauling and disposal of Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials within the City's corporate limits and to provide a statement of such charges each month to the City (the "Monthly Statement"). Thereafter, the Service Provider will remit to the City an amount equal to a franchise fee equal to ten percent (10%) of the amount set forth in the Monthly Statement. Such remittance shall be made by the Service Provider on or before the 15th day of each month (for the immediately preceding month's service) commencing on February 15, 2017. Notwithstanding the above, the Service Provider may reduce the franchise fee by the amount of any bad debt relating to amounts billed by the Service Provider to Residential, Commercial and Industrial Units hereunder; provided that the Service Provider furnishes the City with a list of the past due customers and the amounts due along with the Monthly Statement. The Service Provider shall discontinue service to any Residential, Commercial or Industrial Unit that does not pay the full amount set forth herein for the services provided hereunder within thirty (30) days of the date of any invoice delivered to such Unit.

B. Taxes. In addition to the amounts billed and collected by the Service Provider under Section 15.A., the Service Provider shall also bill for and be responsible for paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Bad Debt; Unpaid Rates/Fees. The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider reserves the right to terminate Service to those Residential Units that are in default until they have paid in full.

D. Billings for Roll-Off Services. The Service Provider will bill and collect all Residential, Commercial and Industrial Units for Services performed with respect to Roll-Off Containers. Notwithstanding anything to the contrary contained herein, the franchise fee shall not apply to any Services provided using Roll-Off Containers.

SECTION 16. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials placed outside of the Containers or bags by any Commercial, Industrial or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials. Should excess Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials continue to be placed outside of the Containers or bags, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment 1 hereto, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NONCOLLECTION NOTICE AND FOLLOWUP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container or bag as directed in Sections 6 and 7 hereto, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste, Construction and Demolition Waste or Recycling Materials and will notify the City within eight (8) hours thereafter of the reason for such noncollection. The Service Provider will also provide written notice to the Commercial, Industrial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial, or Residential Unit's failure to timely place the Containers, bags, Bulky Items, or Bundles out for collection. Such written notice shall be attached to the Container or bag or the uncollected Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial, or Residential Unit that Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials has not been removed from such Commercial, Industrial, or Residential Unit and where no notice of noncollection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste, Construction and Demolition Waste, or Recycling Materials on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original noncollection or late collection so long as the Service Provider makes such collection within such time.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 19. CUSTOMER SERVICE.

A. Office Hours. Service Provider's local telephone shall be staffed so that customers can make complaints, requests for information, requests for service, etc. during the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding legal holidays.

B. Office Personnel. Service Provider's office shall have a responsible person in charge during collection hours on collection days and shall be equipped with sufficient attendants to receive telephone calls. Attendant(s) shall respond to calls in a courteous manner within the following twenty-four (24) hour period.

C. Managing Agent. Throughout the term of the Agreement, Service Provider shall establish and maintain an authorized Managing Agent and shall designate in writing to the City Clerk the name, telephone number, and address of such agent to whom all notices may be served by the City of complaints received from citizens of the City.

D. Service Complaints. All service complaints shall initially be directed to Service Provider and shall be resolved within twenty-four (24) hours. Service Provider shall supply the City with copies of all complaints on a form approved by the City indicating the disposition of each complaint. The form shall indicate the day and hour on which the complaint was received and resolved. When a complaint is received on the day preceding a holiday or a weekend, it shall be serviced on the next working day.

E. Notification of Complaints. The City shall notify Service Provider of each complaint reported to the City in order for the Service Provider to take whatever reasonable steps are necessary

to remedy the cause of the complaint. Service Provider shall notify the City of its disposition within twenty-four (24) hours after receipt of the complaint.

F. Explanation of Disposition of Complaints. Service Provider shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as the result of actions of Service Provider's employees, agents, and subcontractors in connection with the performance of this Agreement.

G. Notification of Procedures. Service Provider shall notify all customers about procedures, rules and regulations, and days of collection on an annual basis and whenever there is a change in service, days of collection, procedures, etc. Notice is to be in the form of printed matter distributed by Service Provider to all premises served by Service Provider at least thirty (30) days prior to any change in the procedures, rules and regulations, days of collection, service, etc. Such notice must be approved by the City prior to distribution, such approval to not be unreasonably withheld, conditioned or delayed.

H. Noncollection. It is understood and agreed by and between the City and Service Provider that if any customer maintains improper or inadequate Containers for the nature, volume, or weight of refuse to be removed from the premises, or if any customer improperly places debris or Bulky Items for collection, Service Provider may refrain from collecting all or a portion of such refuse and shall notify the City and the customer of the reason for such non-collection. When the City is notified by a customer that refuse has not been removed from his or her premises on the scheduled collection day and where no notice of non-collection or a change in collection schedule has been received from Service Provider, the City may investigate.

I. Dangerous Animals. Employees of Service Provider shall not be required to expose themselves to the danger of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but Service Provider shall immediately notify the City, in writing, of such condition and of Service Provider's inability to make collection.

J. Hazardous Weather. Service Provider may cancel a portion or all of a scheduled service day due to hazardous weather conditions, and shall notify the City, in writing, of such cancellation.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 20.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste onto the City's public streets, or properties adjacent thereto, and such

vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized as needed.

SECTION 22. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will ensure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 24. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000
(3) Bodily Injury Liability (except automobile)	\$500,000 per occurrence; \$1,000,000 in the aggregate
(4) Property Damage Liability (except automobile)	\$500,000 per occurrence; \$500,000 in the aggregate
(5) Automobile Bodily Injury Liability	\$500,000 per person; \$1,000,000 per occurrence
(6) Automobile Property Damage Liability	\$500,000 per occurrence

Upon the City's request, the Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 24.

SECTION 25. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings,

claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) arising out of Service Provider's performance of the Services or caused by a willful or negligent act or omission of the Service Provider, its officers or employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees to the extent caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants.

SECTION 26. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 27. TERMINATION.

Any failure by the Service Provider or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City (and signed by the City Secretary), constitute grounds for forfeiture and immediate termination of all the Service Provider's rights under this Agreement, and all such rights shall become null and void.

SECTION 28. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 29. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof.

SECTION 30. MISCELLANEOUS.

A. Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be deemed for all purposes to be an original, and all of which are identical.

B. Notices. Notices by either party to the other party shall be sufficient if sent by certified mail, postage paid, return receipt requested, addressed to the other party at the addresses designated below each party's signature hereunder.


C. Attorneys Fees. The prevailing party in any suit, action or proceeding arising out of or involving the enforcement, interpretation or application of this Agreement shall be entitled to recover all reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

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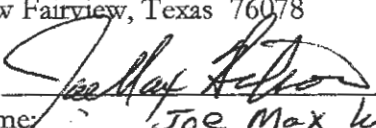
SECTION 31. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF NEW FAIRVIEW, TEXAS COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 17th DAY OF NOVEMBER, 2016.


