



**City of New Fairview
City Council
Special Meeting
999 Illinois Lane
Monday, September 19, 2022, at 7:00 pm**

REGULAR SESSION

1. **Call to Order and Determination of Quorum**
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. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
4. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
5. **New Business:** All matters listed in New Business will be discussed and considered separately.
 - A. **Discuss, consider, and act on a Resolution approving a fire protection and emergency medical services agreement with Justin Community Volunteer Fire Department.**
 - B. **Discuss, consider, and act on approving a contract with MFD Business Solutions for printer, fax, copier, and scanning rental and services for the City of New Fairview.**
 - C. **Discuss, consider, and act on an Ordinance (#202209-04-247) repealing Ordinances No. 202108-01-229 and 2020-19-214, and approving a Resolution adopting an Investment Policy for funds for the Fiscal Year 2022/2022.**
6. **Executive Session:** Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant

to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session for any matter on the agenda at any time, when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.

7. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

8. Adjournment

I, the undersigned authority, do hereby certify the above notice of the meeting of the City Council of New Fairview, is a true and correct copy of the said notice that I posted on the official posting place at New Fairview City Hall, FM 407, New Fairview, Texas, a place of convenience and readily accessible to the general public at all times, and on its website, said notice being posted this 16th day of September, 2022 at 5:00 PM at least 72 hours proceeding the meeting time.


Brooke Boller, City Secretary

SEAL:



This facility is wheelchair accessible; parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary at City Hall 817-638-5366 or fax 817-638-5369 or by email at citysecretary@newfairview.org for further information.



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

September 19, 2022

Justin Community Volunteer Fire Department Fire Protection Agreement

DESCRIPTION:

Discuss, consider, and act on a Resolution approving a fire protection and emergency medical services agreement with Justin Community Volunteer Fire Department.

BACKGROUND INFORMATION:

The Denton County portion of the City of New Fairview is located within the fire protection service area of the Justin Community Volunteer Fire Department (JCVFD). JCVFD has been providing fire protection service for the residents of New Fairview for several years. The City and JCVFD had a Fire and Ambulance Services Agreement that was approved on June 15, 2020, but expired September 30, 2021. As part of the terms of that agreement, the City agreed to pay JCVFD \$3,000 for the performance of their services. However, even though the agreement has expired, JCVFD has continued to provide fire protection and emergency medical services to the residents of New Fairview on the Denton County side of our city.

As part of this agreement, JCVFD will maintain needed emergency response vehicles and equipment; make reasonable effort to maintain the lowest possible fire insurance classification and rate for property within the city; continue to maintain a Fire Chief; and participate in drills and training by all active fire fighters. JCVFD will also enter into a written Mutual Aid Agreement with the East Wise Fire Rescue Department for fire protection, and a Mutual Aid Agreement with Wise County EMS for emergency medical services to all citizens residing within the city limits of New Fairview within Wise County. The Mutual Aid Agreement must be finalized within six months of the effective date of this agreement.

The City will allow JCVFD the use of City facilities and grounds for training and other JCVFD activities. The City may, at its option and discretion, convey, lend, or provide equipment, materials, or assistance to JCVFD, as the City may deem appropriate. However, this shall be under such terms and conditions as the City may impose and shall not in any way alter JCVFD's obligations to provide full fire protection and emergency medical services. The City will pay for these services as listed below in the Financial Consideration Section.

The term of this Agreement is from the Effective Date to and including September 30, 2023.

Staff recommends approval of the Resolution.

FINANCIAL CONSIDERATION:

The City shall pay the JCVFD the fixed sum of twelve thousand dollars (\$12,000) annually. This amount will be paid monthly at one thousand dollars (\$1,000) per month and shall be paid by on or before the fifteenth (15th) day of the month.

However, if the Falcon Ridge subdivision is dis-annexed from the City as a result of the November 2022 Special Election, then beginning on December 1, 2022, the fixed sum of this Agreement shall be reduced to nine thousand dollars (\$9,000) annually. This amount will be paid monthly at seven hundred and fifty dollars (\$750) per month. The JCVFD will also not be required to provide fire protection or emergency medical services to the Falcon Ridge subdivision under this Agreement, as coverage of this subdivision will default to the Interlocal Cooperation Agreement between the Agency and Denton County.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** a Resolution approving a fire protection and emergency medical services agreement with Justin Community Volunteer Fire Department.

ATTACHMENT(S):

1. Justin Community Volunteer Fire Department Agreement
2. Resolution 202209-01-308

**FIRE PROTECTION AND AMBULANCE
SERVICES AGREEMENT**

This agreement is made to formalize the longstanding relationship by and between the City of New Fairview, Texas ("City"), a Type A general-law municipality of the State of Texas, and the Justin Community Volunteer Fire Department ("the Agency"), a Texas non-profit organization (collectively referred to as the "Parties") that is operated by its members, exempt from state sales tax and franchise tax, and organized to provide an emergency response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

For and in consideration of the mutual agreements, promises, and conditions set forth herein, the Parties hereby agree, and contract as follows:

This Agreement is to provide fire protection and emergency medical services within the corporate limits of the City. This Agreement is effective as of September 19, 2022, or the last date on which a party signs below, whichever occurs later (the "Effective Date").

Article I.

Agency shall

- A. Use emergency response vehicles and equipment, to respond to emergency response requests within the corporate limits of the City of New Fairview, Texas in Denton County at all times.
- B. Cooperate with City in every reasonable and available effort to maintain the lowest possible fire insurance classification and rate for property within the City.
- C. Continue to maintain a Fire Chief, who shall assume the customary responsibilities and duties placed upon such position as Chief:
 - 1) Appoint and maintain a member as Agency's qualified and certified training/certification officer, and safety officer(s) with proper and necessary training and qualifications.
 - 2) Cause to be prepared and submitted to City not less than ninety (90) days prior to expiration of the City's fiscal year, a proposed budget for the upcoming fiscal year containing proposed expenditures, together with an itemization of equipment needed, and any requests deemed appropriate by the Agency.
 - 3) Attend meetings of the City Council as may be requested by the City.
 - 4) Execute on behalf of the Agency, such documents, applications, certifications, proclamations, recognitions, and awards as are necessary and proper to the cooperative efforts of City and the Agency.

- 5) Promulgate and enforce standards of attendance and participation in Agency drills and training by all active fire fighters.

Article II.
City shall

Provide the use of City facilities and grounds for training or other various activities to the benefit of the Agency.

Article III.
Agency shall

- A. Acquire and at all times maintain in force and effect such policies of general liability, automobile, worker's compensation, disability, property damage, including fire and extended coverage, insurance covering the Agency and its firefighters and Agency-owned vehicles and equipment in such amounts as the City deems necessary and appropriate for each person and occurrence for bodily injury or death and for injury to or destruction of property or as required by law, as well as such other insurance coverage as the City deems necessary and advisable, and make proof of such coverage available to the City for examination, inquiry, and copying at all reasonable times.
- B. Provide to the Agency's fire fighters such worker's compensation and disability insurance coverages as are required by law or otherwise deemed proper by City. In each event, the Agency and its fire fighters shall be informed of such coverages, if any, and provided with a copy of the policy or plan document and given notice of any discontinuance.
- C. Provide to the Agency's firefighters such other benefits as it may deem proper and, in such instance, notify the Agency and its firefighters of its inception, terms, and discontinuance.

Article IV.

In this agreement, emergency response shall mean fire protection or prevention, rescue, assist emergency medical services and/or hazardous material, whether referring to services or equipment.

Article V.

This agreement is performable in Wise and Denton Counties, Texas and shall be interpreted and executed in accordance with the laws of the State of Texas and the ordinances of the City of New Fairview, Texas, with venue for any dispute being in Wise County.

Article VI.

The obligations of this agreement cannot be assumed or assigned and shall remain in force and effect until modified by mutual agreement. Should either party believe the other not in compliance with this agreement, written notice of the matter shall be given to the other who shall have ten (10) days to remedy or resolve the matter. If such resolution is not accomplished, the complaining party may declare this agreement terminated. Should either party desire to terminate this agreement for any other reason, the party shall give the other reasonable notice, and not less than ninety (90) days' notice of such desire to terminate. Until the date of termination, each party shall continue full performance as set forth herein.

The parties agree to review the terms of this agreement every year to determine what, if any, changes should be made. For the orderly flow of information and notice between the parties, the City Administrator shall be the designated representative for City, and the Fire Chief for the Agency.

Article VII.

This Agreement shall extend to and be binding upon the parties and their respective successors and assignees; provided, however, that the Agreement may not be assigned without the written consent of both parties.

Article VIII.

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement shall be exclusively in Wise County, Texas, and any court of competent jurisdiction shall interpret this Agreement in accordance with the laws of the State of Texas.

Article IX.

Nothing contained in the Agreement shall be deemed or construed by the parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any other relationship between the parties other than the relationship of the City and the Agency as those terms are understood herein.

Article X.

THE AGENCY AGREES TO SAVE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, FOR INJURY, SERIOUS BODILY INJURY OR DEATH TO ANY PERSON, OR FOR DAMAGES TO ANY

REAL OR PERSONAL PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT FOR WHICH THERE IS NO INSURANCE COVERAGE AS REQUIRED BY SUBPARAGRAPH III (C) ABOVE.

Article XI.

Should any provision herein be invalid for any reason, same shall not affect the validity of the remaining provisions and the Agreement if same may be given effect without the invalid provision.

Article XII.

The City may, at its option and discretion, convey, lend, or provide equipment, materials or assistance to the Agency, as the City may deem appropriate. However, this shall be under such terms and conditions as the City may impose and shall not in any way alter the Agency's obligations to provide full fire protection and emergency medical services hereunder.

**Article XIII.
Consideration**

During the term of this Agreement, the Agency shall provide the City with the services required by this Agreement. The City shall pay to the Agency fixed sum of twelve thousand dollars (\$12,000) annually. This amount will be paid monthly at one thousand dollars (\$1,000) per month and shall be paid by on or before the fifteenth (15th) day of the month (Payment Date).

The Parties understand and agree that the City's payment to the Agency shall be made in accordance with the City's normal and customary processes and business procedures and in conformance with applicable state law.

Payments made under this Agreement will be used by the Agency exclusively for fulfilling the requirements of this Agreement and providing and enhancing the Agency's services under this Agreement and no other purposes. Any unauthorized use of payments shall constitute a Major Breach of this Agreement.

The Justin Community Volunteer Fire Department Inc. shall still be able to perform normal emergency medical services and fire services billing as normally conducted when patient transport occurs.

However, if the Falcon Ridge subdivision is dis-annexed from the City as a result of the November 2022 Special Election, then beginning on December 1, 2022, the fixed sum of this Agreement shall be reduced to nine thousand dollars (\$9,000) annually. This amount will be paid monthly at seven hundred and fifty dollars (\$750) per month. The Agency will also not be required to provide fire protection or emergency medical services to the Falcon Ridge subdivision under this Agreement, as coverage of this subdivision will default to the Interlocal Cooperation Agreement between the Agency and Denton County.

Article XIV.

Term

The term of this Agreement is from the Effective Date to and including September 30, 2023.

Article XV.

Performance of Service

The Agency shall devote sufficient time and attention to ensure the performance of all duties and obligations of the Agency under this Agreement, including sufficient training, and shall provide immediate and direct supervision of the Agency's employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of the Agency and the City.

The Agency will also enter into a written Mutual Aid Agreement with the East Wise Fire Rescue Volunteer Fire Department for fire protection services, and Wise County EMS for emergency medical, and related services, to all citizens of the City residing within the City limits of New Fairview within Wise and Denton Counties. The Mutual Aid Agreement must be finalized within six months of the effective date of this agreement.

Article XVI.

Service Area

Acceptance of this Agreement constitutes approval of the service area, which is defined to be the city's municipal boundaries.

Article XVII.

Independent Contractor Status

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture or any other association whatsoever between the parties. It is understood and agreed by the parties that the Agency is providing services to City as an independent contractor. The Agency is not and shall not be construed to be a division or agency of the City. The City does not and will not accept or assume any liability or obligation incurred by or on behalf of the Agency. At no time will any employee or representative of the Agency be considered an agent or employee of the City or represent himself or herself as such.

Article XVIII.

Termination

Either Party may terminate this Agreement without cause by providing the other Party a minimum of ninety (90) days' written notice.

**Article XIX.
Non-Harassment Policy**

In addition to the terms and conditions contained in this Agreement, the Agency agrees to abide by and comply with the City's Non-Harassment Policy. attached to this Agreement as Exhibit 'B' and incorporated herein for all purposes.

**Article XX.
Notices**

All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) shall be in writing, shall be signed by or on behalf of the person or entity giving the notice, and shall be effective as follows: (a) on or after the third (3rd) business day after being deposited with the United States mail service, certified mail, return receipt requested; (b) on the day delivered by private courier, private delivery or private messenger service (including overnight mail services such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the notice is addressed); or (c) otherwise on the day actually received by the person to whom the notice is addressed, including, but not limited to, delivery in person and delivery by regular mail. Notices given pursuant to this section shall be addressed as follows:

To the City:	Attn: City Administrator City of New Fairview 999 Illinois Ln. New Fairview, Texas 76078-3940
To the Agency:	Fire Chief Justin Community Volunteer Fire Department 310 N Sealy Ave. Justin, TX 76247

**Article XXI.
Miscellaneous**

- A. By entering into this Agreement, City does not waive any immunity or defense that would otherwise be available to it against any claims, including those arising in the exercise of governmental powers and functions, all of which is expressly reserved.
- B. This Agreement shall extend to and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned without the express written consent of both parties.

- C. If any of the provisions of this Agreement are declared invalid for any reason, the same shall not affect the other provisions of this Agreement that can be given effect without the invalid provision. The provisions of this Agreement are severable.
- D. During the performance of this Agreement, the Agency agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Agency shall also comply with the Age Discrimination in Employment Act (ADEA) and SB 45, now codified as Section 21.141, Tex. Lab. Code in all volunteer and personal actions, to include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- E. The titles and headings contained in this Agreement and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.
- F. Both parties have participated fully in the review and preparation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
- G. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter unless specifically described herein.