MIDWEST WASTE SERVICES, LLC
337 Morrow Road
Springtown, Texas 76082

By: 
Kent Durham, Vice President

CITY OF NEW FAIRVIEW, TEXAS
999 Illinois Lane
New Fairview, Texas 76078

By: 
Name: Joe Max Wilson
Title: Mayor

ATTEST:

By: 
Name: Monica Rodriguez
Title: City Secretary

ATTACHMENT 1

RATES

Prices below are monthly base prices including the City's ten percent (10%) franchise fee:

A. Residential Services

Curbside waste collection provided once per week from 1 cart	\$20.50
Curbside waste collection provided once per week from 2 carts	\$25.00

B. Commercial Service

2 yard dumpster serviced once per week	\$69.00
2 yard dumpster serviced twice per week	\$125.00
3 yard dumpster serviced once per week	\$84.00
3 yard dumpster serviced twice per week	\$148.00
4 yard dumpster serviced once per week	\$99.00
4 yard dumpster serviced twice per week	\$179.00
6 yard dumpster serviced once per week	\$115.00
6 yard dumpster serviced twice per week	\$199.00
8 yard dumpster serviced once per week	\$130.00
8 yard dumpster serviced twice per week	\$219.00

**AMENDMENT AND RENEWAL AGREEMENT FOR THE CITY OF NEW
FAIRVIEW, TEXAS**

This Amendment and Renewal Agreement to the Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Municipal Solid Waste and Construction and Demolition Waste and Recycling in the City of New Fairview, Texas ("Amendment") is made and entered into and is effective as of the 3rd day of May, 2021, by and between the City of New Fairview, Texas (the "City"), and Frontier Access, LLC ("Service Provider").

RECITALS:

WHEREAS, the City and Midwest Waste Services, LLC entered into an Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Municipal Solid Waste and Construction and Demolition Waste and Recycling in the City of New Fairview, Texas with an effective date of February 1, 2017 (the "Agreement"); and

WHEREAS, Frontier (or its affiliated companies) acquired the assets of Midwest Waste Services, LLC as of September 13, 2019, including the Agreement, which was assigned to Frontier; and

WHEREAS, the City and Service Provider desire to amend and renew the Agreement as more fully described herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Agreement, the parties hereto hereby agree as follows:

1. Term. Pursuant to Section 3 of the Agreement, the parties hereby agree that the Agreement is automatically renewed for an additional five-year period beginning on February 1, 2022 and concluding on January 31, 2027. All other provisions of Section 3 of the Agreement shall remain unchanged and in full force and effect.

2. Free Services. Section 5.F. of the Agreement is hereby deleted in its entirety and replaced with the following:

"For no charge, Service Provider shall furnish City with (i) two (2) Roll-Outs at City Hall to be serviced weekly and (ii) four (4) thirty-yard Roll-Offs for four (4) City-wide cleanups to be held in March, June, September, and December, at a place designated by the City."

3. Recycling Center. Section 8 of the Agreement is hereby deleted in its entirety.

4. Rates and Fees. The rates and fees on Attachment 1 (that was attached to the Agreement) are hereby deleted in their entirety and replaced with the rates and fees on

Attachment 1, attached hereto. The rates and fees on Attachment 1 (attached hereto) are the rates and fees that are currently in effect and were effective as of February 1, 2021.

5. The City and Service Provider hereby reaffirm their agreement to be bound by all of the terms and provisions of the Agreement, as amended hereby.

6. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

The parties hereto have executed this Amendment date first written above.

Frontier Access, LLC

By: 

John Gustafson, President

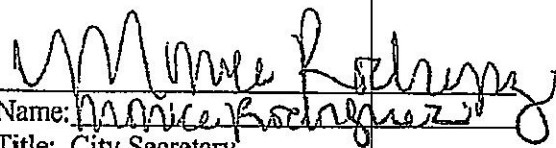
THE CITY OF NEW FAIRVIEW, TEXAS,
a Texas municipality

By: 

Name: Joe May Wilson

Title: Mayor

ATTESTED:


Name: Marice Rodriguez
Title: City Secretary

Attachment 1

Prices below are monthly base prices including the City's ten percent (10%) franchise fee

Rates

A. Residential Services		RATE	FRANCHISE FEE	TOTAL
Curbside waste collection provided once per week from 1-95 gallon cart	\$ 22.33	\$ 20.30	\$ 2.03	\$ 22.33
Each additional cart	\$ 4.90	\$ 4.45	\$ 0.45	\$ 4.90
B. Commercial Services				\$ -
Curbside waste collection provided once per week from 1-95 gallon cart	\$ 27.23	\$ 24.75	\$ 2.48	\$ 27.23
Each additional cart (3 maximum)	\$ 13.62	\$ 12.38	\$ 1.24	\$ 13.62
2 yard dumpster serviced once per week	\$ 75.17	\$ 68.34	\$ 6.83	\$ 75.17
2 yard dumpster serviced twice per week	\$ 136.17	\$ 123.79	\$ 12.38	\$ 136.17
3 yard dumpster serviced once per week	\$ 91.51	\$ 83.19	\$ 8.32	\$ 91.51
3 yard dumpster serviced twice per week	\$ 161.23	\$ 146.57	\$ 14.66	\$ 161.23
4 yard dumpster serviced once per week	\$ 107.85	\$ 98.05	\$ 9.80	\$ 107.85
4 yard dumpster serviced twice per week	\$ 195.00	\$ 177.27	\$ 17.73	\$ 195.00
6 yard dumpster serviced once per week	\$ 125.28	\$ 113.89	\$ 11.39	\$ 125.28
6 yard dumpster serviced twice per week	\$ 216.79	\$ 197.08	\$ 19.71	\$ 216.79
8 yard dumpster serviced once per week	\$ 141.62	\$ 128.75	\$ 12.87	\$ 141.62
8 yard dumpster serviced twice per week	\$ 238.58	\$ 216.89	\$ 21.69	\$ 238.58

City
City of Denton
City of Corinth
City of Azle
City of Decatur
City of Bridgeport
City of Rhome
City of Justin
City of Argyle

Bulky Item Service Details
Two (2) bulky items per week, with \$5 fee for any additional items. Resident must call at least one business day prior to regular scheduled collection day.
Ten (10) bulky items per week. The maximum weight is 40 pounds. Bundled Carpet in 4-foot Lengths Fence Panels no Larger than 4x6 ft, Washing Machines, Dryers, Water Heaters and Kitchen Appliances Refrigerators/Freezers (Must be tagged certifying removal of refrigerants)
Bulk service is provided, for up to two (2) cubic yards, on the second service day every week.
No Bulky Item Service
Once a week collection of bulk items including furniture pieces such as couches, chairs, tables, dressers, bed frames, headboards and mattresses, washing machines, dryers, dishwashers, water heaters, stoves, microwave ovens, space heaters, lawn mowers, bicycles, strollers, boxes and other packaging.
Bulky items are collected once a month and should not be larger than 3x3x6 ft and includes appliances, furniture, exercise equipment, mattresses.
No Bulky Item Service
Bulky waste is collected one time per week on normal service days for up to two (2) cubic yards. Special pick up can be arranged for a fee for any item over two cubic yards.



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

June 6, 2022

Texas Parks and Wildlife Grant

DESCRIPTION:

Receive an update and hold a discussion regarding the Texas Parks and Wildlife Department grant for the construction of a New Fairview Park.

BACKGROUND INFORMATION:

The City of New Fairview has approximately seven acres of land that was dedicated to the City in October 2013. The land is located on Stewart Street in the Chisholm Hills subdivision. Historically, the City has not been maintaining the property and it has been sitting as an overgrown lot. In 2020, staff reached out to Kyle Stephens, an engineer who specializes in preparing grant applications for the Texas Parks & Wildlife Department, to explore possibilities for the installation of park amenities and potential funding sources. Kyle recommended the City participate in the Local Park Grant Program, which provides a state funded grant match up to \$150,000.