CITY OF NEW FAIRVIEW, TEXAS

By: _____

John Cabrales, Jr. City Administrator

Date: _____

ATTEST:

Brooke Boller, City Secretary

[Signatures continue on page following]

**JUSTIN COMMUNITY VOLUNTEER FIRE
DEPARTMENT**

By: _____

Print Name: _____

Title: Fire Chief _____

Date: _____

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 is the _____ of City of New Fairview, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public in and for the State of Texas

Print Name

My Commission Expires:

EXHIBIT "A"
RESPECTFUL WORK ENVIRONMENT

The City of New Fairview is committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion or any other legally protected characteristic will not be tolerated. Sexual harassment (both overt and subtle) is a form of misconduct that is demeaning to another person, undermines the integrity of the employment relationship and is strictly prohibited.



**CITY OF NEW FAIRVIEW, TEXAS
RESOLUTION NO. 202209-07-214**

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TEXAS, APPROVING AN AGREEMENT FOR FIRE PROTECTION, SUPPRESSION AND EMERGENCY MEDICAL RESCUE SERVICES FOR THE CITY OF NEW FAIRVIEW AND THE JUSTIN COMMUNITY VOLUNTEER FIRE DEPARTMENT

WHEREAS, the City of New Fairview, Texas (“City”) has received a request from the Justin Community Volunteer Fire Department (“JCVFD”) to enter into an agreement to provide, within their authorized geographical area, for fire protection, suppression and for emergency medical and rescue services for the City of New Fairview between them, in conjunction; and

WHEREAS, the City and JCVFD seek to establish, clarify, and formalize the legal relationships between them as relating to provision of services in fire protection, suppression, emergency medical and other rescue services; and

WHEREAS, the City and JCVFD have collectively determined that the Agreement also addresses the City’s provided use of City facilities as partial consideration for JCVFD services, serving to enhance response time and being appropriate for JCVFD to better fulfill its purposes herein; and

WHEREAS, the City Council of New Fairview, Texas (“City Council”) has investigated and determined that entering into the Agreement with JCVFD will help preserve and protect the public health and safety of the City’s residents and will further serve the general welfare and advance the good government of the City.

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

Section 1. Recitals Incorporated

The recitals set forth above are incorporated herein for all purposes as if set forth in full.

Section 2. Approval of the Agreement with JCVFD.

The City Council hereby approves the terms of the Agreement for services with JCVFD, attached hereto as Exhibit “A”, and authorizes, ratifies, and approves of the City Administrator’s execution of same on behalf of the City, in final form as determined by the City Attorney.

PASSED AND APPROVED by the City Council of the City of New Fairview, Texas, on this the 19th day of September 2022.

ATTEST:

APPROVED:

Brooke Boller, City Secretary

John Taylor, Mayor



CITY COUNCIL AGENDA MEMO

Prepared By: Susan Greenwood, Court Administrator/Assist. City Secretary September 19, 2022

Contract for Printer Services

DESCRIPTION:

Discuss, consider, and act on approving a contract with MFD Business Solutions for printer, fax, copier, scanner machine rental and services for the City of New Fairview.

BACKGROUND INFORMATION:

As the needs of the City are growing and increasing our activity, staff has been looking for an alternative to our current office printer/copier. The current printer/copier is slow and not addressing or needs. The City currently spends roughly around \$472.00 a month just in toner replacement costs. Moreover, the existing printer/copier does not have the fax or scanning capability. The City only has the one printer and if it ever broke, we do not have a backup. A more modern machine would provide greater office efficiencies at a lower operational cost. It would also allow City staff to more promptly respond to resident needs.

Staff received three quotes for the rental of a printer/copier machine and needed printing services. The contract with MFD Solutions, provides the best value that would meet our needs. Besides providing for faster printing and copying, the new machine will allow staff to scan up to 80 pages of documents per minute and send directly to emails and electronic folders. This contract also covers all printer and fax related expenses, except paper. The cost for the rental and services are listed in the Financial Consideration section below.

Normally, the City Administrator has up to \$50,000 contract authority. However, the City's Procurement Policy, Section 9 "Contract Types, Requirements & Management" states the following:

Contracts Greater than \$10,000

All purchases greater than \$10,000 must include a standard contract, insurance, bonds (if needed), and a purchase order.

City Attorney review is required for all non-standard and City Council approval is required and will be processed by Purchasing.

This is considered a non-standard contract over \$10,000.

Staff recommend approval of the contract.

FINANCIAL CONSIDERATION:

The proposed contract has a quarterly cost of \$702.00, and annual cost of \$2,808.00. This cost includes all toner and ink, maintenance services, and the only item that the city would be required to purchase is paper. The contract is for 60 months so the total for the duration of the contract is \$14,040. The proposed contract costs have been accounted for in the FY 2022-23 budget.

RECOMMENDED MOTIONS:

Move to **Approve/Deny** a contract with MFD Business Solutions, in final form as approved by the City Attorney, for printer, fax, copier, and scanning needs for the City of New Fairview.

ATTACHMENT(S):

1. MFD Lease Contract

LEASE AGREEMENT



Lessor:
Macquarie Equipment Capital Inc.
1301 Riverplace Blvd. Level 4
Jacksonville, FL 32207

Lessee (full legal name and address):
City of New Fairview
999 Illinois Lane
New Fairview, TX 76078

Agreement Number: Phone Number:
(817) 638-5366

Equipment

Table with columns: Make/Model/Accessories, Quantity, Serial Number(s). Row 1: Sharp BP-50C45, 1, [blank]

Equipment Location: 999 Illinois Lane, New Fairview TX 76078

Supplier: MFD Business Solutions

Payment and Term

Table with columns: Base Term (in months), Payment Frequency, Purchase Option, Lease Payment, Document Fee, Advance Payment, Deposit, Initial Payment. Row 1: 60, Quarterly, Fair Market Value, \$ 447.00, \$ 0.00, \$ 0.00, \$ 0.00, \$ 447.00

The Document Fee, Advance Payment, and the Deposit are due together with the Lease Payment for the first Payment Period.

Signatures

Lessee has reviewed this page and the rest of this Agreement.

Signature lines for City of New Fairview (Lessee) and Macquarie Equipment Capital Inc. (Lessor) with fields for Authorized Signature, Date, Authorized Signatory Name, and Title.

Terms & Conditions

1. Term and Payment. The Term of this Agreement shall commence on a date designated by Lessor (the "Commencement Date") after receipt by Lessor of all required documentation...

2. Definitions. "Base Term" means the term of this Agreement and commences on the Commencement Date. "Term" means the Base Term and any renewals or extensions of this Agreement. "Payment" means the Lease Payments indicated above plus Taxes and other amounts that become or are scheduled to become due by Lessee hereunder.

judgment results in a deterioration of its creditworthiness. "Taxes" means all taxes, fees, and assessments of any kind; excluding, however taxes based on Lessor's income.

3. Warranties and Disclaimers. Lessor did not manufacture the Equipment. Lessor does not represent the manufacturer or Supplier. Lessee has selected the Equipment and Supplier based upon Lessee's own judgment. Lessor leases the Equipment to Lessee As-Is, Where-Is, and without warranties of merchantability or fitness for a particular purpose or as to infringement or other warranties...

4. Covenants. Lessee will keep the Equipment at the Equipment Location. Lessee shall use the Equipment only for its business operations, only for the purposes for which it was designed, and only in compliance with all applicable manufacturer operating standards and insurance requirements. Lessee shall comply with all laws and obtain all governmental permissions necessary for it to so comply (or that may be required of Lessor in so complying).

5. Net Agreement; Taxes. This Agreement is a net agreement and Lessee will indemnify Lessor for and, to the extent Lessor so notifies Lessee, pay directly and hold Lessor

harmless from, any and all claims, actions, damages, liabilities, losses and costs (including but not limited to reasonable attorneys' fees'); except to the extent of Lessor's gross negligence or willful misconduct. As between Lessee and Lessor, unless Lessor otherwise directs in writing, Lessor is exclusively entitled to file for and pay personal property Taxes imposed during the Term on the Equipment (regardless of who owns it). Taxes billed with the Lease Payments are due with the Lease Payment, and any other Taxes are due on demand. At Lessor's option, Lessee will remit, along with the Lease Payments under this Agreement, an amount equal to a percentage of Lessor's reasonable estimate of the personal property Taxes that will be assessable against the Equipment. In addition, at Lessor's option, Lessor may include in the Lease Payment an amount for any Taxes that may be imposed at the inception of this Agreement (such as "up-front" sales or use Taxes), financed at an interest rate reasonably determined by Lessor; and, if it is stated on the first page of this Agreement that the Lease Payment includes sales tax, the sales or use taxes included are only estimates and subject to adjustment by Lessor based on actual Tax amounts, as Lessor may advise Lessee from time to time by invoice or other writing. Lessee will remain obligated for any deficiency, if such amounts are insufficient to fully reimburse Lessor the actual amount of such Taxes, and any surplus will be either credited to Lessee's other obligations to Lessor or returned to Lessee. Lessor may impose a tax administration fee (which it may bill as part of the underlying Tax) of up to 10% of Taxes. If requested, Lessee agrees to file promptly on behalf of Lessor all requested Tax returns and reports concerning the Equipment in form satisfactory to Lessor, with all appropriate governmental agencies and to mail a copy to Lessor concurrently with the filing thereof.

6. End-of-Term Options. Lessee may exercise one and only one of the following end-of-Term options by giving Lessor written notice of the election at least 90 days before the end of the Term and duly performing the elected option by the end of the Term: (a) Lessee may elect to return not less than all of the Equipment to Lessor so as to be received by Lessor by the last day of the Term, or (b) if a Purchase Option is provided in this Agreement, Lessee may elect to purchase not less than all of the Equipment on the last day of the Term for the specified Purchase Option price whereupon, on the last day of the Term, if such price and all Taxes and other Payments have been paid and no Default has occurred Lessor will sell the Equipment to Lessee, or (c) Lessee may elect any other end-of-Term option that may be stated herein. If Lessee does not give Lessor such a written election notice or if Lessee does not duly perform the elected option, the election notice, if given, will terminate and the Term will automatically renew for successive one-month renewal terms until Lessee gives a written election notice and performs the end-of-Term option it duly elects therein. During any such renewal terms the amount of each Lease Payment will remain the same (or become the average Lease Payment in effect during the previously applicable portion of the Term—whether it be the Base Term or a renewal term—if Lease Payments were not constant for each Payment Period of such portion of the Term), and the other terms of this Agreement will remain the same. If Lessee performs an end-of-Term option elected duly by it before the last day of the Term, Lessee's obligations under this Agreement shall nonetheless continue through the scheduled end of the Term.

7. Risk of Loss. Lessee shall always bear all risk of loss to the Equipment until the Equipment is returned to Lessor hereunder. No such loss shall condition, limit, or affect Lessee's obligation to pay the Lease Payment. In the event of a loss with respect to any Equipment, Lessee shall either: (a) place such Equipment in good repair, condition, and working order, (b) replace such Equipment with equipment of the same manufacturer, year, make, model, and accessories in good repair, condition and working order, or (c) pay Lessor all amounts due hereunder plus the FMV of the Equipment. If Lessee elects a repair or replacement under subsections (a) or (b) above and the repair or replacement is for any reason not completed within 30 days of the loss, Lessee shall pay Lessor all amounts due hereunder plus the FMV of the Equipment.

8. Insurance. Lessee shall keep in effect an "all risk" extended coverage property insurance policy covering the Equipment for its full replacement value. Lessee shall also carry a comprehensive general liability insurance policy. Such policies shall be in form, amount, and with insurers reasonably acceptable to Lessor. The property insurance policy shall name Lessor and its assigns as loss payee and the general liability insurance policy shall name Lessor and its assigns as additional insureds. Each policy shall provide: (a) for no less than 30 days prior written notice of cancellation or non-renewal to Lessor, and (b) that such policy shall not be invalidated as against Lessor or its assigns for the violation of any term of the policy by Lessee. Proceeds from any general liability policy shall be made payable first on behalf of the Lessor to the extent of its liability, if any. If Lessee fails to maintain the insurance required hereunder or provide satisfactory proof of the existence and terms of the insurance to Lessor, Lessor may at its sole discretion obtain insurance to protect Lessor and its interest in the Equipment. Lessee agrees to pay Lessor's costs for such insurance, which costs may include a profit and/or administrative expense for the Lessor.

9. Remedies. Lessor may upon a Default: (i) terminate this Agreement; (ii) declare all amounts due hereunder plus the FMV of the Equipment immediately due, as liquidated damages for Lessor's loss of its bargain and not as a penalty; and (iii) require Lessee to return the Equipment to Lessor or peacefully repossess the Equipment without court order and without liability for entry or damage to property. Lessee agrees to pay all claims, actions, damages, liabilities, losses and costs (including but not limited to reasonable attorneys' fees) incurred by Lessor in enforcing Lessor's rights against Lessee. The

remedies stated in this Agreement are in addition to all other rights or remedies now or hereafter existing under this Agreement or at law or in equity and may be enforced concurrently and from time to time. If Lessee fails to make any payment to a third party or perform any other act required hereunder, Lessor may, but need not, make such payment or perform such act at the expense of Lessee, reimbursable to Lessor on demand, and Lessor's action shall not be deemed a cure or waiver of Lessee's failure.

10. Title; UCC. No payment of Lease Payments shall entitle Lessee to any equity interest in the Equipment, and unless a Purchase Option is provided in this Agreement and duly elected and performed by Lessee, Lessor shall at all times be the Lessor and titleholder of the Equipment. Lessee will keep the Equipment free of all liens and encumbrances other than those created by Lessor or its assigns. If the Uniform Commercial Code—Leases (Article 2A) applies to this Agreement, this Agreement is to be considered a "finance lease" as that term is defined therein. To the extent permitted by applicable law, Lessee waives all rights and remedies conferred upon a lessee under Sections 516-522 of Article 2A.

11. Assignment. Lessor may, without notifying Lessee, and with or without delegating any of Lessor's obligations hereunder, in whole or in part assign this Agreement or transfer the Equipment. **The rights of any such assignee shall not be subject to any defense, counterclaim or set off which Lessee may have against Lessor.** Lessee may not assign this Agreement or transfer or sublease the Equipment, in whole or in part. Subject to the foregoing, this Agreement binds and benefits the parties' successors and assigns.