The City did land the Texas Parks & Wildlife Department grant of \$150,000 with a local match of \$150,000 for a total project cost of \$300,000. The City must pay the costs first and submit for reimbursement from the state. Staff reached out to local developers to ask for support on this project and one developer has agreed to pay for the cost of the Pavilion Area. The project was originally budgeted in September/October 202, but products for this project (steel, rebar concrete, etc.) have gone up in price since then. The current quoted received from Heartland Park & Recreation LLC is for \$358,356, and this includes a total discount of \$27,625 (see attached). This does not include the \$32,000 that has already been paid to the consultant to help the City prepare and file the application with Texas Parks and Wildlife Department.

Staff has made a recommendation in the Financial Consideration section of this memo on how the project can be funded. There is also the option to reduce some of the amenities, or to decline to move forward with the project, but this will probably prevent the City from ever obtaining any Parks grant in the future.

FINANCIAL CONSIDERATION:

Total Project Cost:	\$358,356
TPWD Match:	-\$150,000
Developer Contribution:	<u>-\$71,132</u>
City Cost:	\$137,224

Staff has identified approximately \$100,000 in the current budget that can be earmarked towards this project. The remaining amount can be drawn down from the Fund Balance. Staff can bring a contract with Heartland Park & Recreation LLC back to council for consideration.

RECOMMENDED MOTIONS:

None discussion only.

ATTACHMENT(S):

1. Image of the dedicated park land
2. Renderings of park amenities and layout
3. Construction cost from Heartland



The City of New Fairview had approximately seven acres of land dedicated to the City in October 2013. The parkland is located on Stewart Street in the Chisholm Hills subdivision.



HARMONY

NEW FAIRVIEW PARK LONGVIEW, TEXAS

815-148855

HEARTLAND
Park & Recreation, LLC



play&park
structures
A PLAYCORE Company

544 CHESTNUT ST.
CHATTANOOGA, TN 37402
800.727.1907
PLAYANDPARK.COM



HARMONY

NEW FAIRVIEW PARK
LONGVIEW, TEXAS

815-148855

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HARMONY

NEW FAIRVIEW PARK
LONGVIEW, TEXAS

815-148855

HEARTLAND
Park & Recreation, LLC



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CHATTANOOGA, TN 37402
800.727.1907
PLAYANDPARK.COM

New Fairview Park
Longview, TX 75608

Heartland Park and Recreation

This play equipment is recommended for children ages:
2-5 and 5-12

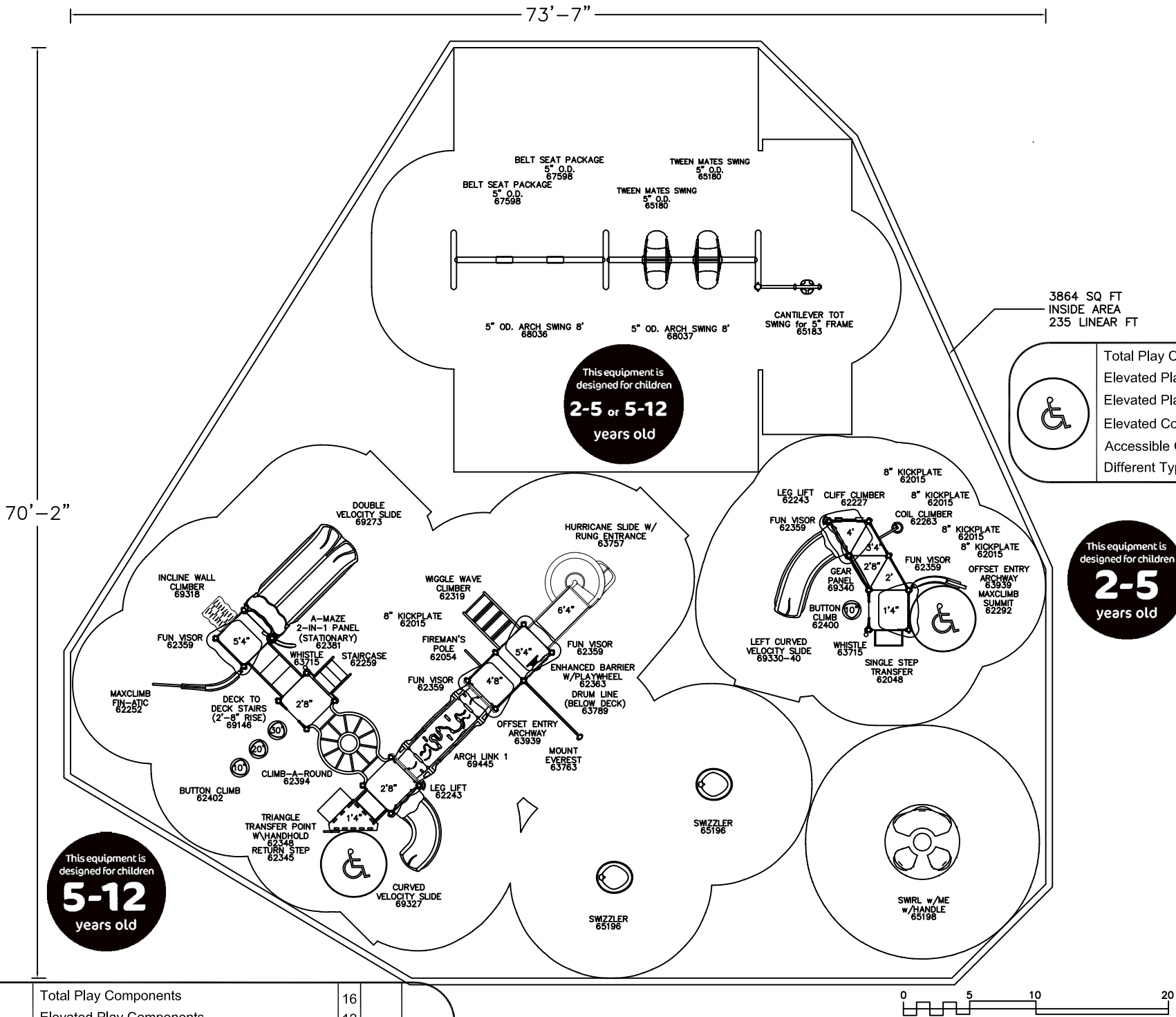
Minimum Area Required:
73'-7" x 69'-5"

Scale: 1" = 10'-0"
This drawing can be scaled only when in an 11" x 17" format

Drawn By:
J. Swiecichowski
Date:
1/24/2022
Quote Number:
815-148855

play&park
structures®
A PLAYCORE Company
544 Chestnut Street
Chattanooga, TN 37402
800-727-1907 / www.playandpark.com

User Capacity
75-100
Critical Fall Height
8'-0"



This equipment is designed for children
2-5 or 5-12
years old

This equipment is designed for children
5-12
years old

This equipment is designed for children
2-5
years old

3864 SQ FT
INSIDE AREA
235 LINEAR FT

	Total Play Components	8				
	Elevated Play Components	6				
	Elevated Play Components Accessible by Ramp	0	Req.	0		User Capacity
	Elevated Components Accessible by Transfer	6	Req.	3		20-30
	Accessible Ground Level Components Shown	2	Req.	2		Critical Fall Height
	Different Types of Ground Level Components	2	Req.	2		4'-0"

	Total Play Components	16				
	Elevated Play Components	12				
	Elevated Play Components Accessible by Ramp	0	Req.	0		User Capacity
	Elevated Components Accessible by Transfer	8	Req.	6		50-60
	Accessible Ground Level Components Shown	4	Req.	4		Critical Fall Height
	Different Types of Ground Level Components	4	Req.	3		8'-0"

Top View drawings and measurements are for overall site and structure appearance purposes. Top view should not be conceived as a construction detail; therefore, all measurements and slope requirements should be field verified prior to construction.