12. Equipment Return. If Lessee is required to return the Equipment under this Agreement, Lessee shall, at its expense, promptly upon demand, send the Equipment to any location(s) that Lessor may designate. The Equipment must be properly packed for shipment, freight prepaid and fully insured, and must be received in useable and in good working order; reasonably clean and cosmetically good; in the same condition as when shipped to Lessee, reasonable wear and tear excepted. If the Equipment is not received within 15 days of the date of demand, Lessee agree to continue paying Lease Payments and all other amounts due hereunder until the Equipment is returned to Lessor. Lessee is solely responsible for removing all data from any digital storage device, hard drive or other electronic medium prior to returning the Equipment or otherwise removing or allowing the removal of the Equipment from Lessee's control for any reason. Lessor shall not be liable for any losses, directly or indirectly arising out of, or by reason of the presence and/or use of any and all proprietary information residing on or with any Equipment returned to Lessor or repossessed by Lessor.

13. Miscellaneous. A provision of this Agreement that is or becomes invalid does not affect the remainder of that provision or this Agreement. Amendments to this Agreement must be in writing and signed by the party to be bound. Lessor may, without notice to Lessee, insert into this Agreement an Agreement Number or any missing information and correct obvious errors in this Agreement. Terms of inclusion are without limitation. Time is of the essence. A party's waiver or failure to require strict observance of this Agreement will not constitute a waiver of any other breach of the same or any other provision of this Agreement or any other agreement between the parties. All notices shall be given in writing by the party sending the notice and shall be effective when received, or, if earlier, on the fifth day after being deposited in the US mail, postage prepaid, or on the next business day after being accepted by a nationally recognized overnight delivery service, addressed to the party receiving the notice at its address shown on the front of this Agreement (or to any other address specified by that party by notice). This Agreement will survive the Term, and any return or sale of the Equipment, and remain in full force and effect, with respect to events or conditions occurring or existing during (or fairly attributable to) the Term or Lessee's possession of the Equipment. The parties intend not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payments that would otherwise be charged or collected will instead be applied to Lease Payments or refunded to Lessee. In any proceeding relating to this Agreement, a party may produce a photocopy or scanned copy of a document rather than an original and such copy will have the same force as an original. Lessor may obtain credit reports from or make inquiries to credit bureaus or other sources as it determines appropriate.—Lessor may also impose an administrative surcharge of up to \$175 with respect to any on-site inspection of the Equipment it makes hereunder. **This Agreement is governed by the internal laws of Florida. Each party submits to the jurisdiction of the United States District Court for the Middle District of Florida or any State of Florida court sitting in Duval County. To the extent permitted by applicable law, each party expressly waives trial by jury. The terms and conditions contained in this Agreement are the entire agreement between Lessee and Lessor regarding the Equipment and may not be contradicted or modified by any prior, contemporaneous or subsequent representation, promise or statement (oral or written). This Agreement is separate and independent of any other agreement or contract that Lessor or Lessee may have with any person, or the obligations of any person to provide any services, licenses or maintenance in connection with any Equipment or otherwise.**

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Lease Agreement Number _____ dated as of September 30, 2022 (the "Lease"), is by and between Macquarie Equipment Capital Inc. as lessor and City of New Fairview, as lessee. Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.
2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.
3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.
4. Lessee's obligation with respect to rent that becomes due upon exercise of Lessor's remedies with respect to an Event of Default shall be limited to such amount permitted under applicable law.
5. The Lease and this Rider shall be governed by the laws of the state in which Lessee is located. Any provisions of the Lease or this Rider found to be prohibited by law shall be ineffective to the extent of

such prohibition without invalidating the remainder of the Lease or this Rider.

6. This Rider may be executed in several counterparts and all of which shall constitute but one and the same instrument.

7. This Rider shall be binding upon and inure to the benefit of the Lessee and Lessor and their respective successors and assigns.

8. Except as modified herein the Lease remains in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the 30th day of September, 2022

LESSEE

LESSOR

By  _____

By _____

Title _____

Title _____



Driven by Technology, Powered by Service!

MFD Business Solutions (MFD) • 4275 Kellway Circle, Suite 121 • Addison, Texas 75001 • Office: (972) 233-2679
www.mfdbiz.com

CUSTOMER SERVICE CONTRACT

Company Name: City of New Fairview Commencement Date: 9 / 30 / 2022
 Phone: (817) 638-5366
 Service Location: 999 Illinois Lane, New Fairview, TX 76078
 Billing Address: 999 Illinois Lane, New Fairview, TX 76078
 Contact Name: Susan Greenwood Email: Susan@newfairview.org

**METER READING REQUESTS AND INVOICES WILL BE EMAILED UNLESS OTHERWISE NOTED.
 CIRCUIT BOARDS ARE COVERED IF MACHINE IS PROTECTED BY A SURGE PROTECTOR PURCHASED FROM ABC.**

CONTRACTED EQUIPMENT (Schedule A required for 6+ units)

Equipment Model	Serial Number	Equipment ID	B/W Meter	Color Meter	Location Remarks
Sharp BP-50C45					

Type of Contract: Parts & Labor Only Parts, Labor & Supplies (excludes paper & staples)
 Service Term: 12 Months 24 Months 36 Months 48 Months 63 Months
 Base Rate Billing Frequency: Monthly Quarterly Semi-Annually Annually
 Base Rate Amount: \$255 Covered Copies B/W 22,500 Color 1,500
 Overage Rate: B/W \$0.008 Color \$0.0495

Special Instructions: _____

This service agreement is billed quarterly with an annual base cost of \$1,020 for a total base allowance of 90,000 B&W copies and 6,000 color copies.

This service agreement and accompanying lease agreement make up the total quarterly payment (lease \$447 + service base \$255) of \$702 per quarter.

Customer's initials required to the left of selected term. Term commences upon date of installation.
 I have read and understand the terms and conditions of this contract.

_____ Title _____ Date _____
 Customer's Signature



**CITY COUNCIL
AGENDA MEMO**

Prepared By: Michele Sanchez, Finance Director

September 19, 2022

Investment Policy for FY 2022-2023

DESCRIPTION:

Discuss, consider, and act on an Ordinance (#202209-04-247) repealing Ordinances No. 202108-01-229 and 2020-19-214, and approving a Resolution adopting an Investment Policy for funds for the Fiscal Year 2022/2022.

BACKGROUND INFORMATION:

A city may invest its public funds, but only if the city complies with Chapter 2256 of the Texas Government Code, the Public Funds Investment Act (PFIA). Before a city may invest its public funds, the PFIA generally requires the following:

1. A city must adopt a written investment policy by ordinance or resolution. TEX. GOV'T CODE § 2256.005(a);
2. A city may thereafter only invest its funds in investments as authorized under its written investment policy;
3. Authorized investments must come from the list of proper investments under the PFIA; and
4. A City official must complete training regarding the requirements of the PFIA
5. The PFIA requires that the governing body of any investing entity review its investment policy no less than annually § 2256.005(e).

An investment policy must contain a statement emphasizing safety and liquidity. § 2256.005(b)(2). If the policy applies to the financial assets of all funds or fund types, that fact should be clearly stated. A distinction should be made between shorter-term cash management and the management of longer-term investments.

The policy must also include a list of authorized investments and the permitted maximum maturity of any individual investment, as well as the maximum weighted average maturity (WAM) of funds. Id. § 2256.005(b)(4)(a) & (c). Although the actual investment strategy for smaller cities is vastly different from larger cities, the primary objectives, which should direct any investment strategy, are safety and liquidity. Safety is the most important objective, because

public officials have a fiduciary responsibility to manage and maintain taxpayer funds. Liquidity, the ability to sell or dispose of an investment, is equally important. Invested funds must be readily available if the need for cash arises and requires the city to liquidate the investment before maturity.

The treasurer, the chief financial officer (if the treasurer is not the chief financial officer), and the investment officer of a local government must attend at least one, ten-hour, training session in investment laws within twelve months after taking office. § 2256.008. The PFIA is written in a way that requires all cities to appoint someone to one of these positions in order to receive the training. On a continuing basis, the investment training sessions must be attended at least once every two-year period for at least eight hours of instruction.

The City's Investment Policy was last reviewed and approved on August 16, 2021, by ordinance. However, because it is an annual requirement to approve, it makes more sense for the Council to adopt by Resolution To do so, however, the Council must also repeal any prior ordinance(s) adopting previous Investment policies. (Generally, resolutions are more informal in nature and are not used to repeal prior ordinances).

FINANCIAL CONSIDERATION:

The financial impact will be determined by the type of investments made by the City.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** an Ordinance repealing the City's Investment previous Investment Policies.

I move to **Approve/Deny** a Resolution adopting the City's 2022-23 Investment Policy.

ATTACHMENT(S):

1. Investment Policy
2. Resolution 202209-06-213
3. Ordinance 202209-04-247

INVESTMENT POLICY

CITY OF NEW FAIRVIEW, TEXAS

I. POLICY STATEMENT

It is the policy of the City that the administration of its funds and the investment of those funds shall be handled as its highest public trust. Investments shall be made in a manner which will provide the maximum security of principal invested through limitations and diversification while meeting the daily cash flow needs of the City and conforming to all applicable state statutes governing the investment of public funds.

The receipt of a market rate of return will be secondary to the requirements for safety and liquidity. It is the intent of the City to be in complete compliance with local law and the Texas Public Funds Investment Act (the "Act"). The earnings from investment will be used in a manner that best serves the interests of the City.

II. SCOPE

This investment policy applies to all the financial assets and funds of the City. The City commingles its funds into pooled investment accounts for investment purposes for efficiency and maximum investment opportunity. These funds are defined in the City's Comprehensive Annual Financial Report (CAFR) and include:

- General Fund
- Debt Service Fund
- Special Court Revenue Funds
- Roadway Impact Fee Fund
- Parks Grant Fund
- Capital Improvement Projects Fund
- Any new funds created by the City unless specifically exempted by the City Council and this policy.

III. OBJECTIVES AND STRATEGY

It is the policy of the City that all funds shall be managed and invested with six primary objectives, listed in order of their priority: safety, suitability, liquidity, diversification, yield and marketability. Investments are to be chosen in a manner which promotes diversity by market sector, credit, and maturity. The choice of high-grade government investments and high-grade money market instruments are designed to assure the marketability of those investments should liquidity needs arise. To match anticipated cash flow requirements the maximum weighted average maturity of the overall portfolio may not exceed six months. However, under certain market conditions the Investment Officer or authorized delegates may need to shorten or lengthen the average life or duration of the portfolio to protect the City's investment portfolio.

Safety of Principal

Safety of principal is the foremost objective of the City. Investments of the City shall be undertaken in a manner that seeks to insure the preservation of capital in the overall portfolio.

Suitability

All investments authorized in the City's Investment Policy are suitable for the Fund types listed in Section II of the policy.

Liquidity

The City's investment portfolio will be based on a cash flow analysis of needs and will remain sufficiently liquid to enable it to meet all operating requirements which might be reasonably anticipated.

Diversification

Diversification of the portfolio will include diversification by maturity and market sector and will include the use of a number of broker/dealers for diversification and market coverage. Competitive bidding will be used on each sale and purchase.

Yield

The City's investment portfolio shall be designed with the objective of attaining a market rate of return, taking into account the City's risk constraints and the cash flow needs of the portfolio. "Market rate of return" may be defined as the average yield of the current six-month U.S. Treasury Bill.

Marketability

Securities with active and efficient secondary markets are needed in the event of an unanticipated cash requirement.

Effective cash management is recognized as essential to good fiscal management. Cash management is defined as the process of managing monies in order to ensure maximum cash availability. The City shall maintain a comprehensive cash management program which includes collection of accounts receivable, prudent investment of its available cash, disbursement of payments in accordance with invoice terms and the management of banking services.

IV. LEGAL LIMITATIONS, RESPONSIBILITIES AND AUTHORITY

Direct specific investment parameters for the investment of public funds in Texas are found in the Public Funds Investment Act, Chapter 2256, Texas Government Code, (the "Act"). The Public Funds Collateral Act, Chapter 2257, Texas Government Code, specifies collateral requirements for all public fund deposits. All investments will be made in accordance with these statutes. The City shall administer its investment activities in conformance with the statutes and in conformance with other applicable state and federal laws, applicable bond requirements, and this investment policy (the "Policy").

V. DELEGATION OF INVESTMENT AUTHORITY

The City Administrator or his/her designee, acting on behalf of the City, is designated as the Investment Officer of the City and is responsible for ensuring that the investment management decisions and activities are conducted in accordance with the City's Investment Policy. The Administrator is also responsible for considering the quality and capability of staff, investment advisors, and consultants involved in investment management and procedures. All participants in the investment process shall seek to act responsibly as custodians of the public trust.

The Investment Officer shall ensure that periodic training in investments for all involved in the investment process is provided through courses and seminars offered by professional organizations and associations in order to ensure the quality and capability of the City's investment personnel making investment decisions in compliance with the Act.

The Investment Officer shall ensure that all involved in the investment process, to include investment committee members, comply with the ethics guidelines in the Act and disclose any conflicts of interest or personal business relationships that may exist.

The Investment Officer shall develop and maintain written administrative procedures for the operation of the investment program which are consistent with this Investment Policy. Procedures will include reference to safekeeping, require and include the "Bond Market Master Repurchase Agreements" (as applicable), wire transfer agreements, banking services contracts, and other investment related activities.

The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials and staff. The Investment Officer shall designate a staff person as a liaison/deputy in the event circumstances require timely action and the Investment Officer is not available.

No officer or designee may engage in an investment transaction except as provided under the terms of this Policy and the procedures established.

VI. STANDARD OF CARE

The standard of care to be used in the investment function shall be the "prudent person" standard and shall be applied in the context of managing the overall portfolio. This standard states:

"Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the expected income to be derived."

Monitoring of Investment Portfolio

An Investment Officer or Investment Advisor shall monitor, on no less than a monthly basis, the credit rating on all authorized investments in the portfolio based upon independent information from a nationally recognized rating agency. If any security(s) falls below the minimum rating required by this Policy, an Investment Officer or Advisor shall notify the Chief Financial Officer immediately of the loss of rating and within (3) three days make a recommendation as to the conditions affecting the rating and possible loss of principal with available liquidation options.

Limitation of Personal Liability

The Investment Officer and those delegated investment authority under this Policy, when acting in accordance this Policy and exercising due diligence, for an individual security's credit risk or market price change, provided that deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.

The Investment Officer shall refrain from personal business activity that could conflict with proper execution of the investment program or that could impair their ability to make impartial investment decisions. An Investment Officer who has a personal business relationship with a business organization offering to engage in an investment transaction with the City shall file a statement disclosing that personal business interest to the City and the Texas Ethics Commission.