IMPORTANT: Never install play equipment over hard, unresilient surfaces such as asphalt, concrete, or compacted earth. It is the owner's responsibility to ensure the "minimum area required" contains an appropriate amount of resilient material to cushion accidental falls.

City of New Fairview 2021 Park Improvements

New Fairview, TX



Description

Site Construction

Dirt Work for All Impacted Areas

Sidewalk 6' 4" 3000 PSI Concrete*

ADA Parking Area (Striped/Sign)

Playground Ribbon Curb*

Total Site Construction

Playground Area

Playground Equipment as Rendered

Manufacturer Material Surcharge

Freight

Install

Flexbase Subbase Compacted to 3" Depth

Pour-In-Place to Support 5'4" CFH (50/50 Mix)

Total Playground Area

Pavilion Area

Gable End Pavilion 34'x20' 4:12 7'6" Entry

Freight

Install

Stone Columns

Pavilion Foundation*

Total Pavilion Area

	Number	Unit Cost	Total	Total Project
	1	\$ 7,500.00	\$ 7,500.00	
	8300 Sf	\$ 7.75	\$ 64,325.00	
	1	\$ 5,500.00	\$ 5,500.00	
	235 Lf	\$ 45.00	\$ 10,575.00	
			\$ 87,900.00	\$ 87,900.00
	1	\$ 104,783.00	\$ 104,783.00	
	1		\$ 14,730.50	
	1		\$ 4,530.00	
	1		\$ 20,000.00	
	3725 Sf	\$ 2.50	\$ 9,312.50	
	3725 Sf	\$ 13.50	\$ 50,287.50	
			\$ 203,643.50	\$ 203,643.50
	1	\$ 36,300.00	\$ 36,300.00	
	1		\$ 4,632.50	
	1		\$ 12,000.00	
	4	\$ 2,000.00	\$ 8,000.00	
	600 Sf	\$ 17.00	\$ 10,200.00	
			\$ 71,132.50	\$ 71,132.50

Site Amenities

Bench with Back 6'

Picnic Tables 8'

Freight

Install

Total Site Amenities**Sub Total Project****Project Manager/General Conditions****Project Sub Total****TIPS Discount (Total Project)****TIPS Discount (Playground Equipment)****Heartland/Play and Park Discount**

6	\$	607.00	\$	3,642.00	
3	\$	1,321.00	\$	3,963.00	
1			\$	1,200.00	
1			\$	2,000.00	
			\$	10,805.00	\$ 10,805.00
					\$ 373,481.00
			\$	12,500.00	\$ 12,500.00
					\$ 385,981.00
					\$ (9,480.00)
					\$ (3,145.00)
					\$ (15,000.00)
					\$ 358,356.00

Notes to Bid/Quote

***Concrete work is listed as a not to exceed price, in the event concrete material is procured at a discount through donations or city contract the discount will be reflected during invoicing.**

Project will require a Dig Test be performed prior to any digging

Not included, moving or relocating any utilities

Bid does not include any fees or permits if required.

Bid proposed off of plan set titled City of New Fairview 2021 TPWD Project NO. 54-000238 dated 1/19/2022 by

Stephens Engineering

Any work not specifically called out in this proposal is not included



**City of New Fairview
City Council
May 16, 2022 Minutes**

**STATE OF TEXAS
COUNTY OF WISE**

CITY OF NEW FAIRVIEW

**THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME
BEING OPEN TO THE PUBLIC, THE 16th DAY OF MAY IN THE NEW FAIRVIEW
CITY HALL AND NOTICE OF SAID MEETING GIVING THE TIME PLACE AND
SUBJECT THEREFORE HAVING BEEN POSTED AS PRESCRIBED BY ARTICLE 5
OF THE TEXAS GOVERNMENT CODE WITH THE FOLLOWING MEMBERS**

PRESENT:

CITY COUNCIL:

Mayor John Taylor

Mayor Pro Tem Julie Burger

Place 1 Councilman Harvey Lynn Burger Jr

Place 2 Councilman John Fissette

Place 4 Councilman Steven King

CITY STAFF

John Cabrales Jr, City Administrator

Brooke Boller, City Secretary

Robert (Robin) Cross, City Attorney (virtual)

ABSENT

Place 2 Councilman Scott Johnson

Place 3 Councilman Steve Misner

Place 5 Councilman Jimmy Royston

CANVASSING ELECTION

**1. Call to Order and Determination of Quorum (per Texas Election Code Sec. 67.004).
(Canvassing Election called to order by Mayor John Taylor at 7:00 pm; Roll Call with the
above-mentioned names.)**

**2. Consider and act on Resolution No. 202205-04-2001 canvassing and declaring the results of
the General Election held on May 7, 2022, for the purpose of electing persons to serve as**

Councilmember for Place 1, Place 3, and Place 5, each for a term of two (2) years, and Place 2 and Place 4, each to fill the unexpired term for one (1) year, to the New Fairview City Council; providing confirmation of voting tabulation; and providing an effective date.

Motion: Councilman Steven King

Second: Mayor Pro Tem Julie Burger

Vote: All in Favor

Result: Motion passed as written

3. Proclamation for outgoing councilmembers.

4. Formal swearing-in and seating of Councilmember Places 1, 2, 3, 4 and 5.

5. Adjournment:

Motion: Councilman John Fissette

Second: Councilman Steven King

Vote: All in Favor

Result: Session Adjourned at 7:13 pm.

REGULAR SESSION

1. Call to Order and Determination of Quorum (**Regular Session called to order by Mayor John Taylor at 7:13 pm; Roll Call with the above-mentioned names.**)

2. Pledge to the Flags.

A. United States of America

B. Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.

3. Discuss, consider, and act on the appointment of the Mayor Pro Tern.

Motion:

Second:

Vote: All in Favor

Result: Tabled until full council is present.

4. Discuss, consider, and act upon the declination of office by a Council Member.

Motion: Councilman Steven King

Second: Councilman Harvey Lynn Burger Jr

Vote: All in Favor

Result: Motion passed to accept the declination of office by Councilman Steve Misner

5. Receive, consider, and act on the process to fill the vacancy for City Council Place 3.

Motion: Councilman Steven King

Second: Councilman John Fissette

Vote: All in Favor

Result: Motion Passed to start the process to fill the vacancy for City Council Place 3.

Council will be accepting applications until June 6, 2022.

7. Consent Agenda: All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be removed from the consent agenda and will be considered separately.

A. Approval of the April 2022 Financial Report

B. Approval of the First Quarter Investment Report

C. Approve the City Council Meeting minutes for February 7, March 7, and 28, April 4, and May 2, 2022.

Motion: Councilman Steven King

Second: Councilman Harvey Lynn Burger Jr

Vote: For – Councilman Steven King & Councilman Harvey Lynn Burger Jr.

Against – Councilman John Fissette

Result: Motion passed as written

8. New Business: All matters listed in New Business will be discussed and considered separately.

A. Receive, consider, and act on appointing a member to the Planning and Zoning Commission.

Motion: Councilman Steven King

Second: Councilman John Fissette

Vote: All in Favor

Result: Motion passed accept Harvey Burger resignation from Planning and Zoning and appointing Julie Burger to the Planning and Zoning Commission Place 1.

B. Receive, consider, and act on a Resolution to adjust the authorized cost of the EMS station.

Motion: Councilman John Fissette

Second: Councilman Steven King

Vote: All in Favor

Result: Motion passed with a not to exceed amount of \$45,000.00 to finish the EMS buildout.