VII. INTERNAL CONTROLS

The Investment Officer shall establish a system of written internal controls which will be reviewed annually with the independent auditor of the City. The controls shall be designed to prevent loss of public funds due to fraud, employee error, misrepresentation by third parties, unanticipated market changes, or imprudent actions by employees of the City.

Cash Flow Forecasting

Cash flow forecasting is designed to protect and sustain cash flow requirements of the City. Supplemental to the financial and budgetary systems, the Investment Officer will maintain a cash flow forecasting process designed to monitor and forecast cash positions for investment purposes.

VIII. AUTHORIZED INVESTMENTS

Acceptable investments under this policy shall be limited to the instruments listed below and as further described by the Public Funds Investment Act.

- A. Obligations of the United States Government, its agencies and instrumentalities, and government sponsoring enterprises, not to exceed two years to stated maturity, excluding collateralized mortgage obligations (CMOs);

- B. Fully insured or collateralized certificates of deposit from a bank doing business in the State of Texas and under the terms of a written depository agreement with that bank, not to exceed one year to stated maturity;
- C. Fully collateralized repurchase agreements transacted with a primary securities dealer as defined by the Federal Reserve, under a written master repurchase agreement, with a defined termination date, secured by obligations as defined by this Policy held by an independent third party custodian approved by the City, and with a stated final maturity not to exceed ninety (90) days. Flexible repurchase agreements (“flex repos”) may be utilized only in the investment of bond proceeds with a stated final maturity not to exceed the expenditure plan on the bond proceeds.
- D. No-load, SEC registered money market funds, not to exceed a weighted average maturity of 90 day, in an amount less than 10 percent of the mutual funds’ total assets each approved specifically before use by the City;
- E. Constant-dollar, AAA-rated (or equivalent) rated Texas Local Government Investment Pools, approved by resolution of the City Council, which strive to maintain a \$1 net asset value, have a dollar-weighted average maturity of 90 days or less and which comply with the Act.

The investment pool may invest only in obligations listed in the preceding paragraphs The City investment in any investment pool shall not exceed 5 percent of the total assets of the pool;

- F. Fully insured or collateralized deposits that are invested through a bank doing business in the State of Texas and under the terms stated in Section 2256.009(7-8), Texas Government Code.

If additional types of securities are approved for investment by public funds by state statute, they will not be eligible for investment by the City until this policy has been amended and the amended version approved by the City Council.

Competitive Bidding Requirement

All investment transactions, including certificates of deposit, shall be made on a competitive basis to assure that the City is receiving fair market prices. Bids may be solicited orally, in writing, electronically, or in any combination of those methods.

Delivery versus Payment

All security transactions, including collateral for repurchase agreements, entered into by the City, shall be conducted on a delivery versus payment (DVP) basis, to ensure that the City has total control of its investments and its funds at all times.

IX. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

All investments made by the City will be made through either the City's banking services bank or a primary dealer. A list of at least three broker/dealers will be maintained in order to assure competitive bidding.

Securities broker/dealers must meet certain criteria as determined by the Investment Officer. The following criteria must be met by those firms on the list:

- Provision of an audited financial statement each year,
- Proof of certification by the National Association of Securities Dealers (NASD) and provision of CRD number,
- Proof of current registration with the State Securities Commission, and
- Completion of a City questionnaire.

Every broker/dealer and bank with which the City transacts business will be provided a copy of this Investment Policy to assure that they are familiar with the goals and objectives of the investment program. A representative of the firm will be required to return a signed certification stating that the Policy has been received and reviewed and that controls are in place to assure that only authorized securities are sold to the City.

X. DIVERSIFICATION AND MATURITY LIMITATIONS

It is the policy of the City to diversify its investment portfolio. Invested funds shall be diversified to minimize risk or loss resulting from over-concentration of assets in a specific maturity, specific issuer, or specific class of securities. Diversification strategies shall be established and periodically reviewed. At a minimum, diversification standards by security type and issuer shall be:

<u>Security Type</u>	<u>Max % of Portfolio</u>
U.S. Treasury obligations	100%
U.S. Government agencies and instrumentalities	not to exceed 50%
Fully insured or collateralized CDs	not to exceed 30%
Repurchase agreements	100%
Money Market funds	100%
For Bond funds	80%
Local Government Investment Pools	
Liquidity Pools	100%
Maximum percent ownership of pool	not to exceed 10%
For Bond Funds	100%

The Investment Officer shall be required to diversify maturities. The Investment Officer, to the extent possible, will attempt to match investment with anticipated cash flow requirements. Matching maturities with cash flow dates will reduce the need to sell securities prior to maturity, thus reducing market risk. Unless matched to specific requirements, the Investment Officer may not invest more than 20% of the portfolio for a period greater than one (1) year. Unless matched to specific requirements, the Investment

Officer may not invest any portion of the portfolio for a period greater than two (2) years. The portfolio's weighted-average maturity shall be limited to 365 days.

XI. SAFEKEEPING AND COLLATERALIZATION

All securities shall be settled on a delivery versus payment basis and be held in safekeeping by an independent third party financial institution contracted by the City. The City shall contract with its banking services depository or another financial institution(s) as safekeeping agent for the safekeeping of any securities owned by the City. The designated safekeeping agent will be responsible for the clearing and safekeeping of all security trades and will provide a monthly report of holdings. All securities held by the safekeeping agent on behalf of the City shall be evidenced by a safekeeping receipt listing each specific security, rate, description, maturity, cusip number, and other pertinent information. Each safekeeping receipt will be clearly marked that the security is held for the City or pledged to the City.

Consistent with state law requirements, the City shall require collateral market value equal to at least 102 percent of total deposits including accrued interest on all repurchase agreements and all time and demand deposits above the limits of federal insurance on City and trust funds.

Collateral will be held by an independent third-party safekeeping agent.

XII. PERFORMANCE EVALUATION AND REPORTING

Not less than quarterly, the Investment Officer shall to the City Council in compliance with the Act. The reports shall contain sufficient information to permit an informed outside reader to evaluate the performance of the investment program and be prepared consistent with statutory requirements. Market prices for market evaluations will be obtained from an independent source. The quarterly report shall be signed by an Investment Officer and Investment Advisor as applicable

XIII. DEPOSITORIES

The City will designate one banking institution through a competitive process as its central banking services provider at least every five years. In selecting a depository, the services, cost of services, credit worthiness, earnings potential, and collateralization of each financial institution shall be considered. This institution will be used for normal banking services including disbursement, deposits, and safekeeping of securities. A depository agreement(s), executed in accordance with FIRREA (Financial Institutions Resource and Recovery Enforcement Act), shall be established before funds are transferred. Other banking institutions from which the City may purchase certificates of deposit will also be designated as a depository after they provide their latest audited financial statements to the City and must execute a written depository (collateral) contract in accordance with the provisions of this Policy if funds exceed FDIC insurance limits.