11. Adjournment

Motion: Councilman John Fissette

Second: Councilman Steven King

Vote: All in Favor

Result: Meeting Adjourned at 8:00 pm

MINUTES APPROVED ON THIS, THE 6TH DAY OF JUNE 2022

John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

June 6, 2022

Appointment of City Council Place 3

DESCRIPTION:

Receive, consider, and act on filling the vacancy for City Council Place 3.

BACKGROUND INFORMATION:

Steve Misner ran unopposed for City Council Place Three (3), as was elected by the voters to fill that position based on the results of the May 7, 2022, Municipal Election. However, Mr. Misner moved out of the city of New Fairview just prior to the election and is no longer a resident of this city. He provided a signed letter, declining the office of City Council Place 3 to which he was elected. At the May 16, 2022, meeting, the City Council accepted his declination of office, triggering a vacancy in the position under applicable state law. Consistent with the Texas Local Government Code, rather than incur the expense of ordering a special election to fill the vacancy, the council determined to appoint a City resident. The Council thus directed staff to inform the public that the City is accepting applications from residents interested in being considered for appointment to this vacant council position. The appointment will be to fill the position until the next general municipal election in May 2023.

The council plans to review the applications and conduct possible interviews with applicants at the June 6 meeting. The City received four applications from the following residents:

1. Walter Clements
2. Nelson Craig
3. Scott Johnson
4. Denis Sansoucie
5. John Judge

FINANCIAL CONSIDERATION:

None

RECOMMENDED MOTIONS:

I move to **appoint** _____ to the vacant City Council Place 3 position.

ATTACHMENT(S):

None



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

June 6, 2022

Mayor Pro Tempore

DESCRIPTION:

Discuss, consider, and act on the appointment of the Mayor Pro Tempore.

BACKGROUND INFORMATION:

The Texas Local Government Code, CHAPTER 22 (ALDERMANIC FORM OF GOVERNMENT IN TYPE A GENERAL-LAW MUNICIPALITY), SUBCHAPTER A, (GENERAL PROVISIONS), Sec. 22.037 (b) (MAYOR AS PRESIDING OFFICER; PRESIDENT PRO TEMPORE) states, "At each new governing body's first meeting or as soon as practicable, the governing body shall elect one alderman to serve as president pro tempore for a term of one year." We refer to this position as Mayor Pro Tempore (Mayor Pro Tem) and is referenced in the City Council Procedures & Decorum Policy. This Policy was adopted by the City Council on June 1, 2020, (2020-17-107), updated on May 17, 2021, and the Mayor Pro Tem is referenced in the sections below.

Sec. 1-100 – Authority

Pursuant to the provisions of the Ordinances of the City of New Fairview, Texas, the City Council shall enact rules of procedure for all meetings of the City Council of the City of New Fairview, Texas, which shall be in effect upon their adoption by the City Council and until such times as they are amended or new rules adopted. These rules of procedures shall serve as general guidelines for Council conduct and meeting protocols.

Additionally, these general rules and guidelines shall govern the procedures and decorum of all Council appointed boards, commissions, committees, or other advisory bodies. References specific to the Council, Mayor, Mayor Pro Tem, or Council member duties and responsibilities shall apply to the advisory body, Chair, Vice Chair, and members respectively

Sec. 1-150 – General Procedures

(b) Chair of Meeting: The Mayor shall preside over all meetings of the City Council as the Tempore Chair and enforce these rules and procedures during a meeting. In the absence of the Mayor, the Pro Tempore shall assume the Chair's responsibility at the meeting. In the absence of the Pro Tempore, the Council will choose a Chair for the meeting.

Sec. 1-160 – Decorum

(b) Mayoral Responsibilities:

The Mayor is the official spokesperson for the Council on all matters unless absent, at which time the Mayor Pro Tempore or appropriate designee will assume the role. The views presented by the Mayor, or the Mayor Pro Tempore in his/her absence, should provide an equitable representation of all Council Members.

This agenda item is for the City Council to consider the appointment of the Mayor Pro Tem. The City Council considered this item at the May 16, 2022 meeting and asked staff to move it to this date in the hopes that all council members will be in attendance to discuss this appointment.

FINANCIAL CONSIDERATION:

None

RECOMMENDED MOTIONS:

None

ATTACHMENT(S):

None



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

June 6, 2022

First Amendment to Chapter 380 Agreement with Sunrise, LLC

DESCRIPTION:

Receive, consider, and act on a Resolution to amend the Chapter 380 Economic Development Agreement with Sunrise, LLC.

BACKGROUND INFORMATION:

On April 19, 2021, the council approved a Chapter 380 Economic Development Agreement with Sunrise, LLC. The City had previously established an Economic Development Program pursuant to Chapter 380 of the Texas Local Government Code. This Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects. Specifically, it provides for offering loans and grants of city funds or services at little or no cost to promote state and local economic development and to stimulate business and commercial activity. Often, municipalities use these economic development incentives to assist with the construction of public infrastructure for the benefit of the community.

Sunrise, LLC has constructed a Ready Mix concrete plant on Graham Road, which is currently zoned Manufacturing. The City negotiated the placement of a centralized dispatch center in New Fairview for dispatch operations for all locations in Wise and Denton County. Sunrise, LLC estimates the annual taxable sales from the initial four total concrete plants to be \$40-50 million which would significantly increase the city's sales tax revenues. As a part of this agreement, the City agreed to share sales tax revenue with Sunrise, LLC at a 50/50 split for three (3) years to help offset the cost of the concrete construction of the first 815 linear feet of Graham Road. Also, the plant will create approximately 15 jobs that would hire initially in New Fairview and then outside if they are unable to obtain qualified candidates.

Under the terms of the Agreement, Sunrise is required to complete the construction of the Graham Road Improvements within ninety (90) days of when the plant in New Fairview begins operation. If the Graham Road Improvements are not completed within the required time, the City may revoke the Certificate of Occupancy for the operation of the plant and the City may

impose any fines or penalties against Sunrise. Sunrise is concerned about this provision because although the road project is near construction phase, the approvals from the Texas Department of Transportation and materials supply line delays might cause the completion of these improvements to exceed the ninety-day requirement. They are requesting to increase the completion timeline from ninety (90) days to one hundred and eighty (180) days. Staff agrees with this request.

Staff would also like to clarify the start of the three (3) year window that Sunrise has to recoup their costs for the public infrastructure improvements. Article II "Term", states that the Agreement is effective as of the date of execution by all the parties and continues for three (3) years. The Agreement was executed on April 23, 2021, however, Sunrise did not begin operations and remitting sales taxes until August 2021. Therefore, staff is recommending that the effective date should now become the date of execution of this First Amendment and continue for three (3) years from this effective date, or until all obligations under the Agreement are fulfilled, whichever occurs first, unless otherwise terminated as provided for in the Agreement.

The final cost of the public improvements have not been determine since the project has not been completed. Staff recommends that the reimbursement payments to Sunrise do not begin until the project is completed to the satisfaction of the City.

Staff recommends approval of the First Amendment (attached) to the Agreement.

FINANCIAL CONSIDERATION:

Revenue estimates based on four locations, and only for the one and one-half cents (1 ½) the city collects in sales tax, are approximated to be \$600,000. Sunrise is currently operating two locations and have already become the City's largest sales tax collector.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** the resolution to amend the Chapter 380 Economic Development Agreement with Sunrise, LLC.

ATTACHMENT(S):

1. Resolution 202104-08-167
2. Chapter 380 Agreement (April 19, 2021)
3. Amendment to Chapter 380 Agreement
4. Resolution 202206-01-203



City of New Fairview, Texas

Resolution No. 202104-08-167

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH SUNRISE, LLC TO PROVIDE SALES TAX SOURCING AND IMPROVEMENTS TO GRAHAM ROAD.

WHEREAS, the City of Fairview is an incorporated city in the State of Texas; and

WHEREAS, the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and

WHEREAS, the City desires to incentivize the improvement of Graham Road and increase sales tax revenues; and

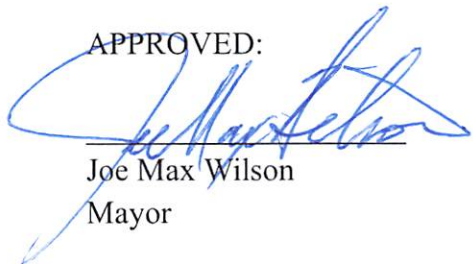
WHEREAS, Sunrise, LLC has agreed to locate their dispatch center within the New Fairview city limits.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY NEW FAIRVIEW:

1. That, all matters stated in the recitals herein above are found to be true and correct and are incorporated herein by reference as if copied in their entirety.
2. That the City Council does hereby approve the economic development agreement and direct the City Administrator to execute the agreement.
3. That, if any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determined that it would have adopted this Resolution without the invalid provision.
4. That this Resolution shall become effective from and after its date of passage.

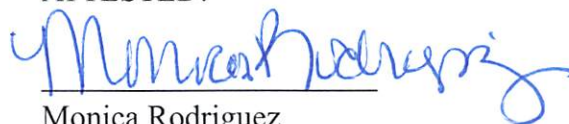
PRESENTED AND PASSED on this **19th day of April, 2021**, at a meeting of the New Fairview City Council.

APPROVED:

A handwritten signature in blue ink, appearing to read "Joe Max Wilson", written over a horizontal line.

Joe Max Wilson
Mayor

ATTESTED:

A handwritten signature in blue ink, appearing to read "Monica Rodriguez", written over a horizontal line.

Monica Rodriguez
City Secretary

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of New Fairview, Texas, a Type A general law municipality located in Wise County, Texas (the "City"), acting by and through Ben Nibarger, its duly authorized City Administrator, and Sunrise, LLC ("Developer"), a Texas limited liability corporation, acting by and through Brandon Smith, its duly authorized representative.

RECITALS

WHEREAS, Developer is the owner of an approximate 5.0 acre tract of land located generally on the west side Graham Road to the north of FM 407 (the "Property"), within the City Limits of the City of New Fairview, as further described on the attached Exhibit "A"; and

WHEREAS, the Developer plans to develop the Property as concrete plant and dispatch office (the "Project"), as more particularly identified and described on the attached Exhibit "A"; and

WHEREAS, development of the Project will involve the construction of certain infrastructure improvements, both on-site and off-site of the Project, to be constructed to the standards of the City, which will benefit the Project and the City; and

WHEREAS, Developer has agreed to advance funds for off-site infrastructure improvements and those improvements which serve a regional need, and the City has agreed to reimburse the Developer for a portion of the costs of such infrastructure improvements as provided herein; and

WHEREAS, on April 19, 2021, the City adopted Resolution No. 202104-04-167 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, Developer desires to participate in the Program by entering into this Agreement whereby Developer will be reimbursed by the City over time for certain development costs incurred by Developer, if Developer meets the conditions for the reimbursement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Developer's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. AUTHORIZATION

The City Council finds and determines that this Agreement is authorized and governed by Section 380.001 of the Texas Local Government Code and by the Program.

ARTICLE II. TERM

This Agreement shall be effective as of the date of execution by all parties and continue for three (3) years from the effective date or until all obligations under the Agreement are fulfilled, whichever occurs first, unless otherwise terminated as provided for in this Agreement.

ARTICLE III. PROGRAM GRANT

1. Covenants of Developer:

a. Zoning and Platting

All of the Property shall be zoned and platted in accordance with the Zoning Ordinance and the Subdivision Ordinance of the City before any Building Permit will be issued. Developer shall dedicate, at no cost to the City, all street rights-of-way, alleys, drainage easements, floodways, utility easements and other dedications as required by the City at the time of platting.

b. Public Improvements

All public improvements required to serve the Property shall be provided by Developer, at no cost to the City, unless otherwise provided herein, in accordance with the Subdivision Ordinance and other development regulations of the City, and as approved by the City Engineer or his/her agent. Such improvements shall be designed and installed within all applicable time frames in accordance with the Subdivision Ordinance and engineering design guidelines manual of the City unless otherwise approved herein.

Upon completion of construction of public improvements as required by this Agreement and the Subdivision Ordinance, Developer shall deliver to the City a set of As-Built construction plans of the public improvements constructed by Developer.

~~No certificates of occupancy will be issued for the Property until all public improvements have been installed, inspected and a Letter of Acceptance has been issued by the City.~~

c. Construction Bonds

Prior to initiating any construction on the Property, the construction contractor(s) for Developer shall provide the City with the following construction bonds:

(1) PERFORMANCE BOND

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing the full and faithful execution of the work and performance of the contract for the public improvements and for the protection of the City against any improper execution of the work or the use of inferior materials. The Performance Bond shall guarantee the completion of public improvements within one year of the beginning of such construction.

(2) PAYMENT BOND

A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing payment for all labor, materials and equipment used in the construction of the public improvements.

(3) MAINTENANCE BOND

A good and sufficient Maintenance Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing the maintenance in good condition of the facilities for a period of two (2) years from and after the date that a Letter of Acceptance is issued from the City for the public improvements.

Each of the above bonds shall be in a form acceptable to the City. Any surety company through which a bond is written shall be duly authorized to do business in the State of Texas, provided that the City shall retain the right to reject any surety company for any work under this Agreement regardless of such company's authorization to do business in the State of Texas. Approval by the City shall not be unreasonably withheld or delayed.

d. Development Obligations

In consideration of the City agreeing to make the economic development incentives described below, Developer agrees to:

- (1) Comply with all of the City's development-related regulations, including those pertaining to the preparation and approval of preliminary plats, final plats and related construction submittals, and commercial site plans.
- (2) Pay all applicable development fees to the City.
- (3) Construct all on-site public infrastructure improvements required for the Project.
- (4) Construct and improve the first 815 linear feet of Graham Road from FM 407, including the connection with Graham Road, to the end of their property line ("Graham Road Improvements"). The road must be constructed with 8.5 inch concrete and must otherwise be constructed in accordance with the City's standard specifications for a concrete street. The City will pay for the engineering and design of the roadway.

- (5) Operate a dispatch office on the Property for Sunrise LLC's and related entities' operations in Wise and Denton County throughout the term of this Agreement.
- (6) Provide materials to the City in the future for the construction and improvement of any other portion of Graham Road at the cost that Developer paid for the materials.

e. Developer shall complete the construction of the Graham Road Improvements, within ninety (90) days of when the plant on the Property is in operation. If the Graham Road Improvements are not completed within the required time, the City may revoke the Certificate of Occupancy for the operation of the plant on the Property and the City may impose any fines or penalties against Developer for operation on the Property as the law allows. The Graham Road Improvements shall be designed and installed in accordance with the Subdivision Ordinance and engineering design guidelines manual of the City. Developer shall provide dust mitigation on Graham Road from the time Developer begins operation on the Property until the Graham Road Improvements are completed. Upon completion of construction of the Graham Road Improvements, Developer shall deliver to the City a set of As-Built construction plans for the improvements.

f. Should Developer fail to comply with any term of this Agreement, including failing to construct the Graham Road Improvements within the required time, Developer shall have thirty (30) days after written notice from City to come into compliance. If the noncompliance is not cured within that period, Developer agrees that the City's obligations to pay economic development incentives under this Agreement shall immediately terminate and Developer agrees to remit to the City a sum equal to the sum of all payments made by the City to Developer pursuant to this Agreement, plus interest at the highest rate allowable by law, per annum from the date payments were made.

2. Economic Development Incentives by the City.

As an economic development incentive and to assist Developer with the development of the Property, the City agrees to provide the following incentives and/or grants to Developer:

- (1) The City agrees to pay to Developer an amount equal to fifty percent (50%) of the sales tax revenues paid by Developer for operation on the Property throughout the term of this Agreement or until Developer has been reimbursed for the cost of the Graham Road Improvements required under this Agreement.
- (2) Sales tax revenues include only the revenues derived from the City's 1.5% municipal sales tax.
- (3) In the event Developer sells the Property during the term of this Agreement, City obligation to make rebate payments to Developer shall

cease upon the conveyance of the Property.

3. **Final Acceptance of Improvements.**

The City will not issue a Letter of Acceptance for the public improvements or the Graham Road Improvements until the improvements are completely constructed (final completion) to the satisfaction of the City Engineer or his/her agent. Upon issuance of a Letter of Acceptance, title to the improvements shall be vested in the City, and Developer relinquishes any right, title or interest in any part of such improvements.

ARTICLE IV. GENERAL PROVISIONS

1. **Access to Information.** Developer agrees to provide the City, upon reasonable notice, access to information related to the construction of the public improvements and the Project, the cost of the public improvements, and access to sales tax verification and sales tax information necessary to fulfill this Agreement, until such time as Developer has been fully reimbursed pursuant to this Agreement.

2. **Termination and Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from another party (the "Complaining Party") to cure such default, the Complaining Party may terminate this Agreement, and by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default.

3. **Mutual Assistance.** Developer and the City shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions hereof.

4. **Representations and Warranties.** Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement. Developer represents and warrants to the City that it will not violate any federal, state or local laws in operating the business, that all Property Improvements shall conform to the applicable building codes, zoning ordinances and all other regulations of the City.

5. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6. **Public Facilities to be Provided by the City.** The City makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the City to supply water and wastewater services is subject to the City's water and wastewater system capacity. The City shall be the sole judge of the availability of such capacity to supply such water and/or wastewater services, provided, however, that the City will use its best efforts to insure that said water supply and wastewater treatment capacity is available.

7. **Determination of Rough Proportionality.** As additional consideration for the payment received by Developer from the City under this Agreement, Developer hereby agrees that any land or property it donates to the City as part of the development of the Property for any public improvements is roughly proportional to the need for such land and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the Improvements. Developer waives and releases all claims on may have against the City related to any and all rough proportionality and individual determination requirements mandated by Subchapter Z of Chapter 212, Texas Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the Improvements.

8. **Indemnification.** In performing its obligations under this agreement, Developer is acting independently, and the City assumes no responsibilities or liabilities to third parties in connection with Developer's business or property. The City shall not be liable to Developer, its agents, employees or contractors, for any damage to persons or property. In this respect, Developer agrees to indemnify and hold the City harmless against any and all claims, liability, demands, damages, costs and expenses, including reasonable attorney's fees, arising from the conduct or management of Developer's business, or from any breach on the part of Developer of any conditions of this Agreement, or from the construction of the public improvements, or from any act of negligence of Developer, its agents, contractors, or employees.

Approval by the City Engineer or other City employee of any plans, designs or specifications submitted by Developer pursuant to this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by Developer's engineer, its officers, agents, servants or employees, it being the intent of the parties that approval by the City engineer signifies the City's approval on only the general design concept of the improvements to be constructed. In this connection, Developer shall for a period of two (2) years after the acceptance by the City of the completed construction project, indemnify and hold harmless the City, its officers, agents, servants and employees.

9. **Attorneys Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.

10. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

11. **Amendment.** This Agreement may only be amended, altered, or revoked by a written instrument signed by Developer and the City.

12. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Developer may not assign all or any part of its rights and obligations hereunder without prior written approval of the City, which shall not be unreasonably withheld.

13. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Developer: _____
Attention: _____

City: City of New Fairview
Attention: Ben Nibarger, City Administrator
999 Illinois Lane
New Fairview, Texas 76078

14. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

15. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Wise County, Texas.

16. **Severability.** In the event that any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. **Continuity.** This Agreement shall be a covenant running with the land and shall be binding upon Developer, its successors, heirs, assigns, grantees, trustees and/or representatives.

18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

19. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

20. **Approval by City of New Fairview, Texas.** This Agreement was approved by the City Council at its meeting on April 19, 2021.

DEVELOPER

By: Brenda Johnson
Its: President
Date: 4-23-21

CITY OF NEW FAIRVIEW

By: [Signature]
Its: Mayor
Date: April 19, 2021

STATE OF TEXAS

COUNTY OF Wise

BEFORE ME, the undersigned authority in and for Wise County, Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of _____, and that he/she is authorized by said partnership to execute the foregoing instrument as the act of such partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

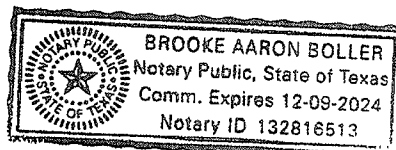
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19th day of April, 2021.

Brooke Aaron Boller
Notary Public in and for the State of Texas

Brooke Aaron Boller
Type or Print Notary's Name

My Commission Expires:

12-09-2024



STATE OF TEXAS §
 §
COUNTY OF WISE §

BEFORE ME, the undersigned authority in and for Wise County, Texas, on this day personally appeared Joel Max Wilson, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the Mayor of the City of New Fairview, and that he/she is authorized by the New Fairview City Council to execute the foregoing instrument as the act of such City for the purposes and consideration therein expressed, and in the capacity therein stated.

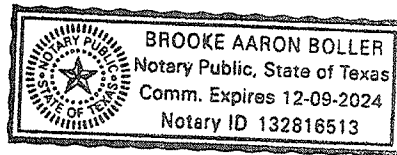
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19th day of April, 2021.

Brooke Aaron Boller
Notary Public in and for the State of Texas

Brooke Aaron Boller
Type or Print Notary's Name

My Commission Expires:

12.09.24





City of New Fairview, Texas

Resolution No. 202104-04-167

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH SUNRISE, LLC TO PROVIDE SALES TAX SOURCING AND IMPROVEMENTS TO GRAHAM ROAD.

WHEREAS, the City of Fairview is an incorporated city in the State of Texas; and

WHEREAS, the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and

WHEREAS, the City desires to incentivize the improvement of Graham Road and increase sales tax revenues; and

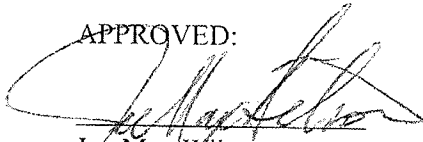
WHEREAS, Sunrise, LLC has agreed to locate their dispatch center within the New Fairview city limits.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY NEW FAIRVIEW:

1. That, all matters stated in the recitals herein above are found to be true and correct and are incorporated herein by reference as if copied in their entirety.
2. That the City Council does hereby approve the economic development agreement and direct the City Administrator to execute the agreement.
3. That, if any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determined that it would have adopted this Resolution without the invalid provision.
4. That this Resolution shall become effective from and after its date of passage.

PRESENTED AND PASSED on this **19th day of April, 2021**, at a meeting of the New Fairview City Council.

APPROVED:


Joe Max Wilson
Mayor

ATTESTED:

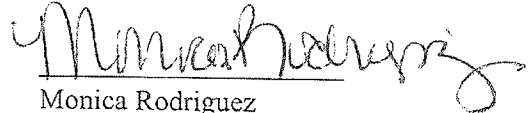

Monica Rodriguez
City Secretary

EXHIBIT A
FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT
AGREEMENT

This First Amendment to the Economic Development Incentive Agreement (First Amended Agreement) is entered into between the City of New Fairview, Texas, a Type A general law municipality located in Wise County (the “City”), and Sunrise, LLC (“Developer”), a Texas limited liability corporation, to be effective when executed by both parties.

RECITALS

WHEREAS, the City Council approved the Economic Development Incentive Agreement between Developer and the City on April 19, 2021 (the “Original Agreement”) that sets the terms for the Developer to advance fund certain off-site public infrastructure improvements (Graham Road Improvements), which serve a regional need, and the City agreed to reimburse the Developer for a portion of the costs of such infrastructure improvements; and

WHEREAS, the Developer is nearing completion of the building and on-site improvements, but has encountered supply chain and materials issues for the off-site public infrastructure improvements, and needs additional time to complete the construction of Graham Road improvements; and

WHEREAS, the City agreed to pay the Developer an amount equal to fifty percent (50%) of the sales tax revenues paid by the Developer for the operation on the property throughout the term of the Agreement or until Developer has been reimbursed for the cost of the Graham Road Improvements required under this Agreement., whichever comes first, such that the term of the Original Agreement requires extension for the Parties to realize the benefit of the Economic Development; and

WHEREAS, the City and the Developer wish to amend certain provisions of the Agreement to reflect such changes.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the Parties agree as follows:

1. The above recitals are true and correct and incorporated for all purposes.
2. Article II, “Term,” shall be amended to read as follows:

This Agreement shall be effective as of the date of execution of this First Amendment by all parties and continue for three (3) years from the effective date, or until all obligations under the Agreement are fulfilled, whichever occurs first, unless otherwise terminated as provided for in the Agreement.

3. Article III, “Program Grant,” Section 1(e), “Covenants of Developer”, is amended to amend the first sentence to read as follows:

Developer shall complete the construction of the Graham Road Improvements, within one hundred and eighty (180) days of when the plant on the Property is in operation.

4. Article III, "Program Grant," Section 2, "Economic Development Incentives by the City", (1) is amended to read as follows:

The City agrees to pay the Developer an amount equal to fifty percent (50%) of the sales tax revenues paid by the Developer for operation on the Property. The sales tax revenues will be paid at the end of each calendar quarter for a three (3) year period following the Term (Article II) of the agreement, as amended, or until the Developer has been reimbursed for the cost of the Graham Road Improvements required under the Agreement. However, payment of the sales tax revenues will not begin until the Graham Road Improvements have been completed and all the Developer obligations in the Agreement have been met. The sales tax payments will never include any monies the Developer pays or owes to the State of Texas for any penalties for late payments, failures to report in a timely manner, and the like related to the sales tax receipts.

5. Article IV, General Provisions, Paragraph 5, Applicable Law is hereby amended to read as follows:

Applicable Law and Adherence to Laws:

- a. This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Wise County, Texas.
- b. Adherence to state law. Developer shall provide the Services in a manner which complies with applicable federal, state, and local law, to include Chapter 176, Texas Local Government Code and Section 2252.908 of the Texas Government Code, as well as (but not limited to) the following additional provisions:

(1) Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) as amended, Sunrise, LLC hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. Sunrise, LLC understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

(2) Verification Regarding Discrimination Against Firearm Entity or Trade Association. To the extent this Agreement constitutes a contract for the purchase of goods or services having a value of at least \$100,000 that is paid wholly or partly from public funds for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 19, 87th Texas Legislature, Regular Session), as amended, Sunrise, LLC hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any,

- a. does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- b. will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19). Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

(3) Certifications Regarding Terrorist Organizations and Boycott of Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Sections 2252.151-.154 Texas Government Code, Sunrise, LLC hereby certifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law.

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Sections 2271.001-002 Texas Government Code, Sunrise, LLC and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, further certifies and verifies that it does not boycott Israel, and agrees that it will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (Tex. Gov’t Code §§ 2270.001-.002, 808.001-.006, .051-.057, .101-.102)

The foregoing verification is made solely to comply with Chapter 2271, Texas Government Code, as amended, to the extent the applicable provision in Chapter 2271.001, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott Israel” shall have the meaning assigned to such term in Section 808.001(1), Texas Government Code. Developer understands “affiliate” to mean

an entity that controls, is controlled by, or is under common control with the underwriter and exists to make a profit.

6. Article IV, General Provisions, Paragraph 13, is hereby amended to read, in relevant part, for purposes of Notice to the Developer:

Developer: Sunrise, LLC

Attention: _____

7. Except as expressly amended, all other terms and provisions in the Parties' Original Agreement are unchanged and shall continue to govern the rights and obligations of the Parties; and shall remain in full force and effect as if fully restated. In the case of any conflict between this First Amendment and the Original Agreement, this First Amendment will govern. This First Amendment, along with the Original Agreement (collectively known as the "First Amended Agreement") represent the complete agreement of the Parties.

CITY OF NEW FAIRVIEW

John Taylor, Mayor

Date: _____

State of Texas §
 §
County of Wise §

Before me, on this day personally appeared John Taylor, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2022.

(Personalized Seal)

Notary Public's Signature

[Signatures continue on page following]

DEVELOPER

Name

Date: _____

State of Texas §

§

County of Wise §

Before me, (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me through (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2022.

(Personalized Seal)

Notary Public's Signature

CITY OF NEW FAIRVIEW

RESOLUTION 202206-01-203

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, APPROVING THE FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT WITH SUNSHINE, L.L.C. IN NEW FAIRVIEW, TEXAS.

WHEREAS, the City of New Fairview is experiencing planned growth through the attraction of economic development projects such as Graham Road Improvements which are consistent with the City's Comprehensive Plan, which contributes to demand for improvements to New Fairview's infrastructure and public buildings; and

WHEREAS, the City of New Fairview (City) and Sunshine, LLCs, (the Developer) entered into a partnership to continue this planned growth through an Economic Development Agreements for the Developer's project, Graham Road Improvements; and

WHEREAS, the City has previously adopted an economic development policy adopted by Resolution; and

WHEREAS, the agreement that the City and the Developer wish to amend is the Economic Development Agreement for Graham Road Improvements approved by the City in Resolution 202104-08-167 on April 19, 2021; and

WHEREAS, the City Council finds that the passage of this Resolution is in the best interest of the citizens of New Fairview.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:

SECTION 1: THAT, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: THAT, the City Council of the City of New Fairview, Texas, hereby approves the First Amendment to the Economic Development Agreement originally approved on April 19, 2021 in Resolution 202104-08-167 and attached hereto to this resolution as Exhibit A.

SECTION 3: THAT, the City Council of the City of New Fairview further authorizes the Mayor to execute said amendment to said amended agreement on behalf of the City of New Fairview.

SECTION 4: If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 5: That this resolution shall become effective from and after its date of passage.

PASSED AND APPROVED ON THIS 6TH DAY OF JUNE, 2022.

John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary

EXHIBIT A