XIV. INVESTMENT STRATEGY STATEMENTS

A. ACTIVE VS. PASSIVE STRATEGY:

The City intends to pursue an active portfolio management philosophy with investment functions carried out either by in-house City staff or by an outside portfolio manager investing the City's funds with oversight by the City Administrator. Active management means that the financial markets will be monitored, and investments will be purchased and sold based on the market conditions, liquidity parameters and legal constraints. Any marketable securities that may be purchased by the City shall have active secondary markets. Securities may be purchased as a new issue or in the secondary markets. Securities may be sold before they mature if market conditions present an opportunity for the City to benefit from the trade or if changes in the market warrant the sale of securities to avoid future losses. Securities may be purchased with the intent from the beginning, to sell them prior to maturity or with the expectation that the security would likely be called prior to maturity under the analyzed market scenario. Market and credit risk shall be minimized by diversification. Diversification by market sector and security types, as well as maturity will be used to protect the City from credit and market risk in order to meet liquidity requirements.

The portfolio will be structured to benefit from anticipated market conditions and to achieve a reasonable return. Relative value between asset groups shall be analyzed and pursued as part of the active investment program within the restrictions set forth by this policy. The portfolio may be comprised of 100% of direct government obligations, 100% repurchase agreements or 100% in an authorized government investment pool. Other asset types shall be limited to no more than 25% of the portfolio.

SPECIFIC INVESTMENT STRATEGIES FOR EACH TYPE OF FUND GROUP OF THE CITY ARE AS FOLLOWS:

B. OPERATING FUNDS:

Operating Funds shall have as their primary objective to assure that anticipated cash outflows are matched with adequate investment liquidity. The secondary objective is to create a portfolio structure, which will experience minimal volatility during changing economic cycles. These objectives may be accomplished by purchasing money market government investment pools, money market mutual funds or high quality, short to medium term securities in a laddered (maturities coming due regularly and staggered to match cash outflows) or barbell (maturities that are placed very short term and maturities that are longer term, such that the average achieves cash flows and income similar to buying in the middle of those maturity spectrums) maturity structure and by diversification among market sectors.

The dollar-weighted average maturity of operating funds, based on the stated final maturity date of each security, will be calculated and limited to one year or less. However, each of the city's operating funds has a component classified as fund balance or reserve monies. These reserve monies may have a dollar-weighted average maturity of two years or less.

C. CAPITAL PROJECT FUNDS AND SPECIAL PURPOSE FUNDS:

Capital Project Funds and Special Purpose Funds shall have as their primary objective to assure that anticipated cash outflows are matched with adequate investment liquidity. These portfolios should have liquid securities to allow for unanticipated project expenditures or accelerated project outlays due to a better than expected or changed construction schedule. The portfolios shall be invested based on cash flow estimates to be supplied by the City Engineer and a capital project report completed by the City Administrator. The dollar-weighted average life of the portfolio should be matched or below the duration of the liabilities. Funds invested for capital projects may be from bond proceeds that are subject to arbitrage rebate regulations. The City will manage these funds as previously described but will conduct an arbitrage rebate calculation annually to determine the income, if any, that has exceeded the arbitrage yield of the bond. This positive arbitrage income will be averaged over a five-year period and rebated to the federal government according to federal arbitrage regulations. A secondary objective of these funds is to achieve a yield equal to or greater than the arbitrage yield of the applicable bond.

D. DEBT SERVICE FUNDS:

Debt Service Funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. Securities purchased shall not have a stated final maturity date which exceeds the debt service payment date.

E. DEBT SERVICE RESERVE FUNDS:

Debt Service Reserve Funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate debt service fund within the limits set forth by the bond ordinance or debt covenants specific to each individual bond issue. Individual securities may be invested to a stated final maturity of five years or less and no more than a three-year dollar-weighted average life.

XV. INVESTMENT POLICIES ADOPTION AND STRATEGY REVIEW

City Council shall review and adopt an investment policy, strategy, and broker/dealer list annually in conjunction with the adoption of the budget. Additional changes to the Policy may be adopted by City Council as needed. The adopting resolution shall reference any changes made to the Policy. The City's investment activities shall be reviewed annually by

the City's independent auditors as part of the annual audit process. The objective of the review shall be to ascertain compliance of the City's investment activities with the investment policy, investment strategy, and applicable laws. Any irregularities shall be reported to the City Council through a report as prescribed by the audit engagement agreement.

**CITY OF NEW FAIRVIEW, TEXAS
RESOLUTION NO. 202209-06-213**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, ADOPTING
AN INVESTMENT POLICY FOR FUNDS FOR THE FOR FISCAL YEAR 2022/2023;
DESIGNATING THE CITY ADMINISTRATOR AS THE PRIMARY INVESTMENT OFFICER;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of New Fairview, Texas, acknowledges the high priority of providing the necessary guardianship of public funds in the municipal sector; and

WHEREAS, the City Council expressly intends to set high fiscal standards, delegate treasury and investment duties to appropriate officials, and to review the actual performance at regular intervals; and

WHEREAS, Chapter 2256 of the Texas Government Code, commonly known as the "Public Funds Investment Act," governs local government investment authority; and

WHEREAS, the Public Funds Investment Act requires annual review of the investment policy for the City of New Fairview, Texas ("City"); and

WHEREAS, the annual adoption of the City's investment policy is intended to replace and supersede all previously adopted financial policies; and

WHEREAS, the City Council had previously adopted an investment policy with in 2021; and

WHEREAS, the City Council has reviewed the Investment Policy for Fiscal Year 2022/2023 attached hereto as Exhibit "A" and incorporated herein, for compliance with the Public Funds Investment Act and has determined it appropriate to adopt the investment policy as set forth; and

WHEREAS, upon consideration, the City Council finds and determines it to be in the best interests of the City to adopt Exhibit "A" as the City's Investment Policy.

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

SECTION 1. That the foregoing recitals are hereby adopted and incorporated into this Resolution.

SECTION 2. The City Council has reviewed and hereby adopts the attached Investment Policy, which contains investment strategies and policies that the Council has determined to be beneficial to the City and hereby adopts the attached Investment Policy set forth in Exhibit "A," replacing and superseding the previous investment policy dated August 16, 2021.

SECTION 3. That the City Administrator is hereby designated as the City's primary investment officer to perform the functions required by the attached policy, and the investment officer is hereby authorized to perform the functions required under the Investment Policy and Chapter 2256 of the Texas Government Code, as amended from time to time.

SECTION 4. That this Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the City of New Fairview, Texas on this the 19th day of September 2022.

John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary

Exhibit "A"
Investment Policy for Fiscal Year 2022/2023

ORDINANCE 202209-04-247

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, REPEALING ALL ORDINANCES ADOPTING INVESTMENT POLICIES, INCLUDING ORDINANCE 202108-01-229 and 2020-19-214; PROVIDING FOR SAVINGS/REPEALING CLAUSE, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the City Council previously approved **Ordinances 202108-01-229 and 2020-19-214**, which adopted the written City Investment Policy, in accordance with Chapter 2256 of the Texas Government Code; and

WHEREAS, the City Council desires to repeal the Ordinances and adopt the written City Investment Policy by separate resolution.

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

SECTION 1. Incorporation of Recitals. The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

SECTION 2. Ordinances Repealed. That **Ordinances 202108-01-229 and 2020-19-214** are hereby repealed and no longer in effect.

SECTION 3. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. New Fairview hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective upon adoption.

Introduced, read at the City Council meeting on September 19, 2022.

PASSED AND APPROVED THIS THE ___ DAY OF _____ 2022.

John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary