



**City of New Fairview  
City Council  
Regular Meeting  
999 Illinois Lane  
Monday, February 20, 2023, at 7:00 pm**

**WORK SESSION**

1. **Call to Order and Determination of Quorum**
2. **Receive a report and hold a discussion regarding a vendor/solicitation permit.**
3. **Receive a report and hold a discussion regarding a Strategic Plan for the City, including a Vision and Mission Statement, Core Values, Strategic Goals and Objectives, and the results of the 2022 Citizen Satisfaction Survey.**
4. **Receive a report and hold a discussion regarding an agreement for the City's plan review and building inspection services.**
5. **Adjournment**

**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. **Announcements & Special Recognitions:** The agenda shall provide a time when proclamations, recognitions, general reports, and updates may be presented by the City Council.
4. **City Administrator's Report:** The City Administrator's Report may provide information on status of current city projects and other projects affecting the City, meetings and actions of the city's boards and commissions, upcoming local community events, including but not limited to departmental operations and capital improvement project status. No action will be taken with respect to this report.
5. **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

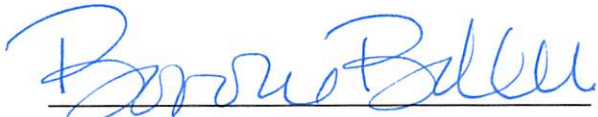
any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.

6. **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.
  - A. **Approve the City Council Meeting minutes for February 3 & 6, 2023.**
  - B. **Approve the January 2023 Financial Report**
7. **New Business:** All matters listed in New Business will be discussed and considered separately.
  - A. **Receive, consider, and act on a Resolution authorizing the City Administrator to enter into an agreement with Pacheco Koch Engineers, LLC for the survey and engineering for Latham Lane roadway in Chisholm Hills and drainage reconstruction for a CDBG-funded project.**
  - B. **Receive, consider, and act on an Ordinance amending Chapter 2, "Administration and Personnel", Article 2.06, "Municipal Court", Division 1, "Generally", of the City of New Fairview Code of Ordinances, by repealing Division 1 in its entirety and adding a new "Division 1", establishing the Municipal Court as a Court of Record.**
  - C. **Receive, consider, and act on a Resolution adopting the City's Legislative Priorities.**
  - D. **Receive, consider, and act on a Resolution adopting a Social Media Policy for Elected and Appointed City Officials.**
8. **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 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.
  - A. **§ 551.071(1): Consultation with the City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding: Employment Agreement for John Cabrales, Jr.**
  - B. **§551.074: (a) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: Employment Agreement for John Cabrales, Jr.**
9. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

**10. Mayor & Council Member Announcements:** The City Council may hear or make reports of community interest provided no action is taken or discussed. Community interest items may include information regarding upcoming schedules of events, honorary recognitions, and announcements involving imminent public health and safety threats to the city. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting

**11. 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 17<sup>th</sup> day of February, 2023 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](mailto:citysecretary@newfairview.org) for further information.



**CITY COUNCIL  
AGENDA MEMO**

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Prepared By: John Cabrales Jr, City Administrator

February 20, 2023

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**Vendor/Solicitor's Permit**

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**DESCRIPTION:**

Receive a report and hold a discussion regarding a vendor/solicitor's permit.

**BACKGROUND INFORMATION:**

Peddlers, solicitors, and transient merchants can provide benefits and challenges to cities and their residents. They provide an opportunity to bring interested parties (such as buyers and sellers, or donors and charitable, religious, or nonprofit organizations) together. However, they can also cause problems not typically associated with permanently established local businesses.

Bad experiences can lead disgruntled home and business owners to contact City Council members, requesting relief, to include:

- Protection from fraud, scam artists, and other unwanted intrusions.
- Prevention of crimes and unlawful activities.
- A direct city response to their uneasiness and need for safety in the community.

State and local governments have used different terms to describe individuals who travel city-to-city or door-to-door offering products and services for sale, or expressing ideological and religious beliefs. Among the most commonly used names for those participating in these general practices include Solicitor, Peddler, Transient merchant, Hawker, Canvasser, Advocate, Itinerant vendor, Hucksters, Proselytizers, Door-to-door salespersons, Drummers, Missionaries

Such terms (and others) are generally defined by state statute or city ordinance. Language is often used interchangeably but may be applied differently. However, despite the use of these various terms for generally similar practices, there are fundamental differences in actual operations that affect a city's ability to regulate a particular type of activity.

A solicitor is any person who goes from house to house or from place to place in the city soliciting, selling, or taking orders for any services, goods, wares, or merchandise. Door to door solicitation is currently an unregulated activity in the City of New Fairview and does not currently require a home solicitor permit.

Texas cities have the authority, both specifically within the state statutes and under their general police powers, to regulate the activities of peddlers, solicitors, and transient merchants. However, this authority is not absolute. Regulations must be “reasonable” and not violate any rights protected by the state or federal constitutions. Some cities require individuals who peddle, sell, solicit, or take orders for any services, wares, merchandise, or goods, or any article of value, from door to door to first obtain a Solicitation permit from the City.

Some solicitation activities have Federal protection through the 1st Amendment of the United States Constitution, as well as protections through Texas State law and the City may only regulate certain aspects of these activities and cannot outright prohibit them. Religious and political activities and their representatives are generally exempt from permit requirements.

### **Peddlers.**

Also commonly known as hawkers, peddlers carry the actual products offered for sale from place to place. Cities generally have the authority to either license or register peddlers who wish to operate within the city’s jurisdiction. The licensing or regulation of peddlers usually does not raise constitutional concerns under the Commerce Clause of the US Constitution, because both product delivery and payment occur during the initial interaction. With peddling, goods are not typically shipped into the local jurisdiction for delivery at a later date and time.

### **Solicitor.**

A solicitor also engages in door-to-door activities. However, unlike a peddler, a merchant solicitor goes from place to place and only obtains orders for goods or services that will be delivered or performed at a later date. Solicitors do not carry the merchandise they are offering for sale with them. Most often, a solicitor will use samples, or carry catalogs illustrating the goods or services available.

### **Canvasser.**

Although this memo often uses the terms “solicitors” and “solicitation” interchangeably with “canvassers” and “canvassing,” canvassing refers to the practice of going from location to location with the primary purpose of furthering religious, social, or political advocacy. Unlike solicitors, financial profit is not the canvassers’ primary motivation. A canvasser (sometimes known as an advocate) may:

- Ask for signatures on a petition.
- Request support for a political candidate or position.
- Espouse religious beliefs or causes.
- Seek donations, organization memberships, or other financial support for their religious, social, or political organizations.
- Take orders for goods, to be delivered later, to raise money for a non-profit or other charitable organization’s operations.

The regulation of these types of door-to-door advocates involves many basic constitutional rights, including a canvasser’s freedom of speech and possibly freedom of religion, a solicitor’s Commerce Clause protections, and a homeowner’s privacy and property rights.

Although statutory cities are specifically provided the power to “restrain or license and regulate” solicitors and canvassers (most home rule charter cities have similar language within their charters), most legal authorities suggest their authority is actually more limited.

The major restriction on local licensing of home solicitors is the Commerce Clause of the U.S. Constitution. The Texas Attorney General has advised that because states are prohibited from interfering with interstate commerce, local governments cannot collect license fees from solicitors who take orders in one state for goods to be delivered in the future from another state. In contrast, a municipal ordinance requiring all solicitors, including interstate merchants, to simply *register* with local authorities before engaging in their business activities may be a reasonable local regulation of interstate commerce.

And while most canvassing activities do not raise concerns under the Commerce Clause, these activities likely raise protections under the First Amendment. If the activity is pure advocacy (the expression of one's views or religious principles), a city cannot impose a prior restraint, such as obtaining a license or registration before engaging in the activity. Unfortunately, it is less clear what regulations, if any, may be enacted when the canvassing involves the sale of goods and services that will be provided at a later date.

Any licensing or other city ordinances regulating transient merchants must apply uniformly to all transient dealers regardless of residence, locale, or otherwise. A volume of legal authority recognizes classifications based on the temporary nature of transient merchants as valid and finds that it is proper to distinguish between temporary enterprises and permanently established businesses.

The City's interest in regulating door-to-door and transient merchant activities is generally two-fold: 1) to ensure residents' privacy rights in their homes; and 2) To protect residents from fraud and other crimes. Regulations take different forms, from elaborate licensing schemes to more simple requirements such as registering with the city and agreeing to abide by time, place, and manner restrictions. Generally, city regulations should seek to control only the nuisance aspects of a particular type of business, not outlaw the activity completely.

Some cities require background checks and even fingerprinting as part of the solicitation permit process. However, this would be a difficult, if not impossible, function for the City of New Fairview because we do not have our own police department. If a Peddler/Solicitation permit was implemented in the city, we could have the Court Clerk/Assistant City Secretary process the permit. We could also pay for a private background check of any applicant, which would be covered by the permit fee.

Things to consider when discussing the solicitor's permit would be the hours of solicitation, permit fee, how long is the permit valid for, if you want to fine any person, firm, or corporation for not pulling a permit and if so, the fine amount, and, to the extent legally permissible, if you would like exempt individuals to still register without a background check or paying the fee. Keep in mind that it would be difficult to enforce violations of permit or registration because we currently do not have any law enforcement personnel that can enforce this City ordinance.

The City ordinance may need to make it an affirmative defense that the individuals were not subject to the permitting requirements, because they are exempted by state or federal law, or otherwise had the business/homeowner's permission, for example public utility companies or others operating under a franchise granted by the City, commercial agents dealing with local business establishments in the usual course of business, and insurance, real estate and others licensed by the state which are subject to financial disclosure under state or federal law, is a licensed process server, or, e.g., are employed by the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety

Administration, or an employee or agent of those services, delivering an item of mail, a notice, or a package to the premises.

Examples of possible solicitation regulations are listed below:

- Limiting the hours of door-to door home solicitation to Standard Time — allowed at a private residence from 9:00 a.m. until 7:00 p.m. Daylight Savings Time — allowed at a private residence from 9:00 a.m. until 8:00 p.m.
- No solicitations on generally observed holidays, such as January 1st, July 4th, the fourth Monday in May, the 1st Monday in September, the fourth Thursday of November, December 25th.

Costs must be related to the cost of processing the permit application, not as a source of City revenue.

Examples of cost are listed below:

- The original application is \$200, each additional applicant is \$50.
- The solicitor's permit is valid for 180 days, renewal 90 days.
- If you come in to renew your permit BEFORE the expiration date, you can renew the permit with no changes (no additional persons may be added) for no charge.
- Each permit is allowed one free 90-day renewal.
- Flat fee of \$50 per permit and permits are valid for three months.

Staff would like the Council's direction on creating an ordinance for the regulation of peddlers, solicitors, and transient merchants.

This item was requested by the City Council.

**FINANCIAL CONSIDERATION:**

None, the costs are passed through to the applicant.

**RECOMMENDED MOTIONS:**

None, discussion only.

**ATTACHMENT(S):**

1. Draft Ordinance
2. Draft Permit Application Form



**ORDINANCE NO. ? ? ? ?**

**AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS, AMENDING THE CITY CODE OF ORDINANCES, CHAPTER 5, BUSINESS REGULATIONS, BY ADDING ARTICLE 5.07, HOME SOLICITOR REGISTRATION, SECTIONS 5.01.001- 5.07.011 BY REGULATING DOOR-TO-DOOR SALE ACTIVITIES WITHIN CITY LIMITS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE**

**Section One.** Amendment to Municipal Code of Ordinances, Chapter 5, Business Regulations, Article 5.01 General Provisions, The City of New Fairview's Code of Municipal Ordinances, , is hereby amended as follows, to add the following Sections:

**Sec. 5-07.001 Purpose and findings.**

- (a) The City Council finds that the City has received numerous and continuous complaints from citizens about persons going onto residential premises (including premises that contain conspicuous signs prohibiting solicitations) to solicit, sell, or take orders for goods and services and to distribute commercial printed matter; and:
- (1) Those citizens have expressed concerns that such solicitations result in criminal activity (including burglary and fraud) and disturb the privacy of their homes;
  - (2) The City Council believes that establishing a registration program for those home solicitors will protect the citizens against criminal activity, including, but not limited to, burglary and fraud, minimize the unwelcome disturbance of citizens and the disruption of their privacy and otherwise preserve the public health, safety, and welfare;
  - (3) The City Council believes it is in the interest of the public health, safety, and welfare to prohibit persons convicted of certain crimes from being home solicitors in the City;
  - (4) The City Council has considered the following criteria:
    - a. The nature and seriousness of the crimes;
    - b. The relationship of the crimes to the purposes for requiring a certificate of registration to engage in the occupation;
    - c. The extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
    - d. The relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the registered occupation; and has determined that the crimes listed in Section 07.009 (a)(2) are serious crimes which directly relate to the duties and responsibilities of a home solicitor, whose job is to solicit, sell, and take orders for goods and services, and to distribute commercial printed matter, on residential premises in the City;
  - (5) The City Council has determined that the very nature of the occupation of a home solicitor brings such a person into constant contact with the public, which gives the person repeated opportunities to participate in crimes of violence or dishonesty, or



crimes against the public health, safety, or morals, should the person be so inclined, and, thus, it is the opinion of the City Council that the crimes listed in Section 07.009 (a)(2) render a person unable, incompetent, and unfit to perform the duties and responsibilities of a home solicitor in a manner that would promote the public safety and trust; and

- (6) The City Council has determined that no person who has been convicted of a crime as listed in Section 07.009(a)(2) is presently fit to engage in home solicitation in the City until the respective time periods designated in that section have expired, and thus should be disqualified from being issued a certificate of registration as a home solicitor until the expiration of those time periods.
- (b) The City Council finds that the regulations of this article do not prevent door-to-door activity and that ample alternative channels of communication exist outside of the time limitations, including solicitation via telephone, electronic communication, public solicitation outside of the privacy of citizens' doorsteps, and solicitation via direct mail, television, radio, and internet.
- (c) The purpose of this article is to further the City's legitimate and compelling interest in securing City citizens' general health, safety and welfare by:
  - (1) Prohibiting door-to-door home solicitation during times when such activity is most intrusive and disruptive to citizens' privacy and the security of their homes;
  - (2) Regulating the manner in which door-to-door solicitation activity may occur so as to protect citizens in the privacy of their own homes from aggressive and intimidating practices; and
  - (3) Requiring home solicitors to register with the City and conspicuously display registration certificates while soliciting, so as to minimize deceptive practices, fraud and aid law enforcement in crime detection.

**Sec. 5.07.002. - Violations; penalty.**

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this section, commits an offense. A person commits a separate offense for: (1) Each day or portion of a day during which a violation is committed, permitted, or continued; (2) Each item placed, deposited, or distributed on residential premises in violation of this article; and (3) Each residential premises to which a home solicitation is conducted in violation of this article. (b) The penalties provided for in Section 5.07.002 are in addition to any other enforcement remedies and penalties which the City may have under City ordinances and State law.

**Sec. 5-07.003. - Delivery of notices.**

Any written notice that the City is required to give any applicant or registrant under this article is deemed to be delivered:

- (1) On the date the notice is hand delivered to the applicant or registrant; or
- (2) Three days after the date the notice is placed in the United States mail with proper postage and properly addressed to the applicant or registrant at the address provided for the applicant or registrant in the most recent registration application.

**Sec. 5.07.004. - Presumption of distribution of commercial printed matter.**

Whenever commercial printed matter is placed, deposited, or distributed, or caused to be placed, deposited, or distributed, in violation of this article, it is presumed that the person named on the commercial printed matter is the person who committed the violation, either personally or through an agent.

**Sec. 5.07.005. - Prohibitions.**

(a) It is unlawful for a person 14 years of age or older to solicit an occupant of residential premises, unrequested:

(1) Without first registering and obtaining a certificate of registration issued by the City in accordance with this article;

(2) Except between the hours of 9:00 a.m. and 8:00 p.m.;

(3) If the residence conspicuously displays at or near the primary entrance to the residence, a readily legible sign, bearing any of the words:

"NO TRESPASSING," "NO PEDDLERS," "NO ADVERTISEMENTS," "NO SOLICITATION," "NO HANDBILLS."

(4) At a location other than the primary entrance to the residence.

(b) It is unlawful for the registrant to allow any other person to use or wear their personal City-issued certificate of registration.

(c) It is unlawful for any registrant or registrant's agent to represent that the City's issuance of a certificate of registration constitutes the City's endorsement or approval of the purposes of any particular solicitation.

**Sec. 5.07.006. - Time and manner for conducting home solicitations.**

(a) A person commits an offense if the person conducts or attempts to conduct (either personally or through an agent), a home solicitation at a residential premises:

(1) Before 9:00 a.m. or after 8:00 p.m. CST/7:00 p.m. DST of any day, Monday through Sunday; or

(2) At any time on January 1st, July 4th, the fourth Monday in May, the 1st Monday in September, the fourth Thursday of November or December 25th.

(b) It is a defense to prosecution under Subsection (a) of this section that the visit to the residential premises resulted from the owner or occupant's request or appointment.

**DIVISION 2. - HOME SOLICITOR REGISTRATION**

**Sec. 5-07.007. - Required; defenses.**

(a) A person commits an offense if that person:

(1) Personally, by an agent, or as the agent of another, engages in a home solicitation without a valid certificate of registration issued to the person under this division;

(2) Engages in a home solicitation by using an agent who does not hold a valid certificate of registration issued under this division; or

(3) Engages in a home solicitation by acting as an agent of another person who does not hold a valid certificate of registration issued under this division.

(b) It is a defense to prosecution under Subsection (a)(1) of this section that:

- (1)The person was soliciting for a noncommercial purpose, including, but not limited to, a charitable, educational, civic, patriotic, philanthropic, political, or religious purpose;
  - (2)The person was on the residential premises by express invitation of the owner, occupant, or other person in control of the premises;
  - (3)The person was a wholesale agent or factory representative who sells or exhibits for sale goods, wares, or merchandise and was conducting business with a person engaged in the business of buying, selling, and dealing in the same type of goods, wares, or merchandise;
  - (4)The person was soliciting newspaper sales, or delivering newspapers pursuant to a request by or contract with the owner, occupant, or other person in control of a residential premises;
  - (5)The solicitation, sale, or taking of orders for goods or services took place upon residential premises owned, leased, or controlled by the person or by the person's employer;
  - (6)The person was a governmental entity, or an officer, employee, or agent of a governmental entity, placing a notice or other information on the premises in the performance of official duties;
- or
- (7)The person was the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety Administration, or an employee or agent of those services, delivering an item of mail, a notice, or a package to the premises.

(c)Before taking any enforcement action under this section, the City Administrator or designee, any Police Officer, or any City Code Enforcement Officer shall ask the apparent offender's reason for being on the residential premises or for depositing any item on the premises. The City Administrator or designee, the Police Officer or the City Code Enforcement Officer shall not issue a citation or make an arrest under this section without a reasonable belief that an offense has occurred.

**Sec. 5-07.008. - Application; fee; expiration; non-transferability; material changes.**

(a)To obtain a certificate of registration to conduct home solicitations, a person must file a written application with the City Administrator or designee on the City-issued form. The application must include the following information regardless if the applicant is an individual or company:

- (1)The applicant's name, address, and telephone number and if an individual his or her date of birth, even if the individual is acting as an agent or submitting the application for the applicant.
- (2)If the applicant is a company the title of each of its officers and date and place of incorporation or location of the business establishment.
- (3)The name, address, date of birth and telephone number of each person conducting home solicitation in the City for the applicant.
- (4)A photograph of the applicant and of each person soliciting taken within the preceding 12 months, which clearly depicts the applicant's facial features.
- (5)The applicant's and each person soliciting date of birth and proof of driver's license including the driver's license number and the issuing state or if the person does not have a driver's license, proof of a government issued personal identification card with the government number, the person's photograph and date of birth.
- (6)The names of other cities or jurisdictions in which the applicant and each person soliciting has worked as a home solicitor in the past 12 months and if the person was an agent of different companies in the other cities or jurisdictions, the names of those companies.



(7)The nature, character, and quality of the goods or services to be advertised, offered for sale, or delivered as part of the home solicitation.

(8)Whether the applicant and each person soliciting, upon obtaining an order for goods or services, will demand, accept, or receive payment or a deposit of money in advance of final delivery of the goods or services.

(9)The dates, times, and locations for which the applicant and each person soliciting proposes to conduct home solicitations in the City.

(10)An outline of the method to be used in conducting the home solicitations.

(11)Whether the applicant and each person soliciting has been convicted of any crime listed in Section 07.009 within the time period listed in Section 07.009 and the applicant's and each person soliciting signed consent authorizing the City to obtain a criminal history report on the applicant and each solicitor.

(12)Proof that the applicant and each person soliciting possesses all licenses or permits required by this Code or by State or Federal law for the operation of the proposed business.

(13)If the applicant is an agent of an individual or company, sufficient written proof of the applicant's authority to represent and act on behalf of the individual or company.

(14)If a company, proof of applicant's compliance with State or Federal law for the operation of the proposed business, to include Texas Labor Code ch. 51, as amended.

(15)Any other information the City Administrator or designee determines necessary to the enforcement and administration of this article.

(b)Any application filed under this section must be accompanied by a nonrefundable registration or renewal fee for each home solicitor established in Section 07.009.

(c)Upon expiration, the registrant may apply for a registration renewal in the same manner prescribed by this division for a new registration.

(d)A certificate of registration is not transferable from one person to another, but:

(1)Both may be used by the registrant to act as an agent for different individuals or companies during the registration term if the City Administrator or designee is notified in accordance with this section; and

(2)A registrant under subsection (a)(1) of this section may request additional copies of the certificate of registration at the time of issuance so that each agent may comply with the display requirements of this section.

(e)A registrant shall notify the City Administrator or designee within five days after any material change in the information on the application during the registration term. A material change includes, but is not limited to:

(1)When a registrant becomes an agent for another individual or company;

(2)When a registrant terminates an individual's authority to serve as the registrant's agent;

(3)A change in the nature, character, and quality of the goods or services; or

(4)A change in the dates, times, and locations proposed for conducting home solicitations in the City.

(f)A certificate of registration expires 180 days after the issue date. The registration may be renewed for a successive 90-day period, if the application is made within the previous 180-day registration period. Before expiration, the registrant may apply for a registration renewal in the same manner prescribed by this section for a new registration, submitting any renewal fee.

#### **Sec. 5-07. 009. - Issuance, denial, and display of registration**

(a)The City Administrator or designee shall issue a certificate of registration to the applicant within three business days after receipt of the application unless any of the following applies:

(1)The applicant has failed to provide material information requested or made a false statement of a material fact on the application form or in a hearing concerning the application or registration.

(2)The applicant has been convicted of a crime involving:

a. Criminal homicide as described in Texas Penal Code ch. 19;

b. Kidnapping as described in Texas Penal Code ch. 20;

c. A sexual offense as described in Texas Penal Code ch. 21;

d. An assaultive offense as described in Texas Penal Code ch. 22;

e. Robbery as described in Texas Penal Code ch. 29;

f. Burglary as described in Texas Penal Code ch. 30;

g. Theft as described in Texas Penal Code ch. 31, as amended, but only if the offense was committed against a person with whom the applicant came in contact while engaged in a home solicitation business;

h. Fraud as described in Texas Penal Code ch. 32, but only if the offense was committed against a person with whom the applicant came in contact while engaged in a home solicitation business;

i. The transfer, carrying, or possession of a weapon in violation of Texas Penal Code ch. 46 or of any comparable State or Federal law, but only if the violation is punishable as a felony under the applicable law; or

j. Criminal attempt to commit any offenses listed in Subsections (a)(2)a through i of this section for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses.

(3)The offense descriptions in Subsection (a)(2) of this section are meant to be descriptive only and not as exclusive to convictions under the Texas Penal Code. They include convictions for comparable offenses as provided under other State or Federal law.

(4)The applicant has failed to provide proof of a license or permit required by this Code or another City ordinance or by State law for the operation of the proposed business.

(5)The applicant or an agent, individually or cumulatively, has been convicted of any violation of this article, within the 24 months immediately preceding the application.

(6)The required registration fee has not been paid.

(7)The applicant has failed to comply with or the proposed business will violate any applicable ordinance or regulation of the City or applicable State or Federal law.

(b)If the City Administrator or designee determines that a certificate of registration should be denied the applicant, the City Administrator or designee shall notify the applicant in writing that

the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

(c) Upon issuing a certificate of registration, the City Administrator or designee shall issue the registrant and each person soliciting a certificate of registration. At all times the registrant and each person soliciting is conducting home solicitations in the City, the registrant maintains the certificate of registration on the registrant's person. The registrant shall allow the certificate of registration to be examined upon request by the City Administrator or designee, any Police Officer, any City Code Enforcement Officer, or the owner or occupant of the residential premises on which a home solicitation is being conducted. (d) If a City-issued home solicitor's certificate of registration is lost, mutilated, or destroyed, the City Administrator or designee shall issue the registrant or each person soliciting a duplicate upon payment of a duplicate fee established herein.

#### **Sec. 5-07.010- Suspension.**

(a) The City Administrator or designee may suspend a certificate of registration for a definite period of time not to exceed 30 days if the City Administrator or designee determines that:

(1) A violation of this Code or any other law concerning the sale or distribution of goods or services, or the distribution of commercial printed matter, by the registrant or the registrant's agent has occurred; or

(2) The registrant or a representative authorized to supervise the registrant's agents has failed to establish policy and take action to discourage, prevent, or correct violations of this article by agents.

(b) The City Administrator or designee shall send to the registrant by certified mail, return receipt requested, a written statement setting forth the reasons for the suspension and notifying the registrant of the right to appeal. A timely request for appeal by the registrant stays the effect of the suspension unless the City Administrator or designee determines that an emergency exists.

(c) For purposes of this section, an emergency exists if the City Administrator or designee determines that a violation has occurred and constitutes an imminent and serious threat to the public health or safety. In case of an emergency, the City Administrator or designee may order the registrant or the registrant's representative to correct the violation immediately or cease home solicitations to the extent the City Administrator or designee determines is necessary to abate the threat until the violation is corrected.

#### **Sec. 5-07.011. - Revocation.**

(a) The City Administrator or designee shall revoke a certificate of registration if the City Administrator or designee determines that:

(1) The registrant or an agent of the registrant, individually or cumulatively, has been convicted in any court of two violations of this Code or any other law concerning the sale or distribution of goods or services, or the distribution of commercial printed matter, within a 12 month period. The fact that a conviction is being appealed has no effect;

(2) The registrant has given false or misleading information of a material nature or has withheld material information on the application or in any hearing concerning the application or registration;

(3) The registrant or an agent of the registrant has intentionally or knowingly or otherwise impeded a lawful inspection by the City Administrator or designee, his or her authorized representative, or any representative of another department who has the authority to inspect the registrant and the registrant's business procedure; or (4) A cause for suspension under Section 8-



212 (a) or (b) occurs and the certificate of registration has been suspended within the preceding 12 months.

(b) The City Administrator or designee shall send to the registrant by certified mail, return receipt requested, a written statement setting forth the reasons for the revocation and notifying the registrant of the right to appeal.

(c) If the City Administrator or designee revokes a certificate of registration, the fee already paid for the registration will be forfeited. A person whose certificate of registration has been revoked under this section may not apply for or be issued a new registration for a period of one year after the date the revocation took effect, except that, if the City Administrator or designee determines that the basis for the revocation has been corrected, the person may apply for and be issued a new certificate of registration if at least 90 days have elapsed since the date the revocation took effect.

**Section Three. Cumulative and Conflicts.** This Ordinance shall be cumulative of all provisions of ordinances of the City of New Fairview, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in direct conflict herewith are repealed.

**Section Four. Savings.** All rights or remedies of the City of New Fairview, are expressly saved as to any and all violations of Ordinance No. \_\_\_\_\_ as codified in Chapter 5, Business Regulations, Article 5, Home Solicitations, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**Section Four. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section Five** Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense

**Section Six. Effective Date.** This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED on this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2023.



APPROVED:

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John R. Taylor  
Mayor

ATTESTED:

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Brooke Boller  
City Secretary

DRAFT



**City of New Fairview**  
**999 Illinois Lane**  
**New Fairview, Texas 76078**  
**817-638-5366**

**Solicit Permit Application**

**Date of application:** \_\_\_\_\_

**Name of Applicant:** \_\_\_\_\_

**Applicant's Date of Birth:** \_\_\_\_\_

**Applicant's Driver's License Number/State Issued by:** \_\_\_\_\_

**Business Name:** \_\_\_\_\_ **Type of Business:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**Description of goods/services to be sold, solicited, or displayed:**  
\_\_\_\_\_  
\_\_\_\_\_

**Vehicle Description used for solicitation:**

**Make:** \_\_\_\_\_ **Model:** \_\_\_\_\_ **Year:** \_\_\_\_\_

**Color:** \_\_\_\_\_ **License Plate:** \_\_\_\_\_ **State:** \_\_\_\_\_

If the applicant has plead guilty or no contest to, or has been convicted of a felony, misdemeanor, or ordinance violation involving fraud, misrepresentation, a sex offense, or trafficking in controlled substances, or of any violent acts against persons or property, within five years preceding the date of application, a description of each conviction or plea is required. The description shall include the date the offense occurred, the date of the conviction or plea, the location of the offense, and the sentence received.

**Offense:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Location of the Offense (City/County and state):**  
\_\_\_\_\_

**Date of conviction or plea:** \_\_\_\_\_ **Sentenced Received:** \_\_\_\_\_

**This application must be accompanied by the permit fee and a legible copy of the applicant's driver's license, front and back.**

**I undersigned, affirm that the information contained in this application is true and correct. I acknowledge that I have received a copy of this application.**

\_\_\_\_\_

Signature of Applicant

Date

**For City Use only**

Solicitor's Permit is: \_\_\_\_\_ Approved \_\_\_\_\_ Denied

Date of approval: \_\_\_\_\_

Permit Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ Amount Paid: \_\_\_\_\_

Signature of Person Approving the Permit: \_\_\_\_\_

DRAFT

I, [ \_\_\_\_\_ ] hereby authorize the City of New Fairview, Texas ("City") and/or its agents to make investigation of my criminal history record information which may be in any state or local files, including those maintained by both public and private organizations, and all public records, for the purpose of confirming the information contained on my application and/or obtaining other information which may be material to my qualifications for a home solicitation permit. A telephone facsimile (fax) or xerographic copy of this consent shall be considered as valid as the original consent.

I hereby consent to the City's verification of all the information I have provided on my application form. With regard to the foregoing disclosures, **I HEREBY AGREE TO RELEASE AND HOLD HARMLESS THE CITY OF NEW FAIRVIEW, ITS EMPLOYEES, AGENTS AND PUBLIC OFFICIALS, OR ITS CONTRACTORS FROM ANY AND ALL CAUSES OF ACTION THAT OTHERWISE MIGHT ARISE FROM SUPPLYING THE CITY WITH INFORMATION IT MAY REQUEST PURSUANT TO THIS REQUEST.** I understand that any false answers or statements, or misrepresentations by omission, made by me on this application or any related document, will be sufficient for rejection of my application/ denial of any permit or revocation should such falsifications or misrepresentations be discovered after any such permit is issued.

Applicant Signature: \_\_\_\_\_

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

DRAFT



**CITY COUNCIL  
AGENDA MEMO**

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Prepared By: John Cabrales Jr, City Administrator

February 20, 2023

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**Strategic Plan**

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**DESCRIPTION:**

Receive a report and hold a discussion regarding a Strategic Plan for the City, including a Vision and Mission Statement, Core Values, Strategic Goals and Objectives, and the results of the 2022 Citizen Satisfaction Survey.

**BACKGROUND INFORMATION:**

Strategic planning is a process in which an organization's leaders define their vision for the future and identify their organization's goals and objectives. The process includes establishing the sequence in which those goals should be realized so that the organization can reach its stated vision. It involves developing a vision and mission statement, core values, and goals, priorities, and action steps needed.

A vision statement is an organization's declaration of what it desires to achieve and become in the future. Vision statements act as a goal for an organization to strive toward and must align with its mission, strategic planning, culture, and core values.

A mission statement is a concise explanation of the organization's reason for existence. It describes the organization's purpose and its overall intention. The mission statement supports the vision and serves to communicate purpose and direction to employees, customers, and other stakeholders. This is a main building block to the formulation of the strategic plan.

Core values lists the principles that guide and direct the organization and its culture. In a values-led organization, the values create a moral compass for the organization and its employees. It guides decision-making and establishes a standard against which actions can be assessed. These core values are an internalized framework that is shared and acted on by leadership.

A strategic plan should focus on a handful of goals; maybe five or six priorities for an organization our size. These goals should be aligned with the mission and vision statements and should contain strategic objectives. It should be actionable, measurable, and easy to understand so that it can be used in making operational decisions. A strategic plan serves as a roadmap that can be used to prioritize resources (including the budget), goals, and operational initiatives.

In 2021, the City of New contracted with Texas A&M AgriLife Extension for the Texas Rural Leadership Program to conduct a strategic planning initiative with the Planning and Zoning Commission. The process resulted in the drafting of a draft vision statement, mission statement, core values, and strategic goals and objectives. However, this work was never shared with the City Council, so the City never adopted them.

It is important to involve as many people as possible to get diverse input when engaging in the strategic planning process to better understand community priorities. On December 8, 2022, the City launched a New Fairview Citizen Survey that collected input from residents on various city related topics. The survey was concluded on January 16, 2023, with ninety respondents to the survey. On February 3, 2023, the City Council held a strategic planning retreat to review the results of the citizen survey. Staff also shared the results of the 2021 City strategic planning initiative, and gave sample vision statements, mission statements, core values, and strategic goals and objectives from other cities. Attached are the results of the strategic planning retreat, based on the consensus of the City Council.

Staff is seeking feedback from the City Council on the draft vision statement, mission statement, core values, and strategic goals and objectives as we prepare these for adoption. Once the final version is adopted, they will be placed on the City website and will be used in the upcoming Fiscal Year 2023-24 Budget discussion with Council. They will also be used by staff in our daily operations and staff will identify some key performance indicators for each strategic goal so that we can come back to Council later to share any progress made. Strategic plans are not static documents, they change as new circumstances arise, both internally and externally. As such, staff will have a discussion with the City Council after the May General Municipal Elections to ensure that any new City Council members are made aware of the Strategic Plan.

**FINANCIAL CONSIDERATION:**

None

**RECOMMENDED MOTIONS:**

None, discussion only.

**ATTACHMENT(S):**

1. Draft Vision Statement, Mission Statement, Core Values, and Strategic Plan

## City of New Fairview Vision Statement

New Fairview is a thriving rural community determined to balance old and new while strategically managing growth and sustainability for the next generation.

## City of New Fairview Mission Statement

New Fairview is committed to governing with integrity and fiscal responsibility to ensure the overall quality of life for our citizens by providing excellence in public safety, economic growth, public infrastructure, and community services.

## City of New Fairview Core Values

**Integrity**

**Service**

**Trust**

**Transparency**

**Respectful**

**Accountable**

**Family Friendly**

**Fiscally Responsible**

**Preservation of our Natural Beauty**



## City of New Fairview Strategic Plan

1. Protect the Public	2. Invest in Infrastructure	3. Manage our Growth	4. Exercise Fiscal Responsibility	5. Parks & Beautification	6. Advance our Interests
1.1 Improve Animal Control Services	2.1 Better Roads and Drainage	3.1 Respect for our rural heritage	4.1 Sustain a low Property Tax Rate	5.1 Develop and enhance Community Events	6.1 Improve Communication
1.2 Improve Code Enforcement	2.2 Convert Mult-Purpose building to public safety use only	3.2 Keep existing and new residential minimum to one (1) acre lots	4.2 Seek grant opportunities	5.2 Enhance the beautification of the community	6.2 Protect Extraterritorial Jurisdiction (ETJ)
1.3 Grow public safety services	2.3 Build a public works building	3.3 Update the Zoning Map	4.3 Seek Interlocal opportunities		6.3 Develop an Economic Development Plan

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AGENDA ITEM: W4

## CITY COUNCIL AGENDA MEMO

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Prepared By: John Cabrales Jr, City Administrator

February 20, 2023

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### Plan Review and Building Inspection Services Agreement

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#### **DESCRIPTION:**

Receive a report and hold a discussion regarding an agreement for the City's plan review and building inspection services.

#### **BACKGROUND INFORMATION:**

At the May 4, 2020, meeting, the City Council approved an agreement with SAFEbuilt, LLC (attached) for plan review and building inspection services. However, for whatever reason, SAFEbuilt was never contacted to implement these services. Instead, the City entered into an Agreement with EMI Services, LLC for plan review and building inspection services. Nonetheless, the City has been using EMI for these services. EMI Services recently contacted the City and informed that they will not be able to provide these services past March 2023, because the Inspector is retiring.

As a result, the City needs to determine who will be providing these vital services. SAFEbuilt was contacted, met with staff and stated they are prepared to start these services for the City. They were willing to honor the current terms of the 2020 Agreement. More information can be found on SAFEbuilt at [www.safebuilt.com](http://www.safebuilt.com). Staff also visited with Bureau Veritas ([www.bvna.com](http://www.bvna.com)), Metrocode ([www.metrocode.com](http://www.metrocode.com)) and Atlas Municipal Services ([www.atlasmunicipalservices.net](http://www.atlasmunicipalservices.net)) as well, and received proposals for plan review and building inspection services.

Staff shared the existing agreement with SAFEbuilt, the proposals from Bureau Veritas, Metrocode and Atlas Municipal Services as well, and representatives from each of these companies made a brief presentation to the Council at the January 16, 2023, meeting. Staff was directed to share the references from each of the companies with the Council and to make a recommendation on which one the City should use for plan review and building inspection services. As previously stated, either company can provide the City with these services and can do a good job.

At the February 6 meeting, the City Council had a work session discussion and the consensus of the Council was for the City Administrator to work with the City Attorney in updating the agreement with SAFEbuilt and using them for the City's plan review and building inspection services. Since that meeting, staff has been working with the SAFEbuilt representative, Lee Swain, on the transition of these services from EMI Services. However, staff was informed by Mr. Swain that he was leaving SAFEbuilt and forming

his own plan review and building inspection services company, ATLAS Municipal Service LLC. He apparently has four former SAFEbuilt inspectors that are part of his company, but Mr. Swain has committed that he would personally be the inspector for the City of New Fairview. He is also proposing to charge a fifty percent (50%) of the municipal permit fee for residential inspections, compared to fifty-five (55%) in the SAFEbuilt Agreement. Staff has had a positive working experience with Mr. Swain, he is responsive to questions and has made every scheduled meeting without fail.

Due to this change and possible opportunity, staff wanted to have a discussion with the council to determine if we should stay with SAFEbuilt or enter into an agreement with ATLAS Municipal Services.

**FINANCIAL CONSIDERATION:**

None; the costs are passed through to the applicant.

**RECOMMENDED MOTIONS:**

None, discussion only.

**ATTACHMENT(S):**

1. Atlas Municipal Services Proposal
2. SAFEbuilt Agreement



February 15, 2023

John Cabrales Jr.  
City Administrator  
City of New Fairview  
999 Illinois Lane  
New Fairview, TX 76078

Re: ATLAS Municipal Services LLC

Dear Mr. Cabrales Jr.,

ATLAS Municipal Services is pleased with the opportunity to partner with the City of New Fairview, its staff, and the community to provide full building department services.

We will be providing building, mechanical, electrical, and plumbing plan review, and inspection services. We will provide next business day inspections and will perform any emergency inspections the same day that we are notified. We will work closely with city staff to ensure that the citizens of New Fairview receive the best service possible with their plan review and inspections needs. We will work within the city permit tracking system CivicGov performing plan reviews and resulting inspections.

We will provide excellent customer service and communication with the City of New Fairview. We will also provide this same level of communication with the residents and trades in the field. We will always be helpful and work to gain code compliance in a friendly manner. We will provide business cards at the front counter to help answer citizen and trade questions. We will have a workspace within City Hall to help facilitate a relationship with city staff and the citizens of New Fairview.

ATLAS Municipal Services LLC was formed in 2019. Our staff has over 75 years of building inspection experience and numerous licenses and ICC certifications. We are all licensed State of Texas Plumbing Inspectors. I have included for your review ATLAS staff resumes, agreement, COI, and SmartSheet that we will use internally to track and archive our plan review and inspection results.

Once again, we are pleased to have the opportunity to partner with the City of New Fairview and its residents. Any questions can be directed to Lee Swain  
[lswain@atlas municipal.net](mailto:lswain@atlas municipal.net) 940-305-3688

Sincerely,

Lee Swain

ATLAS Municipal Services LLC

[lswain@atlas municipal.net](mailto:lswain@atlas municipal.net)

TSBPE-2592

940-305-3688



## **PROFESSIONAL SERVICES AGREEMENT**

### **Between the City of New Fairview and ATLAS Municipal Services, LLC**

This Professional Services Agreement (“Agreement”) is made and entered into by and between City of New Fairview (Municipality”) and ATLAS Municipal Services LLC, (“Consultant”). Municipality and Consultant shall be jointly referred to as “Parties”.

#### RECITALS

WHEREAS, Municipality is seeking a consultant to perform the services listed in Exhibit A – List of Services, (“Services”); and

WHEREAS, Consultant is ready, willing, and able to perform Services.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Municipality and Consultant agree as follows:

#### 1. SCOPE OF SERVICES

Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality, state laws and regulations. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement.

Unless otherwise provided in Exhibit C, Consultant shall provide the Services using hardware and Consultant’s standard software package. In the event that Municipality requires that Consultant utilize hardware or software specified by or provided by Municipality, Municipality shall provide the information specified in Exhibit C. Consultant shall use reasonable commercial efforts to comply with the requirements of Exhibit C and Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with the requirements of Exhibit C.

#### 2. CHANGES TO SCOPE OF SERVICES

Any changes to Services between Municipality and Consultant shall be made in writing that shall specifically designate changes in Service levels and compensation for Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Amendment executed by both Parties.

#### 3. FEE STRUCTURE

In consideration of Consultant providing services, Municipality shall pay Consultant for Services performed in accordance with Exhibit B – Fee Schedule for Services. Fee Schedule shall be effective the 1<sup>st</sup> (first) day of the month following full execution of Agreement.

#### 4. INVOICE & PAYMENT STRUCTURE

Consultant will invoice Municipality, on a monthly basis and provide all necessary supporting documentation. All payments are due to Consultant within 30 days of Consultant’s invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. Municipality may request, and Consultant shall



provide, additional information before approving the invoice. When additional information is requested Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

5. TERM

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties. The initial term of this Agreement shall be twelve (12) months. Agreement shall automatically renew for subsequent twelve (12) month terms until such time as either Party notifies the other of their desire to terminate this Agreement.

6. TERMINATION

Either Party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

All structures that have been permitted, a fee collected, and not yet expired at the time of termination may be completed through final inspection by Consultant if approved by Municipality. Consultant's obligation is met upon completion of final inspection or permit expiration, provided that the time period to reach such completion and finalization does not exceed ninety (90) days. Alternately, Municipality may exercise the option to negotiate a refund for permits where a fee has been collected but inspections have not been completed. The refund will be prorated according to percent of completed construction as determined by Consultant and mutually agreed upon by all Parties. No refund will be given for completed work.

7. FISCAL NON-APPROPRIATION CLAUSE

Financial obligations of Municipality payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Municipality, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

8. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services (Materials). Municipality has the right to grant and hereby grants Consultant a fully paid up, non-exclusive, non-transferable license to use the Materials in accordance with the terms of this Agreement.

9. PERFORMANCE STANDARDS

Consultant shall perform the Services using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services. Consultant represents to Municipality that Consultant retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform Services in accordance with this Agreement.

10. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and, except as provided otherwise in this section, neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder

during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or when requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

11. ASSIGNMENT AND SUBCONTRACT

Neither party shall assign all or part of its rights or obligations under this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement in connection with the sale of all or substantially all of its assets or ownership interest, effective upon notice to Municipality, and may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performance clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities ("Claims") alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the negligence of Consultant or any officer, employee, representative, or agent of Consultant. Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from Municipality.

To the fullest extent permitted by law and without waiver of governmental immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) the negligence of, or material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from Municipality. If either Party becomes aware of any

incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR NON-INFRINGEMENT. EXCEPT TO THE EXTENT ARISING FROM MUNICIPALITY'S PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMAINING REMEDY. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENTIONAL CONDUCT, OR OTHERWISE) EXCEED THE GREATER OF THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT OR THE AVAILABLE LIMITS OF CONSULTANTS INSURANCE (SUCH LIMITS DEFINE MUNICIPAL MAXIMUM LIABILITY TO THE SAME EXTENT AS IF MUNICIPALITY HAD BEEN OBLIGATED TO PURCHASE THE POLICIES).

14. INSURANCE

- A. Consultant shall procure and maintain and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- B. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee. Worker's compensation coverage in "monopolistic" states is administered by the individual state and coverage is not provided by private insurers. Individual states operate a state administered fund of workers compensation insurance which set coverage limits and rates. Monopolistic states: Ohio, North Dakota, Washington, Wyoming.
- C. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, and products. The policy shall contain a severability of interest provision and shall be endorsed to include Municipality and Municipality's officers, employees, and consultants as additional insureds.
- D. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- E. Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- F. Municipality shall be named as an additional insured on Consultant's insurance coverage.
- G. Prior to commencement of Services, Consultant shall submit certificates of insurance acceptable to Municipality.

15. THIRD PARTY RELIANCE

This Agreement is intended for the mutual benefit of Parties hereto and no third-party rights are intended or implied.

16. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all Materials and of all work product and deliverables created by Consultant pursuant to this Agreement. The Materials, work product and deliverables shall be used by Consultant solely as provided in this Agreement and for no other purposes without the express prior written consent of Municipality. As between Municipality and Consultant, all work product and deliverables shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in such manner and for such purposes as determined by it. Notwithstanding the preceding, Consultant may use the Materials, work product, deliverables, applications, records, documents and other materials provided to perform the Services or resulting from the Services, for purposes of (i) benchmarking of Municipality's and other client's performance relative to that of other groups of customers served by Consultant; (ii) improvement, development marketing and sales of existing and future Consultant services, tools and products; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties, other than hosting providers, development consultants and other third parties providing services for Consultant, only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

Upon reasonable prior written notice, Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of Consultant that are related to this Agreement for the purposes of audit or examination, other than Consultant's financial records, and may make excerpts and transcriptions of the same at the cost and expense of Municipality.

17. CONSULTANT ACCESS TO RECORDS

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

18. CONFIDENTIALITY

Consultant shall not disclose, directly or indirectly, any confidential information or trade secrets of Municipality without the prior written consent of Municipality or pursuant to a lawful court order directing such disclosure.

19. CONSULTANT PERSONNEL

Consultant shall employ a sufficient number of experienced and knowledgeable employees to perform Services in a timely, polite, courteous and prompt manner. Consultant shall determine appropriate staffing levels and shall promptly inform Municipality of any reasonably anticipated or known employment-related actions which may affect the performance of Services. Additional staffing resources shall be made available to Municipality when assigned employee(s) is unavailable.

20. DISCRIMINATION & ADA COMPLIANCE

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of Equal Opportunity laws. Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by Municipality at any time during the term of this Agreement.

21. E-VERIFY/VERIFICATION OF EMPLOYMENT STATUS

Pursuant to FS 448.095, Consultant certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Consultant during the term of the Agreement. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment eligibility. If Consultant enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Consultant shall likewise require the subcontractor to comply with the requirements of FS 448.095, and the subcontractor shall provide to Consultant an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Consultant will maintain a copy of such affidavit for the duration of its contract with owner. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

22. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). Parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant's trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee's annual salary including bonus.

23. NOTICES

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

If to Municipality:	If to Consultant:
Email:	Email:

24. FORCE MAJEURE

Any delay or nonperformance of any provision of this Agreement by either Party (with the exception of payment obligations) which is caused by events beyond the reasonable control of such party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

25. DISPUTE RESOLUTION

In the event a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, Parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure. The cost thereof shall be borne equally by each Party.

26. ATTORNEY'S FEES

In the event of dispute resolution or litigation to enforce any of the terms herein, each Party shall pay all its own costs and attorney's fees.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective entities to the performance of its obligations hereunder.

28. CONFLICT OF INTEREST

Consultant shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Consultant with regard to providing the Services pursuant to this Agreement. Consultant shall not offer or provide anything of benefit to any Municipal official or employee that would place the official or employee in a position of violating the public trust as provided under Municipality's charter and code of ordinances, state or federal statute, case law or ethical principles.

29. TEXAS GOVERNMENT CODE/PROHIBITION OF BOYCOTT ISRAEL

Consultant verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001/2270.001, as amended.

30. GOVERNING LAW AND VENUE

The negotiation and interpretation of this Agreement shall be construed under and governed by the laws of the State of Texas, without regards to its choice of laws provisions. Exclusive venue for any action under this Agreement, other than an action solely for equitable relief, shall be in the state and federal courts serving Municipality and each party waives any and all jurisdictional and other objections to such exclusive venue.

31. COUNTERPARTS

This Agreement and any amendments or task orders may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

32. ELECTRONIC REPRESENTATIONS AND RECORDS

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

33. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.



34. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous agreements, communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

\_\_\_\_\_  
Municipality Authorized Representative Name Printed

\_\_\_\_\_  
Municipality Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Atlas Authorized Representative Printed

\_\_\_\_\_  
Atlas Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

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## EXHIBIT A – LIST OF SERVICES

### 1. LIST OF SERVICES

#### Building, Electrical, Plumbing, Mechanical, OSSF and Fire

- ✓ Consultant utilizes an educational, informative approach to improve the customer’s experience.
- ✓ Perform code compliant inspections to determine that construction complies with approved plans
- ✓ Consultant’s Inspector may perform in person or virtual inspections at inspector discretion
  - Either inspection type may be used on the same permitted project
- ✓ Provide fire suppression, sprinkler, alarm system, fire access and hazmat storage inspections
- ✓ Perform OSSF inspection services, as Municipality’s designated representative (DR)
- ✓ Meet or exceed agreed upon performance metrics regarding inspections
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Discuss inspection results with site personnel

#### Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Provide fire suppression, sprinkler, alarm system, fire access and hazmat storage plan review
- ✓ Perform OSSF plan review services, as Municipality’s designated representative (DR)
- ✓ Be available for pre-submittal meetings by appointment
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide review of plan revisions and remain available to applicant after the review is complete

#### Reporting Services

- ✓ Consultant will work with Municipality to develop a mutually agreeable reporting schedule and format

### 2. MUNICIPAL OBLIGATIONS

- ✓ Municipality will issue permits and collect all fees
- ✓ Municipality will provide Consultant with a list of requested inspections and supporting documents
- ✓ Municipality will intake plans and related documents and submit to Consultant electronically

### 3. TIME OF PERFORMANCE

- ✓ Consultant will perform Services during normal business hours excluding Municipal holidays
- ✓ Services will be performed on an as-requested basis
- ✓ Consultant representative(s) will be available by cell phone and email

Deliverables			
<b>INSPECTION SERVICES</b>	Perform inspections received from the Municipality prior to 4:00 pm next business day		
<b>PRE-SUBMITTAL MEETINGS</b>	Provide pre-submittal meetings to applicants by appointment		
<b>PLAN REVIEW TURNAROUND TIMES</b>	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<b>Project Type:</b>	<b>First Comments</b>	<b>Second Comments</b>
	✓ Single-family within	5 business days	5 business days or less
	✓ Multi-family within	10 business days	5 business days or less
	✓ Small commercial within (under \$2M in valuation)	15 business days	5 business days or less
✓ Large commercial within	20 business days	10 business days or less	
✓ OSSF within	7 business days	5 business days or less	

## EXHIBIT B – FEE SCHEDULE FOR SERVICES

1. FEE SCHEDULE

- ✓ Beginning January 01, 2023 and annually thereafter, the hourly and flat rates listed shall be increased based upon the annual increase in the Department of Labor, Bureau of Labor Statistics or successor thereof, Consumer Price Index (United States City Average, All Items (CPI-U), Not Seasonally adjusted, All Urban Consumers, referred to herein as the “CPI”) for the Municipality or, if not reported for the Municipality the CPI for cities of a similar size within the applicable region from the previous calendar year, such increase, however, not to exceed 4% per annum. The increase will become effective upon publication of the applicable CPI data. If the index decreases, the rates listed shall remain unchanged.

Consultant fees for Services provided pursuant to this Agreement will be as follows and shall be effective the 1st (first) day of the month following full execution of Agreement.

COMMERCIAL AND MULTI-FAMILY FEES	
Plan Review Service – New, Remodel, Addition, Alteration	
Project Valuation	Fee
\$1.00 to \$10,000	\$40.00
\$10,001 to \$25,000	\$61.63 for the first \$10,000 plus \$4.76 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$133.03 for the first \$25,000 plus \$3.43 for each additional \$1,000; or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$218.88 for the first \$50,000 plus \$2.38 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$337.88 for the first \$100,000 plus \$1.90 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,099.46 for the first \$500,000 plus \$1.62 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$1,906.98 for the first \$1,000,000 plus \$1.07 for each additional \$1,000; or fraction thereof
Construction Inspection Service – New, Remodel, Addition, Alteration	
Project Valuation	Fee
\$1.00 to \$10,000	\$70.00
\$10,001 to \$25,000	\$99.67 for the first \$10,000 plus \$7.70 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$215.19 for the first \$25,000 plus \$5.56 for each additional \$1,000; or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$354.06 for the first \$50,000 plus \$3.85 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$546.56 for the first \$100,000 plus \$3.03 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,778.56 for the first \$500,000 plus \$2.61 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$3,084.81 for the first \$1,000,000 plus \$1.73 for each additional \$1,000; or fraction thereof
RESIDENTIAL 1 & 2 FAMILY FEES	
One and Two Family Construction Plan Review and Construction Inspection	
50% of the Municipality Permit Application Fee	



**EXHIBIT C – MUNICIPAL SPECIFIED OR ATLAS Municipal Services LLC. PROVIDED SOFTWARE**

1. Consultant shall provide Services pursuant to this Agreement using hardware and Consultant’s standard software package, unless otherwise provided below. Use of Consultant’s software shall be subject to the applicable terms of service, privacy and other policies published by Consultant with respect to that software, as those policies may be amended from time to time. In the event that Municipality requires that Consultant utilize hardware and/or software specified by and provided by Municipality, Consultant shall use reasonable commercial efforts to comply with Municipal requirements.
  
2. Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with Municipal requirements. Municipality will provide the following information to Consultant.
  - ✓ Municipal technology point of contact information including name, title, email and phone number
  - ✓ List of technology services, devices and software that the Municipality will provide may include:
    - Client network access
    - Internet access
    - Proprietary or commercial software and access
    - Computer workstations/laptops
    - Mobile devices
    - Printers/printing services
    - Data access
    - List of reports and outputs

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## New Fairview - Atlas Municipal - Inspection Request Form

Address

Permit number

Inspection Type

Inspection Date Requested

Requestor

Requestor Contact phone

Requestor email

File Upload

Drag and drop files here or [browse files](#)

Send me a copy of my responses

Submit

# LEE SWAIN

## LICENSES AND CERTIFICATIONS

TX State Licensed Plumbing Inspector  
Texas State Medical Gas Endorsement  
Texas State MRFPS Endorsement  
Texas State Licensed Residential  
Wireman Electrician  
Texas State Licensed Code  
Enforcement Officer  
ICC Residential Combination  
Inspector  
ICC Residential Electrical Inspector  
ICC Residential Plumbing Inspector  
ICC Residential Mechanical Inspector  
ICC Residential Building Inspector ICC  
Residential Energy Inspector/  
Plans Examiner  
ICC Commercial Combination  
Inspector  
ICC Commercial Mechanical Inspector  
ICC Commercial Plumbing Inspector  
ICC Commercial Building Inspector  
ICC Commercial Energy Inspector  
ICC Commercial Electrical Inspector  
ICC Plumbing Plans Examiner  
TREC Licensed Residential Inspector  
Certified Vocational Instructor

## WORK EXPERIENCE

- **Principal / Business Development / Inspector, Atlas, LLC | 2019 to Present**
  - Work closely with the operations teams to expand client relationships.
  - Develop trusted relationships with client leaders that have meaningful impact to their communities.
  - Establish Atlas and yourself as a credible, trusted advisor on community development services.
  - Create and present market and competitively differentiated solutions that Atlas can deliver and support by working closely with operations.
  - Perform assigned field inspections in accordance with adopted codes.
  - Collaborate with other inspectors to discuss code information and code interpretations.
  - Interpret and enforce the adopted building codes in a consistent manner for each jurisdiction assigned.
  - Document inspection results so that the information is clear, concise, complete, and understandable.
  - Perform inspections for existing client jurisdictions while identifying areas for improvement in customer service levels and implement changes with the approval of the Building Official.
  - Suggest/recommend procedures to improve operations.
  - Answer code related questions from builders and the public.
  - Schedule/assign inspections, complete/result inspection tickets, generate and print out inspection tickets in jurisdiction relevant software package.
  - Attend town board meetings, planning meetings or pre-construction meetings as required or requested.
  - Execute sound safety practices in the execution of daily activities and wear proper safety equipment at job sites. Keep safety equipment in proper working condition and notify supervisor of any malfunctioning or missing safety equipment.
- **Client Liaison/Building Inspector, SAFEbuilt, LLC | 2018 to Present**
  - Work closely with the operations teams to expand client relationships
  - Develop trusted relationships with client leaders that have meaningful impact to their communities.
  - Establish SAFEbuilt and yourself as a credible, trusted advisor on community development services.
  - Create and present market and competitively differentiated solutions that SAFEbuilt can deliver and support by working closely with operations and all departments.
  - Prepare and respond to all target account requests for proposals, company information, and presentations on the company's capabilities that distinguishes SAFEbuilt from competition.
  - Successfully transition new logo client's to operations for effective client service delivery.
  - Maintain client databases and provide reporting and forecasting as required.
  - Perform assigned field inspections in accordance with adopted codes.
  - Collaborate with other inspectors to discuss code information and code

- interpretations to help ensure
- consistency of inspections.
- Interpret and enforce the adopted building codes in a consistent manner for each jurisdiction assigned.
- Document inspection results so that the information is clear, concise, complete, and understandable.
- Perform inspections for existing client jurisdictions while identifying areas for improvement in customer service levels and implement changes with the approval of the Building Official.
- Suggest/recommend procedures to improve operations.
- Answer code related questions from builders and the general public.
- Schedule/assign inspections, complete/result inspection tickets, generate and print out inspection tickets in jurisdiction relevant software package.
- Attend town board meetings, planning meetings or pre-construction meetings as required or requested.
- Compensation for attending board and planning meetings after normal work hours is addressed under SAFEbuilt Ambassador Program.
- Attend scheduled training.
- Execute sound safety practices in the execution of daily activities and wear proper safety equipment at job sites. Keep safety equipment in proper working condition and notify supervisor of any malfunctioning or missing safety equipment.

inspections on residential and commercial projects within assigned areas. Enforced all local ordinances and city codes. Worked with city staff and superintendents in the field to help them build safe structures that met the minimum code standards. Developed relationships with city staff, attended council meetings, educated vendor trades on code compliance to minimize

- **Inspection Services Manager, Business Development Manager,**

Bureau Veritas | 2004 to 2018

- Conducted and completed electrical, mechanical, plumbing, framing, and foundation

risk, and made presentations. Promoted to manager in 2010 supervising 6 full-time and 1 part-time inspectors. Assigned their daily routes, conducted performance reviews, scheduled in the field training and conducted business development meetings. Assigned the Building Official duties for the City of Murphy. Handled field inspections, administrative duties, conducted pre-development and pre-construction meetings. Handled all the in house plan review and assist with issuing permits.

- **Code Enforcement Officer**, City of Anna (Part-time) | 2003 to 2010
  - Enforced the property maintenance code which included writing violation letters and making contact with property owners. Advised property owners of violations and negotiated terms to allow reasonable time to cure. Writing citations when property owners failed to comply with violation terms and representing the city on disputes.
- **Building Inspector**, City of Anna | 2003 to 2004
  - Conduct and complete electrical, mechanical, plumbing, framing, and foundation inspections on residential and commercial projects within the city. Enforced local ordinances, and city codes.
- **Building Inspector**, City of Carrollton | 2003 to 2004
  - Conduct and complete electrical, mechanical, plumbing, framing, and foundation inspections on residential and commercial structures throughout the city. Project Manager on numerous commercial, and apartment projects. Additional duties included enforcement of the property maintenance code, making contact with the property owners, and issuing violations.
- **Building Inspector**, City of Frisco | 1999 to 2003
  - Duties included performing inspections in all phases of residential and commercial construction. Working with building superintendents to ensure the projects under construction meet the requirements of the building code. Also worked as a Code Enforcement Officer to ensure existing homes met the minimum standards of the property maintenance code.
- **Home Inspector**, Home Tech Residential Inspections | 1997 to 1999
  - Perform construction inspections on new and older homes. Prepare a computer report of the inspection findings. Look for and report any building defects, safety hazards of code violations. Give the home buyers and real estate agents a verbal and typed report regarding the inspection findings. Make recommendations for repairs.
- **Police Officer**, Fayetteville Police Department | 1993 to 1997
  - Patrol a zone in the city of Fayetteville North Carolina enforcing state laws and city ordinances. Make arrests, book prisoners, prepare cases for court and testify when requested. Served as a member, of the Fayetteville Police Department Emergency Response Team for two years.
- **Detention Deputy**, Wake County Sheriff's Department | 1991 to 1993
  - Employed as a Detention Deputy for the Wake County Sheriff's Department and was responsible for the care, welfare, and supervision of individuals detained in the county jail. Transported individuals to court, and other areas within the jail. Worked in direct supervision of juvenile, and maximum custody inmates for one year.
- **Marine**, United States Marine Corps | 1986 to 1991
  - Served as a Marine Corps Squad Leader. Learned survival and combat battle field tactics. Served in Operation Desert Storm 8/1990 to 4/1991. Received Navy Achievement Medal, combat action ribbon, good conduct medal, and sea service deployment ribbon. Meritoriously promoted to Lance Corporal upon graduation of boot camp and also meritoriously promoted to sergeant at end of Operation Desert Storm.



# BRYAN C SURGI

## CERTIFICATIONS

ICC certified Building Official

ICC certified Plans Examiner

ICC certified Energy  
Inspector / Plans Examiner

ICC certified  
Residential &  
Commercial  
Combination inspector  
(Building, Electrical, Plumbing  
and Mechanical)

Texas state licensed  
(TSBPE) plumbing  
inspector

Texas Commission  
on Fire Protection  
(TCFP) Certified  
Fire inspector &  
Plans Examiner

## PROFESSIONALEXPERIENCE

- **Principal / Building Official / Plans Examiner / Inspector**, Atlas Municipal Services, LLC, Texas, October 2022 to Current
  - Work closely with the Sales team to expand client relationships.
  - Develop trusted relationships with client leaders that have meaningful impact to their communities.
  - Establish Atlas and yourself as a credible, trusted advisor on community development services.
  - Create and present market and competitively differentiated solutions that Atlas can deliver and support by working closely with operations.
  - Perform assigned field inspections in accordance with adopted codes.
  - Collaborate with other inspectors to discuss code information and code interpretations.
  - Interpret and enforce the adopted building codes in a consistent manner for each jurisdiction assigned.
  - Document inspection results so that the information is clear, concise, complete, and understandable.
  - Perform inspections for existing client jurisdictions while identifying areas for improvement in customer service levels and implement changes with the approval of municipal Building Official.
  - Suggest/recommend procedures to improve operations.
  - Answer code related questions from builders and the public.
  - Schedule/assign inspections, complete/result inspection tickets, generate and print out inspection tickets in jurisdiction relevant software package.
  - Attend town board meetings, planning meetings or pre-construction meetings as required or requested.
  - Execute sound safety practices in the execution of daily activities and wear proper safety equipment at job sites. Keep safety equipment in proper working condition and notify supervisor of any malfunctioning or missing safety equipment.
- **Building Official**, SAFEbuilt, LLC, Austin, TX, June 2020 to Current
  - Accepts management responsibility for activities, operations and services of the Building Division; directs, coordinates, reviews and participates in the work of professional and technical employees and contract personnel to ensure that codes are properly enforced with uniformity, equity, and safety; provides interpretation and decisions on applicable codes, rules, regulations and technical problems of enforcement; monitors plan check flow; coordinates activities with other departments, outside agencies, contract service providers and organizations.
  - Performs residential and commercial plan review
  - Performs residential and commercial inspections to ensure code

requirements are followed.

- **Construction Administrator / Construction Inspector,**

DBR  
Engineering  
Consultants,  
INC,  
2018  
to  
2020

- Inspect renovation and new construction commercial construction projects including but not limited to, Austin ISD schools, hospitals, low rise buildings and retail centers. Prepare detailed observation reports that include a narrative for corrective action. Review RFIs and proposal request for change orders. Observe M.E.P. work to verify engineering specifications and code compliance are being followed. Review and document project material submittals. Attend equipment startups to ensure correct procedures are followed.

- **Chief Building Official, City of Hutto, TX, 2017 to 2019**

- Accepts management

responsibility for activities, operations and services of the Building Division; directs, coordinates, reviews and participates in the work of professional and technical employees and contract personnel to ensure that codes are properly enforced with uniformity, equity, and safety; provides interpretation and decisions on applicable codes, rules, regulations and technical problems of enforcement; monitors plan check flow; coordinates activities with other

City departments, outside agencies, contract service providers and organizations.

- Performs residential and commercial plan review
- Performs residential and commercial inspections to ensure code requirements are followed.

- **Chief Building Official, City of Harahan, LA, 2015-2017**

- Accepts management responsibility for activities, operations and services of the Building Division; directs, coordinates, reviews and participates in the work of professional and technical employees and contract personnel to ensure that codes are properly enforced with uniformity, equity, and safety; provides interpretation and decisions on applicable codes, rules, regulations and technical problems of enforcement; monitors plan check flow; coordinates activities with other City departments, outside agencies, contract service providers and organizations.

- Performs residential and commercial plan review
  - Performs residential and commercial inspections to ensure code requirements are followed.
- 
- **I.E.C.I, Owner / Plans Examiner / Inspector** Metairie, LA , October 2011
    - Perform 3rd party electrical, mechanical, gas and building inspections.
    - Perform 3rd party construction and demolition consultations and inspection audits on residential and commercial buildings.
    - Perform 3rd party plan review to ensure national and local codes are followed.
    - Document inspections and ensure local governments receive inspection reports.
    - Train and mentor new inspectors.
    - Ensure inspections are scheduled and performed in a timely, efficient manner.

# JAMES CHUMLEY

Inspector

## LICENSES & CERTIFICATIONS

### State Licenses

Plumbing Inspector License #3730

with Med Gas

Master Electrical License #224897

### ICC Certifications

Certified Building Official

Master Code Professional

Building Inspector

Building Plans Examiner

Combination Inspector

Commercial Building Inspector

Commercial Combination

Inspector

Commercial Electrical Inspector

Commercial Mechanical Inspector

Commercial Plumbing Inspector

Electrical Inspector

Electrical Plans Examiner

Mechanical Inspector

Plumbing Inspector

Residential Building Inspector

Residential Combination Inspector

Residential Electrical Inspector

Residential Energy Inspector/  
Plans Examiner

Residential Mechanical Inspector

Residential Plumbing Inspector

Mr. Chumley is a Certified Inspector in multiple disciplines including electrical and plumbing. As a Master Electrician since 2010, he has an exceptional depth of practical experience providing great "bandwidth" for projects from single story single family to high rise residential and commercial projects.

## EXPERIENCE

- **Building Inspector** Atlas Municipal Services | 2022 – Present
  - Perform residential and commercial building, electrical, and mechanical inspections for various municipalities.
  - Collaborate with contractors, homeowners, and architects to complete building projects per municipal code.
  - Perform residential and commercial plan review services for various municipalities throughout Texas.
  - Provide code enforcement services for various municipalities.
- Proficiently use various municipal software to submit inspection results
  - Perform residential and commercial building, electrical, and mechanical inspections for various municipalities.
  - Collaborate with contractors, homeowners, and architects to complete building projects per municipal code.
  - Perform residential and commercial plan review services for various municipalities throughout Texas.
  - Provide code enforcement services for various municipalities.
  - Proficiently use various municipal software to submit inspection results.
- **Building Inspector** SAFEbuilt | 2022 – Present
  - Perform residential and commercial building, electrical, and mechanical inspections for various municipalities.
  - Collaborate with contractors, homeowners, and architects to complete building projects per municipal code.
  - Perform residential and commercial plan review services for various municipalities throughout Texas.
  - Provide code enforcement services for various municipalities.
- Proficiently use various municipal software to submit inspection results
  - Perform residential and commercial building, electrical, and mechanical inspections for various municipalities.
  - Collaborate with contractors, homeowners, and architects to complete building projects per municipal code.
  - Perform residential and commercial plan review services for various municipalities throughout Texas.
  - Provide code enforcement services for various municipalities.
  - Proficiently use various municipal software to submit inspection results.
- **Inspector** Denton County FWS District 1-A | 2014 – 2022
  - Initially did only electrical inspections, until obtaining plumbing inspections certifications in 2019.
  - Worked directly with Director on Inspections and other full time and part time certified inspectors.
  - Performed as many as 40 inspections per day followed up with calls and meetings.
  - Participated in pre-constructions meetings as frequently as weekly.
  - Performed building, mechanical, electrical and plumbing inspections simultaneously while on site providing efficient use of time both for client and District.
  - Required minimal supervision for as much as \$2.5M in permit revenue in single fiscal year.

- **Inspector** City of Dallas | 2011 – 2014
  - Performed route inspections for electrical installations both commercial and residential.
  - Daily contact with multiple contractors answering code questions by phone.
  - Participated in weekly construction meetings with contractors.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/07/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

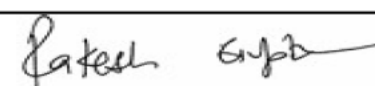
PRODUCER BIBERK P.O. Box 113247 Stamford, CT 06911	CONTACT NAME: PHONE (A/C, No, Ext): 844-472-0967 E-MAIL ADDRESS: customerservice@biBERK.com	FAX (A/C, No): 203-654-3613
	INSURER(S) AFFORDING COVERAGE INSURER A: Berkshire Hathaway Direct Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED Atlas Municipal Services llc  1509 Wilson Branch Rd Killeen, TX 76542-5566		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER:			[REDACTED]	09/08/2022	09/08/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	Professional Liability (Errors & Omissions): Claims-Made			[REDACTED]			Per Occurrence/Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  Atlas Municipal Services llc 1509 Wilson Branch Rd Killeen, TX 76542-5566	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



# CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
09/07/2022

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PRODUCER  BIBERK P.O. Box 113247 Stamford, CT 06911	CONTACT NAME:	
	PHONE (A/C, No, Ext): (844) 472-0967	FAX (A/C, No): (203) 654-3613
INSURED  Atlas Municipal Services llc 1509 Wilson Branch Rd Killeen, TX 76542-5566	E-MAIL ADDRESS: salessupport@biberk.com	
	PRODUCER CUSTOMER ID:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Berkshire Hathaway Direct Insurance Compai	NAIC # 524298
	INSURER B :	
	INSURER C :	
INSURER D :		
INSURER E :		
INSURER F :		

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Location: 1509 Wilson Branch Rd Killeen, TX 76542-5566  
 Bldg #001: Inspection and Appraisal Companies (Office) - 6383101

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS	
<input checked="" type="checkbox"/>	PROPERTY	[REDACTED]	09/08/2022	09/08/2023	BUILDING	\$ 0	
	CAUSES OF LOSS				DEDUCTIBLES	PERSONAL PROPERTY	\$ 0
	BASIC				BUILDING	BUSINESS INCOME	\$ *
	BROAD				250	EXTRA EXPENSE	\$ *
<input checked="" type="checkbox"/>	SPECIAL				CONTENTS	RENTAL VALUE	\$
	EARTHQUAKE					BLANKET BUILDING	\$ n/a
	WIND					BLANKET PERS PROP	\$ n/a
	FLOOD					BLANKET BLDG & PP	\$ n/a
							\$
							\$
	INLAND MARINE	TYPE OF POLICY			\$		
	CAUSES OF LOSS				\$		
	NAMED PERILS	POLICY NUMBER			\$		
					\$		
	CRIME				\$		
	TYPE OF POLICY				\$		
	BOILER & MACHINERY / EQUIPMENT BREAKDOWN				\$		
					\$		
					\$		

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

\* ALS up to 12 months.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
Atlas Municipal Services llc 1509 Wilson Branch Rd Killeen, TX 76542-5566	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 





Atlas Municipal Services Ilc  
1509 Wilson Branch Rd  
Killeen, TX 76542-5566



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/07/2022

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**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

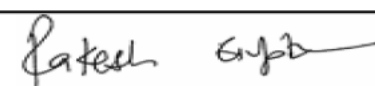
<b>PRODUCER</b> BIBERK P.O. Box 113247 Stamford, CT 06911	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 844-472-0967      FAX (A/C, No): 203-654-3613 E-MAIL ADDRESS: customerservice@biBERK.com	
	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : Berkshire Hathaway Direct Insurance Company      NAIC # 10391	
<b>INSURED</b> Atlas Municipal Services llc  1509 Wilson Branch Rd Killeen, TX 76542-5566	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			██████████	09/08/2022	09/08/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				PER STATUTE      OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	Professional Liability (Errors & Omissions): Claims-Made						Per Occurrence/ Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  Atlas Municipal Services llc 1509 Wilson Branch Rd Killeen, TX 76542-5566	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN CITY OF NEW FAIRVIEW, TEXAS  
AND SAFEbuilt TEXAS, LLC**

This Professional Services Agreement ("Agreement") is made and entered into by and between City of New Fairview, Texas, ("Municipality") and SAFEbuilt Texas, LLC, a wholly owned subsidiary of SAFEbuilt, LLC, ("Consultant"). Municipality and Consultant shall be jointly referred to as "Parties".

**RECITALS**

WHEREAS, Municipality is seeking a consultant to perform the services listed in Exhibit A – List of Services, ("Services"); and

WHEREAS, Consultant is ready, willing, and able to perform Services.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Municipality and Consultant agree as follows:

**1. SCOPE OF SERVICES**

Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement.

Unless otherwise provided in Exhibit C, Consultant shall provide the Services using hardware and Consultant's standard software package. In the event that Municipality requires that consultant utilize hardware or software specified by or provided by Municipality, Municipality shall provide the information specified in Exhibit C. Consultant shall use reasonable commercial efforts to comply with the requirements of Exhibit C and Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with the requirements of Exhibit C.

**2. CHANGES TO SCOPE OF SERVICES**

Any changes to Services between Municipality and Consultant shall be made in writing that shall specifically designate changes in Service levels and compensation for Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Amendment executed by both Parties.

**3. FEE STRUCTURE**

In consideration of Consultant providing services, Municipality shall pay Consultant for Services performed in accordance with Exhibit B – Fee Schedule for Services.

**4. INVOICE & PAYMENT STRUCTURE**

Consultant will invoice Municipality as SAFEbuilt, LLC, on a monthly basis and provide all necessary supporting documentation. All payments are due to Consultant within 30 days of Consultant's invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. Municipality may request, and Consultant shall provide, additional information before approving the invoice. When additional information is requested Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

5. TERM

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties. The initial term of this Agreement shall be twelve (12) months, subsequently, Agreement shall automatically renew for twelve (12) month terms, unless prior notification is delivered to either Party thirty (30) days in advance of the renewal date of this Agreement. In the absence of written documentation, this Agreement will continue in force until such time as either Party notifies the other of their desire to terminate this Agreement.

6. TERMINATION

Either Party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

All structures that have been permitted, a fee collected, and not yet expired at the time of termination may be completed through final inspection by Consultant if approved by Municipality. Consultant's obligation is met upon completion of final inspection or permit expiration, provided that the time period to reach such completion and finalization does not exceed ninety (90) days. Alternately, Municipality may exercise the option to negotiate a refund for permits where a fee has been collected but inspections have not been completed. The refund will be prorated according to percent of completed construction as determined by Consultant and mutually agreed upon by all Parties. No refund will be given for completed work.

7. FISCAL NON-APPROPRIATION CLAUSE

Financial obligations of Municipality payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Municipality, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

8. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services. Municipality grants Consultant full privilege, non-exclusive, non-transferable license to use all such materials as reasonably required to perform Service.

9. PERFORMANCE STANDARDS

Consultant shall perform the Services using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services. Consultant represents to Municipality that Consultant retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform Services in accordance with this Agreement.

10. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as

determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or where requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

#### 11. ASSIGNMENT

Neither party shall assign all or part of its rights, duties, obligations, responsibilities, nor benefits set forth in this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performances clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

#### 12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities ("Claims") alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the negligence of Consultant or any officer, employee, representative, or agent of Consultant. Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from Municipality.

To the fullest extent permitted by law and without waiver of sovereign immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) the negligence of, or material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from Municipality. If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

#### 13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR INFRINGEMENT. IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION,

DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY OTHER THAN WITH RESPECT TO PAYMENT OF OBLIGATIONS FOR SERVICES. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT, OR OTHERWISE) EXCEED THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT.

14. INSURANCE

- A. Consultant shall procure and maintain and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- B. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease -- policy limit, and one million dollars (\$1,000,000) bodily injury by disease -- each employee. Worker's compensation coverage in "monopolistic" states is administered by the individual state and coverage is not provided by private insurers. Individual states operate a state administered fund of workers compensation insurance which set coverage limits and rates. Monopolistic states: Ohio, North Dakota, Washington, Wyoming.
- C. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, and products. The policy shall contain a severability of interest provision and shall be endorsed to include Municipality and Municipality's officers, employees, and consultants as additional insureds.
- D. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- E. Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- F. Municipality shall be named as an additional insured on Consultant's insurance coverage.
- G. Prior to commencement of Services, Consultant shall submit certificates of insurance acceptable to Municipality.

15. THIRD PARTY RELIANCE

This Agreement is intended for the mutual benefit of Parties hereto and no third-party rights are intended or implied.

16. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all work product and deliverables created by Consultant pursuant to this Agreement and all records, documents, notes, data and other materials required for or resulting from the performance of Services hereunder shall not be used by Consultant for any purpose other than the performance of Services hereunder without the express prior written consent of Municipality. All such records, documents, notes, data and other materials shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in

such manner and for such purposes as determined by it. Notwithstanding the preceding, Consultant may use the work product, deliverables, applications, records, documents and other materials required for or resulting from the Services, all solely in anonymized form, for purposes of (i) benchmarking of Municipality's and others performance relative to that of other groups of customers served by Consultant; (ii) sales and marketing of existing and future Consultant services; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

Upon reasonable prior written notice, Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of Consultant that are related to this Agreement for the purposes of audit or examination, other than Consultant's financial records, and may make excerpts and transcriptions of the same at the cost and expense of Municipality.

**17. CONSULTANT ACCESS TO RECORDS**

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

**18. CONFIDENTIALITY**

Consultant shall not disclose, directly or indirectly, any confidential information or trade secrets of Municipality without the prior written consent of Municipality or pursuant to a lawful court order directing such disclosure.

**19. CONSULTANT PERSONNEL**

Consultant shall employ a sufficient number of experienced and knowledgeable employees to perform Services in a timely, polite, courteous and prompt manner. Consultant shall determine appropriate staffing levels and shall promptly inform Municipality of any reasonably anticipated or known employment-related actions which may affect the performance of Services. Additional staffing resources shall be made available to Municipality when assigned employee(s) is unavailable.

**20. DISCRIMINATION & ADA COMPLIANCE**

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of Equal Opportunity laws. Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by Municipality at any time during the term of this Agreement.

**21. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS**

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. Consultant shall not knowingly employ or contract with an illegal alien to



perform work under this Agreement and will verify immigration status to confirm employment eligibility. Consultant shall not enter into an agreement with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

**22. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES**

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). Parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant's trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee's annual salary including bonus.

**23. NOTICES**

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

If to Municipality:	If to Consultant:
Alan Guard interim City Administrator City of New Fairview 999 Illinois Lane New Fairview, Texas 76078	Joe DeRosa, CRO SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538 Email: <a href="mailto:jderosa@safebuilt.com">jderosa@safebuilt.com</a>

**24. FORCE MAJEURE**

Any delay or nonperformance of any provision of this Agreement by either Party (with the exception of payment obligations) which is caused by events beyond the reasonable control of such party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

**25. DISPUTE RESOLUTION**

In the event a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, Parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure. The cost thereof shall be borne equally by each Party.

**26. ATTORNEY'S FEES**

In the event of dispute resolution or litigation to enforce any of the terms herein, each Party shall pay all its own costs and attorney's fees.

**27. AUTHORITY TO EXECUTE**

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective entities to the performance of its obligations hereunder.

## EXHIBIT A – LIST OF SERVICES

### 1. LIST OF SERVICES

#### Building, Electrical, Plumbing, and Mechanical Inspection Services

- ✓ Consultant utilizes an educational, informative approach to improve the customer's experience.
- ✓ Perform code compliant inspections to determine that construction complies with approved plans
- ✓ Meet or exceed agreed upon performance metrics regarding inspections
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Leave a copy of the inspection ticket and discuss inspection results with site personnel

#### Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Be available for pre-submittal meetings by appointment
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide review of plan revisions and remain available to applicant after the review is complete

#### Reporting Services

- ✓ Consultant will work with Municipality to develop a mutually agreeable reporting schedule and format

### 2. MUNICIPAL OBLIGATIONS

- ✓ Municipality will issue permits and collect all fees
- ✓ Municipality will provide Consultant with a list of requested inspections and supporting documents
- ✓ Municipality will intake plans and related documents for pick up by Consultant or submit electronically

### 3. TIME OF PERFORMANCE

- ✓ Perform Services during normal business hours excluding Municipal holidays
- ✓ Services will be performed on an as-requested basis
- ✓ Inspectors will be dispatched on an as-requested basis
- ✓ Consultants representative(s) will be available by cell phone and email

<u>Deliverables</u>			
<b>INSPECTION SERVICES</b>	Inspections requested before 4:00 p.m. completed the following business day		
<b>TWO HOUR INSPECTION WINDOW</b>	Permit holder may request a phone call the morning of the inspection with a two (2) hour ETA inspection time		
<b>PRE-SUBMITTAL MEETINGS</b>	Provide pre-submittal meetings to applicants by appointment		
<b>PLAN REVIEW TURNAROUND TIMES</b>	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<b>Project Type:</b>	<b>First Comments</b>	<b>Second Comments</b>
✓ Single-family within	5 business days	5 business days or less	
✓ Tenant Improvements	5 business days	5 business days or less	
✓ Multi-family within	10 business days	5 business days or less	
✓ Commercial/Industrial	10 business days	5 business days or less	
✓ Large commercial within	15 business days	5 business days or less	

28. TEXAS GOVERNMENT CODE/PROHIBITION OF BOYCOTT ISRAEL

Consultant verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001/2270.001, as amended.

29. GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by the laws of the State of Texas and all services to be provided will be provided in accordance with applicable federal, state and local law, without regard to its conflict of laws provisions.

30. COUNTERPARTS

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

31. ELECTRONIC REPRESENTATIONS AND RECORDS

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

32. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

33. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.



Thomas P. Wilkas, CFO  
SAFEbuilt Texas, LLC

May 06, 2020

Date



Signature  
City of New Fairview, Texas

May 5, 2020

Date

Interim City Administrator, Alan Guard

Name and Title  
City of New Fairview, Texas

## EXHIBIT B – FEE SCHEDULE FOR SERVICES

### 1. FEE SCHEDULE

- ✓ Municipality will promptly notify Consultant of any revisions or amendments to Municipal Fee Schedule
- ✓ Municipality will periodically review its Municipal Fee Schedule and valuation tables and make adjustment to reflect increases in the cost incurred by Consultant in providing Services
- ✓ Consultant fees for Services provided pursuant to this Agreement will be as follows:

<b>Commercial and Multi-Family Construction Plan Review</b>	
Project Valuation	Fee
\$1.00 to \$10,000	\$40.00
\$10,001 to \$25,000	\$61.63 for the first \$10,000 plus \$4.76 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$133.03 for the first \$25,000 plus \$3.43 for each additional \$1,000; or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$218.88 for the first \$50,000 plus \$2.38 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$337.88 for the first \$100,000 plus \$1.90 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,099.46 for the first \$500,000 plus \$1.62 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$1,906.98 for the first \$1,000,000 plus \$1.07 for each additional \$1,000; or fraction thereof
<b>Commercial and Multi-Family Construction Inspection</b>	
Project Valuation	Fee
\$1.00 to \$10,000	\$70.00
\$10,001 to \$25,000	\$99.67 for the first \$10,000 plus \$7.70 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$215.19 for the first \$25,000 plus \$5.56 for each additional \$1,000; or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$354.06 for the first \$50,000 plus \$3.85 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$546.56 for the first \$100,000 plus \$3.03 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,778.56 for the first \$500,000 plus \$2.61 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$3,084.81 for the first \$1,000,000 plus \$1.73 for each additional \$1,000; or fraction thereof
<b>One and Two Family Construction Plan Review and Construction Inspection</b>	
55% of Municipality permit application fee	

## EXHIBIT C – MUNICIPAL SPECIFIED OR PROVIDED SOFTWARE

1. Consultant shall provide Services pursuant to this Agreement using hardware and Consultant's standard software package, unless otherwise provided below. In the event that Municipality requires that Consultant utilize hardware and/or software specified by and provided by Municipality, Consultant shall use reasonable commercial efforts to comply with Municipal requirements.
2. Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with Municipal requirements. Municipality will provide the following information to Consultant.

- ✓ Municipal technology point of contact information including name, title, email and phone number
- ✓ List of technology services, devices and software that the Municipality will provide may include:
  - Client network access
  - Internet access
  - Proprietary or commercial software and access
  - Computer workstations/laptops
  - Mobile devices
  - Printers/printing services
  - Data access
  - List of reports and outputs

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> RBN Insurance Services 303 E Wacker Dr Ste 650 Chicago IL 60601	<b>CONTACT NAME:</b> PHONE (A/C No, Ext): 312-856-9400 E-MAIL ADDRESS: rdelich@rbninsurance.com	<b>FAX (A/C No):</b> 312-856-9426
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> SAFEbuilt Holding Company SAFEbuilt, LLC (See Attached) 3755 Precision Drive, Ste 140 Loveland CO 80538	INSURER A : Hartford Fire Insurance Co.	NAIC # 19682
	INSURER B : Hartford Casualty Insurance Co	29424
	INSURER C : Navigators Insurance Company	42307
	INSURER D : Twin City Fire Insurance Co.	29459
	INSURER E : Great American E&S Ins. Co.	37532
	INSURER F :	

**COVERAGES**      **CERTIFICATE NUMBER:** 232152292      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	83UENZV3951	10/3/2019	10/3/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		83UENPY9100	10/3/2019	10/3/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB    CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0		CH19EXC885600IV	10/3/2019	10/3/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	83WECE0623	5/12/2019	5/12/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 Each Claim/Aggregate 10,000,000
E	Professional Liability		TER285-99-95	10/3/2019	10/3/2020	Each Claim/Aggregate 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
City of New Fairview, its officers, employees and consultants are additional insured as respects the General Liability as required by written contract.

<b>CERTIFICATE HOLDER</b>  City of New Fairview 999 Illinois Street Rhome TX 76078	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



## ADDITIONAL REMARKS SCHEDULE

AGENCY <b>RBN Insurance Services</b>		NAMED INSURED <b>SAFEbuilt Holding Company SAFEbuilt, LLC (See Attached) 3755 Precision Drive, Ste 140 Loveland, CO 80538</b>	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 26 FORM TITLE: Certificate of Liability Insurance

## Named Insureds (continued):

SAFEbuilt Arizona, LLC  
SAFEbuilt Carolinas, LLC  
SAFEbuilt Colorado, LLC  
SAFEbuilt Florida, LLC  
SAFEbuilt Georgia, LLC  
SAFEbuilt Illinois, LLC  
SAFEbuilt Louisiana, LLC  
SAFEbuilt New Mexico, LLC  
SAFEbuilt Ohio, LLC  
SAFEbuilt Oregon, LLC  
SAFEbuilt Texas, LLC  
SAFEbuilt Michigan, LLC  
SAFEbuilt Washington, LLC  
SAFEbuilt Wisconsin, LLC  
LSL Planning, LLC  
Meritage Systems, Inc.

If required by a written contract, the following forms apply on a blanket basis.

## General Liability:

Form HG0001 09 16 Additional Insureds; Primary and Non-contributory; Waiver of Transfer of Rights of Recovery Against Others to Us

## Auto Liability:

HA9916 0312 Commercial Automobile Broad Form Endorsement includes Additional Insureds and Waiver of Subrogation

## Workers Compensation:

WC 00 03 13 Waiver Of Our Right to Recover from Others





**City of New Fairview  
City Council  
Special Called Meeting Minutes**

**THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 3RD DAY OF FEBRUARY 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 Steven King**

**Place 1 Councilman Harvey Lynn Burger**

**Place 2 Councilman Peter Kozlowski**

**Place 3 Councilman Walter Clements**

**Place 5 Councilman Richard Greene**

**City Staff**

**John Cabrales Jr, City Administrator**

**Brooke Boller, City Secretary**

**Susan Greenwood, Assistant City Secretary**

**WORK SESSION**

1. Call to Order and Determination of Quorum (**Work Session called to order by Mayor John Taylor at 1:02pm; Roll Call with the above-mentioned names.)(Councilman Richard Greene left the meeting at 2:40pm and returned at 2:59pm).**
2. Receive a report and hold a discussion regarding a Strategic Plan for the City, including a Vision and Mission Statement, Core Values, Strategic Goals and Objectives, and the results of the 2022 Citizen Satisfaction Survey.

**Council received a presentation from City Administrator John Cabrales Jr on the following topics a Strategic Plan for the City, including a Vision and Mission Statement, Core Values, Strategic Goals and Objectives, and the results of the 2022 Citizen Satisfaction Survey. Council then had discussion after each presentation.**

3. Adjournment  
**Motion: Councilman Walter Clements**  
**Second: Councilman Richard Greene**  
**Vote: All in Favor**

**Result: Meeting was adjourned at 4:33pm.**

**MINUTES APPROVED ON THIS, THE 20TH DAY OF FEBRUARY 2023**

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**John Taylor, Mayor**

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**Brooke Boller, City Secretary**



**City of New Fairview  
City Council  
Regular Meeting Minutes**

**THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 16TH DAY OF FEBRUARY 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 Steven King**

**Place 1 Councilman Harvey Lynn Burger**

**Place 2 Councilman Peter Kozlowski**

**Place 3 Councilman Walter Clements**

**Place 5 Councilman Richard Greene**

**City Staff**

**John Cabrales Jr, City Administrator**

**Brooke Boller, City Secretary**

**Susan Greenwood, Assistant City Secretary**

**Roberta (Robin) Cross, City Attorney (Virtual)**

**WORK SESSION**

1. Call to Order and Determination of Quorum (**Work Session called to order by Mayor John Taylor at 7:00pm; Roll Call with the above-mentioned names.**)
2. Receive a report and hold a discussion regarding the 'Unite Us" program.  
**Council received a presentation from Jordan Holzbog the Director of Population Health & Partnership Services with Wise Health Systems on the program Unite Us. Unite Us is a program that helps citizen get connected to all the resources that are available to them (utility bill help, finding car seats etc..)**
3. Receive a report and hold a discussion regarding the city's roads including needed reconstruction and maintenance.  
**Council received a presentation from Ryley Paroulek, Don Strange and Joshua Barnwell in regards to how the city plans to repair and maintain the current roads.**

4. Receive a report and hold a discussion regarding the City becoming a Municipal Court of Record.  
**Council received a presentation from Susan Greenwood, Court Administrator on the benefits of becoming a court of record. Council advised her to move forward and bring the Ordinance forward at the next meeting.**
5. Receive a report and hold a discussion regarding a City Social Media Policy.  
**Council received a presentation from John Cabrales and was advised to move forward with the policy.**
6. Receive a report and hold a discussion regarding City Legislative Priorities.  
**Council received as presentation from John Cabrales and was advised to move forward with the City Legislative Priorities.**
7. Adjournment  
**Motion: Councilman Walter Clements**  
**Second: Councilman Richard Greene**  
**Vote: All in Favor**  
**Result: Work Session was adjourned at 9:30pm.**

#### REGULAR SESSION

1. Call to Order and Determination of Quorum (**Regular Session called to order by Mayor John Taylor at 9:42pm; 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. **Announcements & Special Recognitions:** The agenda shall provide a time when proclamations, recognitions, general reports, and updates may be presented by the City Council.
4. **City Administrator's Report:** The City Administrator's Report may provide information on status of current city projects and other projects affecting the City, meetings and actions of the city's boards and commissions, upcoming local community events, including but not limited to departmental operations and capital improvement project status. No action will be taken with respect to this report.
5. **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.
6. **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.

- A. Approve the City Council Meeting minutes for January 16, 2023.

**Motion: Councilman Richard Greene**

**Second: Councilman Walter Clements**

**Vote: All in Favor**

**Result: City Council Meeting minutes for January 16, 2023 were approved.**

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

- A. Receive a report and hold a discussion regarding plan review and building inspection services.

**Motion: Councilman Richard Greene**

**Second: Councilman Peter Kozlowski**

**Vote: All in Favor**

**Result: Council would like to move forward with updating the agreement with SafeBuilt for building inspection services.**

- B. Receive, consider, and act on amending the Chapter 3, "Animal Control" of the Code of Ordinances.

**Motion: Mayor Pro Tem Steven King**

**Second: Councilman Walter Clements**

**Vote: All in Favor**

**Result: Council approved amending the Chapter 3, "Animal Control" of the Code of Ordinances.**

- C. Receive, consider, and act on an Ordinance creating a Parks and Recreation Board and Keep New Fairview Beautiful Committee, and park rules and regulations.

**Motion: Councilman Walter Clements**

**Second: Councilman Richard Greene**

**Vote: For: Councilman Peter Kozlowski, Councilman Walter Clements, Mayor Pro Tem Steven King and Councilman Richard Greene**

**Against- Councilman Harvey Lynn Burger**

**Result: Council approved an Ordinance creating a Parks and Recreation Board and Keep New Fairview Beautiful Committee, and park rules and regulations.**

- D. Discuss, consider, and act on an Ordinance ordering a general/special election for the office of Mayor and City Members Place 2 and Place 4 to be held May 6, 2023, as well as a special election for an unexpired term for City Council Member Place 5 and 3 to be held May 6, 2023.

**Motion: Mayor Pro Tem Steven King**

**Second: Councilman Walter Clements**

**Vote: All in Favor**

**Result: Council approved a Ordinance ordering a general election for the office of Mayor and City Members Place 2 and Place 4 to be held May 6, 2023, as well as a special election for an unexpired term for City Council Member Place 5 and 3 to be held May 6, 2023; authorizing execution of a joint election agreement with the Wise County Elections Administrators and Denton County Administrators to conduct the election; and provide procedures to conduct the election as well as resolving other matters incident and related thereto.**

- E. Receive, consider, and act on Resolution authorizing the submission of a 2023/2024 Texas Community Block Grant (CDBG) program application and adopting required CDBG Civil Rights policies.

**Motion: Councilman Peter Kozlowski**

**Second: Councilman Walter Clements**

**Vote: All in Favor**

**Result: Council approved a Resolution authorizing the submission of a 2023/2024 Texas Community Block Grant (CDBG) program application and adopting required CDBG Civil Rights policies.**

- F. Receive, consider, and act on a Resolution to designate authorized signatories for the Texas Community Development Block Grant program.

**Motion: Councilman Richard Greene**

**Second: Councilman Walter Clements**

**Vote: All in Favor**

**Result: Council approved a Resolution to designate authorized signatories for the Texas Community Development Block Grant program.**

8. **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 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.

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

10. **Mayor & Council Member Announcements:** The City Council may hear or make reports of community interest provided no action is taken or discussed. Community interest items may include information regarding upcoming schedules of events, honorary recognitions, and announcements involving imminent public health and safety threats to the city. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting

11. Adjournment

**Motion: Councilman Walter Clements**

**Second: Councilman Richard Greene**

**Vote: All in Favor**

**Result: Regular session meeting was adjourned at 10:40pm.**

**MINUTES APPROVED ON THIS, THE 20TH DAY OF FEBRUARY 2023**

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**John Taylor, Mayor**

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**Brooke Boller, City Secretary**

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>Revenue &amp; Expenditures</b>						
<b>Revenue</b>						
<b>Revenues</b>						
<b>Fines &amp; Fees</b>						
4501	Court Fines	20,000.00	1,290.31	3,443.93	(16,556.07)	17.22%
	<b>Total Fines &amp; Fees</b>	<b>\$20,000.00</b>	<b>\$1,290.31</b>	<b>\$3,443.93</b>	<b>(\$16,556.07)</b>	
<b>Franchise Fees</b>						
4301	Franchise Fees	50,000.00	2,847.36	11,897.01	(38,102.99)	23.79%
	<b>Total Franchise Fees</b>	<b>\$50,000.00</b>	<b>\$2,847.36</b>	<b>\$11,897.01</b>	<b>(\$38,102.99)</b>	
<b>Other Revenue</b>						
4901	Other Revenue	154,000.00	15,038.23	15,119.23	(138,880.77)	9.82%
4906	Sponsorship	5,000.00	0.00	2,031.10	(2,968.90)	40.62%
	<b>Total Other Revenue</b>	<b>\$159,000.00</b>	<b>\$15,038.23</b>	<b>\$17,150.33</b>	<b>(\$141,849.67)</b>	
<b>Permits</b>						
4401	Construction Permits	500,000.00	15,370.60	79,094.91	(420,905.09)	15.82%
4403	Contractor Registration	3,600.00	412.00	1,439.00	(2,161.00)	39.97%
4402	Septic Permits	14,000.00	0.00	4,969.20	(9,030.80)	35.49%
	<b>Total Permits</b>	<b>\$517,600.00</b>	<b>\$15,782.60</b>	<b>\$85,503.11</b>	<b>(\$432,096.89)</b>	
<b>Property Tax</b>						
4101	Current Property Tax	656,790.05	239,726.20	484,427.62	(172,362.43)	73.76%
	<b>Total Property Tax</b>	<b>\$656,790.05</b>	<b>\$239,726.20</b>	<b>\$484,427.62</b>	<b>(\$172,362.43)</b>	
<b>Sales Tax</b>						
4201	Sales/ Beverage Tax	378,000.00	34,658.07	163,804.07	(214,195.93)	43.33%
	<b>Total Sales Tax</b>	<b>\$378,000.00</b>	<b>\$34,658.07</b>	<b>\$163,804.07</b>	<b>(\$214,195.93)</b>	
	<b>Revenues Totals</b>	<b>\$1,781,390.05</b>	<b>\$309,342.77</b>	<b>\$766,226.07</b>	<b>(\$1,015,163.98)</b>	
	<b>Total Revenue</b>	<b>\$1,781,390.05</b>	<b>\$309,342.77</b>	<b>\$766,226.07</b>	<b>(\$1,015,163.98)</b>	
	<b>Total Gross Profit</b>	<b>\$1,781,390.05</b>	<b>\$309,342.77</b>	<b>\$766,226.07</b>		
<b>Expenses</b>						
<b>City Administration</b>						
<b>Contract Labor</b>						
5101	Contract Labor	6,240.00	1,038.00	5,208.20	1,031.80	83.46%
5111	Information Technology	8,000.00	0.00	0.00	8,000.00	0.00%
5108	Legal Expenses	50,000.00	0.00	11,502.20	38,497.80	23.00%
5113	Website	10,000.00	0.00	0.00	10,000.00	0.00%
	<b>Total Contract Labor</b>	<b>\$74,240.00</b>	<b>\$1,038.00</b>	<b>\$16,710.40</b>	<b>\$57,529.60</b>	



**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>Other Expense</b>						
7185	Transfer Out - Special Rev	0.00	0.00	17,098.74	(17,098.74)	0.00%
	<b>Total Other Expense</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$17,098.74</b>	<b>(\$17,098.74)</b>	
<b>Salaries &amp; Payroll</b>						
5011	Deferred Compensation	6,000.00	11,206.00	22,412.00	(16,412.00)	373.53%
5007	FICA - Payroll Taxes	9,157.05	0.00	0.00	9,157.05	0.00%
5006	Health Insurance	10,740.96	855.62	5,057.06	5,683.90	47.08%
5004	Longevity Pay	100.00	0.00	100.00		100.00%
5012	LTD, STD and Life	456.00	0.00	0.00	456.00	0.00%
5001	Salaries	119,700.00	12,775.36	68,498.40	51,201.60	57.23%
5005	TMRS	7,636.86	2,348.06	9,877.22	(2,240.36)	129.34%
5010	Unemployment	3,591.00	0.00	0.00	3,591.00	0.00%
5008	Worker's Comp	400.00	0.00	3.89	396.11	0.97%
	<b>Total Salaries &amp; Payroll</b>	<b>\$157,781.87</b>	<b>\$27,185.04</b>	<b>\$105,948.57</b>	<b>\$51,833.30</b>	
<b>Services</b>						
5340	Auditor	7,000.00	0.00	0.00	7,000.00	0.00%
5375	Chapter 380	84,000.00	0.00	0.00	84,000.00	0.00%
5361	Credit Card Fees	20,000.00	304.00	790.70	19,209.30	3.95%
5315	Electric / Trash	2,000.00	0.00	340.51	1,659.49	17.03%
5320	Equipment Rental	500.00	44.00	88.00	412.00	17.60%
5335	Internet/Telephone	1,500.00	1,187.76	3,398.14	(1,898.14)	226.54%
5305	Legal Notices	0.00	187.50	187.50	(187.50)	0.00%
5355	Miscellaneous Expense	33,618.00	757.71	757.71	32,860.29	2.25%
5365	Penalties Expense	1,200.00	0.00	0.00	1,200.00	0.00%
5350	Professional Services	5,000.00	0.00	50.00	4,950.00	1.00%
5360	Prop Tax Collection Fees	14,200.00	0.00	4,324.94	9,875.06	30.46%
5310	Software	15,500.00	699.95	5,006.17	10,493.83	32.30%
5380	TML Insurance	8,430.20	2,728.20	5,456.40	2,973.80	64.72%
5322	Training/ Dues/ Memberships	4,600.00	155.00	2,686.54	1,913.46	58.40%
	<b>Total Services</b>	<b>\$197,548.20</b>	<b>\$6,064.12</b>	<b>\$23,086.61</b>	<b>\$174,461.59</b>	
<b>Supplies</b>						
5202	Equipment	500.00	0.00	170.00	330.00	34.00%
5299	Miscellaneous Supplies	500.00	139.34	298.91	201.09	59.78%
5201	Office Supplies	2,500.00	159.50	1,302.75	1,197.25	52.11%
5207	Postage	0.00	0.00	31.40	(31.40)	0.00%
	<b>Total Supplies</b>	<b>\$3,500.00</b>	<b>\$298.84</b>	<b>\$1,803.06</b>	<b>\$1,696.94</b>	

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>City Administration Totals</b>		<b>\$433,070.07</b>	<b>\$34,586.00</b>	<b>\$164,647.38</b>	<b>\$268,422.69</b>	
<b>City Council</b>						
<b>Contract Labor</b>						
5108	Legal Expenses	15,000.00	0.00	7,224.00	7,776.00	48.16%
<b>Total Contract Labor</b>		<b>\$15,000.00</b>	<b>\$0.00</b>	<b>\$7,224.00</b>	<b>\$7,776.00</b>	
<b>Services</b>						
5370	Election Expense	5,000.00	0.00	1,130.15	3,869.85	22.60%
5310	Software	120.00	0.00	0.00	120.00	0.00%
5322	Training/ Dues/ Memberships	15,000.00	0.00	2,963.85	12,036.15	19.76%
<b>Total Services</b>		<b>\$20,120.00</b>	<b>\$0.00</b>	<b>\$4,094.00</b>	<b>\$16,026.00</b>	
<b>Supplies</b>						
5213	Council Supplies	0.00	0.00	74.58	(74.58)	0.00%
5299	Miscellaneous Supplies	300.00	78.00	78.00	222.00	26.00%
5201	Office Supplies	2,000.00	124.07	224.07	1,775.93	11.20%
<b>Total Supplies</b>		<b>\$2,300.00</b>	<b>\$202.07</b>	<b>\$376.65</b>	<b>\$1,923.35</b>	
<b>City Council Totals</b>		<b>\$37,420.00</b>	<b>\$202.07</b>	<b>\$11,694.65</b>	<b>\$25,725.35</b>	
<b>City Secretary</b>						
<b>Contract Labor</b>						
5108	Legal Expenses	10,000.00	0.00	950.00	9,050.00	9.50%
<b>Total Contract Labor</b>		<b>\$10,000.00</b>	<b>\$0.00</b>	<b>\$950.00</b>	<b>\$9,050.00</b>	
<b>Salaries &amp; Payroll</b>						
5007	FICA - Payroll Taxes	4,417.88	423.20	1,513.88	2,904.00	34.27%
5006	Health Insurance	10,740.96	855.62	5,057.03	5,683.93	47.08%
5004	Longevity Pay	64.00	0.00	208.00	(144.00)	325.00%
5012	LTD, STD and Life	945.34	0.00	0.00	945.34	0.00%
5001	Salaries	57,750.00	5,547.92	19,932.57	37,817.43	34.52%
5005	TMRS	3,684.45	497.61	2,239.58	1,444.87	60.78%
5008	Worker's Comp	320.00	0.00	3.88	316.12	1.21%
<b>Total Salaries &amp; Payroll</b>		<b>\$77,922.63</b>	<b>\$7,324.35</b>	<b>\$28,954.94</b>	<b>\$48,967.69</b>	
<b>Services</b>						
5315	Electric / Trash	2,000.00	0.00	340.44	1,659.56	17.02%
5320	Equipment Rental	1,000.00	0.00	0.00	1,000.00	0.00%
5335	Internet/Telephone	1,000.00	0.00	268.67	731.33	26.87%
5305	Legal Notices	2,000.00	0.00	1,705.00	295.00	85.25%
5355	Miscellaneous Expense	0.00	139.33	205.54	(205.54)	0.00%
5310	Software	7,695.00	21.64	59.51	7,635.49	0.77%

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
5322	Training/ Dues/ Memberships	7,500.00	169.00	1,921.20	5,578.80	25.62%
	<b>Total Services</b>	<b>\$21,195.00</b>	<b>\$329.97</b>	<b>\$4,500.36</b>	<b>\$16,694.64</b>	
<b>Supplies</b>						
5202	Equipment	500.00	0.00	170.00	330.00	34.00%
5299	Miscellaneous Supplies	1,000.00	0.00	42.50	957.50	4.25%
5201	Office Supplies	2,000.00	0.00	336.22	1,663.78	16.81%
5207	Postage	400.00	0.00	0.00	400.00	0.00%
	<b>Total Supplies</b>	<b>\$3,900.00</b>	<b>\$0.00</b>	<b>\$548.72</b>	<b>\$3,351.28</b>	
	<b>City Secretary Totals</b>	<b>\$113,017.63</b>	<b>\$7,654.32</b>	<b>\$34,954.02</b>	<b>\$78,063.61</b>	
<b>Court</b>						
<b>Contract Labor</b>						
5108	Legal Expenses	5,000.00	85.20	2,186.40	2,813.60	43.73%
5106	Municipal Judge	2,400.00	0.00	1,050.00	1,350.00	43.75%
	<b>Total Contract Labor</b>	<b>\$7,400.00</b>	<b>\$85.20</b>	<b>\$3,236.40</b>	<b>\$4,163.60</b>	
<b>Salaries &amp; Payroll</b>						
5007	FICA - Payroll Taxes	3,842.75	0.00	0.00	3,842.75	0.00%
5006	Health Insurance	10,740.96	855.62	3,214.46	7,526.50	29.93%
5004	Longevity Pay	64.00	0.00	100.00	(36.00)	156.25%
5012	LTD, STD and Life	561.70	0.00	0.00	561.70	0.00%
5003	Overtime	5,000.00	253.61	459.40	4,540.60	9.19%
5001	Salaries	50,232.00	4,326.40	17,304.48	32,927.52	34.45%
5005	TMRS	3,204.80	350.39	1,833.49	1,371.31	57.21%
5008	Worker's Comp	320.00	0.00	3.88	316.12	1.21%
	<b>Total Salaries &amp; Payroll</b>	<b>\$73,966.21</b>	<b>\$5,786.02</b>	<b>\$22,915.71</b>	<b>\$51,050.50</b>	
<b>Services</b>						
5315	Electric / Trash	2,000.00	0.00	340.44	1,659.56	17.02%
5320	Equipment Rental	2,000.00	0.00	0.00	2,000.00	0.00%
5335	Internet/Telephone	1,000.00	0.00	268.64	731.36	26.86%
5355	Miscellaneous Expense	10,000.00	139.33	139.33	9,860.67	1.39%
5325	Municipal Judge Training	350.00	0.00	0.00	350.00	0.00%
5350	Professional Services	1,000.00	0.00	0.00	1,000.00	0.00%
5322	Training/ Dues/ Memberships	2,450.00	1,474.06	3,444.56	(994.56)	140.59%
	<b>Total Services</b>	<b>\$18,800.00</b>	<b>\$1,613.39</b>	<b>\$4,192.97</b>	<b>\$14,607.03</b>	
<b>Supplies</b>						
5202	Equipment	500.00	0.00	170.00	330.00	34.00%
5299	Miscellaneous Supplies	500.00	0.00	42.50	457.50	8.50%

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
5201	Office Supplies	1,500.00	10.40	258.38	1,241.62	17.23%
5207	Postage	500.00	10.20	10.20	489.80	2.04%
5222	Signs	500.00	0.00	0.00	500.00	0.00%
<b>Total Supplies</b>		<b>\$3,500.00</b>	<b>\$20.60</b>	<b>\$481.08</b>	<b>\$3,018.92</b>	
<b>Court Totals</b>		<b>\$103,666.21</b>	<b>\$7,505.21</b>	<b>\$30,826.16</b>	<b>\$72,840.05</b>	
<b>Health/Code Enforcement</b>						
<b>Contract Labor</b>						
5112	Abatement	15,000.00	0.00	0.00	15,000.00	0.00%
5104	Animal Control	2,000.00	125.00	350.00	1,650.00	17.50%
5108	Legal Expenses	3,000.00	0.00	1,668.00	1,332.00	55.60%
5103	Septic Inspector	5,500.00	1,150.00	1,150.00	4,350.00	20.91%
<b>Total Contract Labor</b>		<b>\$25,500.00</b>	<b>\$1,275.00</b>	<b>\$3,168.00</b>	<b>\$22,332.00</b>	
<b>Services</b>						
5390	Cleanup Days	2,475.00	0.00	138.00	2,337.00	5.58%
5320	Equipment Rental	1,000.00	0.00	0.00	1,000.00	0.00%
5310	Software	1,400.00	0.00	0.00	1,400.00	0.00%
5322	Training/ Dues/ Memberships	1,760.00	0.00	0.00	1,760.00	0.00%
<b>Total Services</b>		<b>\$6,635.00</b>	<b>\$0.00</b>	<b>\$138.00</b>	<b>\$6,497.00</b>	
<b>Supplies</b>						
5299	Miscellaneous Supplies	0.00	0.00	106.95	(106.95)	0.00%
5222	Signs	0.00	0.00	121.98	(121.98)	0.00%
<b>Total Supplies</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$228.93</b>	<b>(\$228.93)</b>	
<b>Health/Code Enforcement Totals</b>		<b>\$32,135.00</b>	<b>\$1,275.00</b>	<b>\$3,534.93</b>	<b>\$28,600.07</b>	
<b>Parks &amp; Recreation</b>						
<b>Services</b>						
5385	Building Repairs	500.00	0.00	0.00	500.00	0.00%
5320	Equipment Rental	4,000.00	0.00	0.00	4,000.00	0.00%
5355	Miscellaneous Expense	4,000.00	83.00	219.91	3,780.09	5.50%
5304	Special Events	10,500.00	386.98	4,401.54	6,098.46	41.92%
<b>Total Services</b>		<b>\$19,000.00</b>	<b>\$469.98</b>	<b>\$4,621.45</b>	<b>\$14,378.55</b>	
<b>Supplies</b>						
5202	Equipment	1,000.00	0.00	0.00	1,000.00	0.00%
5299	Miscellaneous Supplies	500.00	0.00	0.00	500.00	0.00%
5201	Office Supplies	500.00	0.00	166.97	333.03	33.39%
<b>Total Supplies</b>		<b>\$2,000.00</b>	<b>\$0.00</b>	<b>\$166.97</b>	<b>\$1,833.03</b>	
<b>Parks &amp; Recreation Totals</b>		<b>\$21,000.00</b>	<b>\$469.98</b>	<b>\$4,788.42</b>	<b>\$16,211.58</b>	

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>Planning &amp; Development</b>						
<b>City Projects</b>						
5655	CDBG	0.00	175.00	262.50	(262.50)	0.00%
<b>Total City Projects</b>		<b>\$0.00</b>	<b>\$175.00</b>	<b>\$262.50</b>	<b>(\$262.50)</b>	
<b>Contract Labor</b>						
5105	Building Inspector	60,000.00	4,875.00	17,975.00	42,025.00	29.96%
5109	City Engineer	25,000.00	87.50	9,960.94	15,039.06	39.84%
5110	City Planner	40,000.00	4,600.85	15,410.91	24,589.09	38.53%
5108	Legal Expenses	5,000.00	0.00	0.00	5,000.00	0.00%
5102	Public Infrastructure	0.00	375.00	375.00	(375.00)	0.00%
<b>Total Contract Labor</b>		<b>\$130,000.00</b>	<b>\$9,938.35</b>	<b>\$43,721.85</b>	<b>\$86,278.15</b>	
<b>Services</b>						
5355	Miscellaneous Expense	0.00	292.00	292.00	(292.00)	0.00%
5350	Professional Services	15,700.00	0.00	0.00	15,700.00	0.00%
5310	Software	700.00	0.00	0.00	700.00	0.00%
<b>Total Services</b>		<b>\$16,400.00</b>	<b>\$292.00</b>	<b>\$292.00</b>	<b>\$16,108.00</b>	
<b>Supplies</b>						
5201	Office Supplies	1,500.00	0.00	466.84	1,033.16	31.12%
<b>Total Supplies</b>		<b>\$1,500.00</b>	<b>\$0.00</b>	<b>\$466.84</b>	<b>\$1,033.16</b>	
<b>Planning &amp; Development Totals</b>		<b>\$147,900.00</b>	<b>\$10,405.35</b>	<b>\$44,743.19</b>	<b>\$103,156.81</b>	
<b>Public Safety</b>						
<b>Capital Outlay</b>						
6030	Buildings - Capital	17,270.00	3,482.16	17,593.29	(323.29)	101.87%
6060	Buildings - Extractor	10,450.00	0.00	0.00	10,450.00	0.00%
<b>Total Capital Outlay</b>		<b>\$27,720.00</b>	<b>\$3,482.16</b>	<b>\$17,593.29</b>	<b>\$10,126.71</b>	
<b>City Projects</b>						
5645	EMS Buildout	0.00	0.00	100.66	(100.66)	0.00%
<b>Total City Projects</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$100.66</b>	<b>(\$100.66)</b>	
<b>Contract Labor</b>						
5107	Contract Deputies	44,000.00	1,167.46	5,905.96	38,094.04	13.42%
5101	Contract Labor	37,400.00	2,950.00	12,300.00	25,100.00	32.89%
<b>Total Contract Labor</b>		<b>\$81,400.00</b>	<b>\$4,117.46</b>	<b>\$18,205.96</b>	<b>\$63,194.04</b>	
<b>Services</b>						
5385	Building Repairs	0.00	0.00	959.97	(959.97)	0.00%
5322	Training/ Dues/ Memberships	2,200.00	0.00	178.00	2,022.00	8.09%
<b>Total Services</b>		<b>\$2,200.00</b>	<b>\$0.00</b>	<b>\$1,137.97</b>	<b>\$1,062.03</b>	

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>Supplies</b>						
5202	Equipment	0.00	0.00	200.95	(200.95)	0.00%
<b>Total Supplies</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$200.95</b>	<b>(\$200.95)</b>	
<b>Public Safety Totals</b>		<b>\$111,320.00</b>	<b>\$7,599.62</b>	<b>\$37,238.83</b>	<b>\$74,081.17</b>	
<b>Public Works</b>						
<b>Capital Outlay</b>						
6030	Buildings - Capital	35,000.00	0.00	0.00	35,000.00	0.00%
6020	Equipment - Capital	92,000.00	0.00	0.00	92,000.00	0.00%
6010	Vehicles - Capital	65,000.00	0.00	0.00	65,000.00	0.00%
<b>Total Capital Outlay</b>		<b>\$192,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$192,000.00</b>	
<b>City Projects</b>						
5655	CDBG	0.00	0.00	9,483.38	(9,483.38)	0.00%
5635	CR 4717	0.00	0.00	22,624.90	(22,624.90)	0.00%
5630	TDLR	10,300.00	70.67	10,709.50	(409.50)	103.98%
<b>Total City Projects</b>		<b>\$10,300.00</b>	<b>\$70.67</b>	<b>\$42,817.78</b>	<b>(\$32,517.78)</b>	
<b>Contract Labor</b>						
5105	Building Inspector	750.00	0.00	0.00	750.00	0.00%
5101	Contract Labor	15,000.00	0.00	0.00	15,000.00	0.00%
5102	Public Infrastructure	5,000.00	0.00	0.00	5,000.00	0.00%
<b>Total Contract Labor</b>		<b>\$20,750.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$20,750.00</b>	
<b>Salaries &amp; Payroll</b>						
5007	FICA - Payroll Taxes	8,103.19	0.00	0.00	8,103.19	0.00%
5006	Health Insurance	21,481.92	855.62	5,057.06	16,424.86	23.54%
5004	Longevity Pay	64.00	0.00	136.00	(72.00)	212.50%
5012	LTD, STD and Life	1,890.67	0.00	0.00	1,890.67	0.00%
5003	Overtime	5,000.00	765.14	2,422.72	2,577.28	48.45%
5001	Salaries	105,924.00	8,888.60	35,862.60	70,061.40	33.86%
5005	TMRS	6,757.95	562.85	2,847.57	3,910.38	42.14%
5010	Unemployment	3,177.72	0.00	0.00	3,177.72	0.00%
5008	Worker's Comp	640.00	0.00	3.89	636.11	0.61%
<b>Total Salaries &amp; Payroll</b>		<b>\$153,039.45</b>	<b>\$11,072.21</b>	<b>\$46,329.84</b>	<b>\$106,709.61</b>	
<b>Services</b>						
5385	Building Repairs	15,000.00	207.56	685.06	14,314.94	4.57%
5315	Electric / Trash	12,000.00	0.00	2,309.32	9,690.68	19.24%
5320	Equipment Rental	5,000.00	0.00	1,497.28	3,502.72	29.95%

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

		<b>Annual Budget Oct 2022 Sep 2023</b>	<b>Current Period Jan 2023 Jan 2023 Actual</b>	<b>Year-To-Date Oct 2022 Jan 2023 Actual</b>	<b>Annual Budget Oct 2022 Sep 2023 Variance</b>	<b>Oct 2022 Sep 2023 Percent of Budget</b>
5301	Fuel	8,000.00	539.97	3,011.28	4,988.72	37.64%
5335	Internet/Telephone	1,030.00	0.00	0.00	1,030.00	0.00%
5355	Miscellaneous Expense	1,500.00	0.00	4.49	1,495.51	0.30%
5395	Road Maintenance	50,000.00	1,049.50	4,266.94	45,733.06	8.53%
5345	Street Lights	11,940.00	239.02	1,675.63	10,264.37	14.03%
5303	Tolls	50.00	0.00	0.00	50.00	0.00%
5302	Tractor/ Truck Repairs	8,000.00	86.34	888.82	7,111.18	11.11%
5322	Training/ Dues/ Memberships	4,410.00	240.00	430.00	3,980.00	9.75%
	<b>Total Services</b>	<b>\$116,930.00</b>	<b>\$2,362.39</b>	<b>\$14,768.82</b>	<b>\$102,161.18</b>	
<b>Supplies</b>						
5202	Equipment	7,500.00	1,084.65	2,746.29	4,753.71	36.62%
5299	Miscellaneous Supplies	2,000.00	222.00	292.96	1,707.04	14.65%
5201	Office Supplies	3,000.00	168.09	228.06	2,771.94	7.60%
5207	Postage	500.00	0.00	0.00	500.00	0.00%
5222	Signs	8,000.00	282.04	295.28	7,704.72	3.69%
5203	Uniforms	3,500.00	114.98	135.96	3,364.04	3.88%
	<b>Total Supplies</b>	<b>\$24,500.00</b>	<b>\$1,871.76</b>	<b>\$3,698.55</b>	<b>\$20,801.45</b>	
	<b>Public Works Totals</b>	<b>\$517,519.45</b>	<b>\$15,377.03</b>	<b>\$107,614.99</b>	<b>\$409,904.46</b>	
<b>Revenues</b>						
<b>City Projects</b>						
5650	LED Lights	0.00	0.00	(3,014.59)	3,014.59	0.00%
	<b>Total City Projects</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>(\$3,014.59)</b>	<b>\$3,014.59</b>	
<b>Services</b>						
5322	Training/ Dues/ Memberships	0.00	0.00	(40.70)	40.70	0.00%
	<b>Total Services</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>(\$40.70)</b>	<b>\$40.70</b>	
	<b>Revenues Totals</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>(\$3,055.29)</b>	<b>\$3,055.29</b>	
	<b>Total Expenses</b>	<b>\$1,517,048.36</b>	<b>\$85,074.58</b>	<b>\$436,987.28</b>	<b>\$1,080,061.08</b>	
	<b>Total Revenue Less Expenditures</b>	<b>\$264,341.69</b>	<b>\$224,268.19</b>	<b>\$329,238.79</b>		
<b>Transfers Out</b>						
<b>Parks &amp; Recreation</b>						
<b>Transfer Expense</b>						
9100	Transfers Out	142,973.00	0.00	0.00	142,973.00	0.00%
	<b>Total Transfer Expense</b>	<b>\$142,973.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$142,973.00</b>	
	<b>Parks &amp; Recreation Totals</b>	<b>\$142,973.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$142,973.00</b>	

**GENERAL FUND**  
**Statement of Revenue and Expenditures**

	Annual Budget Oct 2022 Sep 2023	Current Period Jan 2023 Jan 2023 Actual	Year-To-Date Oct 2022 Jan 2023 Actual	Annual Budget Oct 2022 Sep 2023 Variance	Oct 2022 Sep 2023 Percent of Budget
<b>Public Works</b>					
<b>Transfer Expense</b>					
9100 Transfers Out	85,000.00	0.00	0.00	85,000.00	0.00%
<b>Total Transfer Expense</b>	<b>\$85,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$85,000.00</b>	
<b>Public Works Totals</b>	<b>\$85,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$85,000.00</b>	
<b>Total Transfers Out</b>	<b>\$227,973.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$227,973.00</b>	
<b>Total Net Change in Fund Balance</b>	<b>\$36,368.69</b>	<b>\$224,268.19</b>	<b>\$329,238.79</b>		

**Fund Balances**

Beginning Fund Balance	0.00	1,784,780.87	1,679,810.27	0.00%
Net Change in Fund Balance	36,368.69	224,268.19	329,238.79	0.00%
Ending Fund Balance	0.00	2,009,049.06	2,009,049.06	0.00%





**AGENDA ITEM: 7A**

**CITY COUNCIL  
AGENDA MEMO**

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**Prepared By: John Cabrales Jr, City Administrator**

**February 20, 2023**

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**Professional Services Agreement with Pacheco Koch, Consulting Engineers,  
LLC**

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**DESCRIPTION:**

Receive, consider, and act on a Resolution authorizing the City Administrator to enter into an agreement with Pacheco Koch, Consulting Engineers, LLC for the survey and engineering for roadway and drainage reconstruction for a CDBG-funded project.

**BACKGROUND INFORMATION:**

On December 5, 2022, the Council authorized the submission of a 2023-2024 Texas Community Development Block Grant (TxCDBG) application to the Texas Department of Agriculture and authorized the City Administrator to negotiate a contract with GrantWorks to act as the City's grant administrator for this grant. This round of grant funding is for up to \$500,000 and requires a local match from the City of \$10,000 up to \$25,000.

Based on conversations between staff and GrantWorks, the drainage work and road reconstruction project submission will be for Latham Lane in the Chisholm Hills subdivision. This project is currently estimated at \$738,500, but engineering survey and design is needed in order to get a more accurate estimate of costs. In order to do this, the City will need to enter into a Professional Services Agreement (PSA) with our contract engineering firm, Pacheco Koch, so that we can get this survey and design done in time to submit the TxCDBG application.

Attached is the project scope and cost for the survey and engineering for roadway reconstruction and drainage improvements to Latham Lane. The scope of basic services include: project management; coordination and permitting; drainage analysis; final design submittals; bid advertising, document distribution, analysis and recommendation of award; and construction administration. The scope of special services include: establish survey control; benchmark loop; profile existing streets and right-of-way; verification of drainage channels and swales; utility relocation; right-of-way locate; and sizing of existing storm sewers and culverts.

Services that are not included in the contracted project scope include:

- Construction inspection services.

- Pole foundations are standards and no special foundation will be designed to accommodate custom situations.
- As-built surveys of constructed improvements.
- Subsurface Utility Engineering.
- Geotechnical Investigation.
- Public hearings or City Council/Commission meetings.
- Utility coordination meeting(s) to start relocation process with affected franchise utilities.
- Reset property corner monumentation disturbed or removed during or after Construction.
- Required application and permitting fees (LOMR) or special insurance premiums are not included.
- Phase II Environmental Site Assessments.
- Permitting with TxDOT or any other agency
- Storm Water Pollution Prevention Plans (SWPPP)

Staff recommend approval of the Resolution.

**FINANCIAL CONSIDERATION:**

For all services included in the Scope of Services for Latham Lane, the City will pay a lump sum fee of \$67,500 as summarized below. The total lump sum fee shall be considered full compensation for the services need for this project, including all labor materials, supplies, and equipment necessary to deliver the services. This should be paid from the Capital Improvements Project Fund. We currently have a balance of \$63,662.70 in the Fund and will probably need to transfer money into this Fund from the Fund Balance at some point to cover these costs.

**Basic & Special Services**

A. Project Management, Coordination & Permitting	\$ 6,500.00
B. Drainage Analysis	\$13,150.00
C. Final Design (90% & 100% Submittals)	\$25,800.00
D. Bid Phase Services	\$ 4,500.00
E. Construction Administration	\$ 2,700.00
F. Field Survey	<u>\$14,850.00</u>
<b>TOTAL</b>	<b>\$67,500.00</b>

**RECOMMENDED MOTIONS:**

I move to **Approve/Deny** a Resolution authorizing the City Administrator to enter into an agreement with Pacheco Koch, Consulting Engineers, LLC for the survey and engineering for roadway and drainage reconstruction for a CDBG funded project.

**ATTACHMENT(S):**

1. Pacheco Koch Professional Service Agreement
2. Resolution 202302-06-119

**CITY OF NEW FAIRVIEW - PACHECO KOCH CONSULTING ENGINEERS, LLC**  
**STANDARD PROFESSIONAL SERVICES AGREEMENT**  
**ADDENDUM TO PROJECT WORK ORDER PROFESSIONAL SERVICES MASTER**  
**AGREEMENT**

THE STATE OF TEXAS     §  
  §  
WISE COUNTY             §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of New Fairview, Texas, (the “City”) a Texas municipality, and Pacheco Koch Consulting Engineers, LLC (“Professional”), who may jointly be referred to as the “Parties”. This Addendum is attached to and made part of the above-referenced agreement and shall be considered as part of the Contract Documents. To the extent that there are any conflicts with the Contract Documents, this Addendum shall control.

**Section 1. Duration.** This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work (Survey and engineering for roadway and drainage reconstruction for a CDBG funded project), unless terminated as provided for in this Agreement, with deliverables due within 400 days from the date the agreement is fully executed by the parties.

**Section 2. Scope of Work.**

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project” (Drainage analysis of existing conditions. Final plan set with construction documents per CDBG requirements). Unless otherwise provided in the Scope of Work, the anticipatedsubmittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

### **Section 3. Compensation.**

(A) The Professional shall be paid in the manner set forth in Exhibit "B" and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in Exhibit "B". If these items are not specifically accounted for in Exhibit B, they shall be considered subsidiary to the total contract amount.

### **Section 4. Changes to the Project Work; Additional Work.**

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

**Section 5. Time of Completion.**

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

**Section 6. Insurance.**

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance as provided in Exhibit "C", throughout the term of this Agreement and thereafter as required herein:

All insurance and evidence of such insurance shall comply with the terms specified Exhibit "D".

**Section 7. Miscellaneous Provisions.**

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) Pursuant to completion of this work order, Pacheco Koch will utilize the following primary personnel under the designated roles listed:  
Ryley Paroulek, 14418, Project Manager  
Execute all deliverables and manage Client

(D) *Professional's Seal.* To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(E) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations and civil rights statutes. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(F) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(G) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(H) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such

performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(l) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

### **Section 8. Termination.**

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Professional and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than sixty (60) days written notice to the Professional.

(5) By the Professional, at will and without cause, upon not less than sixty (60) days written notice to the City.

If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.



**Section 9. INDEMNIFICATION. PROFESSIONAL SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF NEW FAIRVIEW, TEXAS AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") BY REASON OF ANY PERSONAL INJURY, SERIOUS PERSONAL INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES CONTEMPLATED BY THIS AGREEMENT BUT ONLY TO THE EXTENT CAUSED BY NEGLIGENT OR GROSSLY NEGLIGENT ACTS, ERRORS OR OMISSIONS, INTENTIONAL TORTS, INTELLECTUAL PROPERTY INFRINGEMENT, OR A FAILURE TO PAY A SUB-CONTRACTOR OR SUPPLIER COMMITTED BY PROFESSIONAL OR PROFESSIONAL'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL (WHETHER ACTIVE OR PASSIVE) OF PROFESSIONAL OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "PROFESSIONAL") (II) THE FAILURE OF PROFESSIONAL TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF PROFESSIONAL TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL, STATE OR LOCAL, IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. PROFESSIONAL EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES, OR ANYONE OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF PROFESSIONAL, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH PROFESSIONAL'S LIABILITY TO SUCH EMPLOYEE OR FORMER EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. NOTHING HEREIN SHALL REQUIRE PROFESSIONAL TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNITEE FOR THE INDEMNITEE'S OWN NEGLIGENCE OR WILLFUL MISCONDUCT. ANY AND ALL INDEMNITY PROVIDED FOR IN THIS AGREEMENT SHALL SURVIVE THE EXPIRATION OF THIS AGREEMENT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS AGREEMENT BUT THEREAFTER SO LONG AS ANY LIABILITY COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF PROFESSIONAL IN PERFORMING SERVICES UNDER THIS AGREEMENT.**

**FOR PROFESSIONAL LIABILITY CLAIMS, PROFESSIONAL SHALL BE LIABLE FOR REASONABLE DEFENSE COSTS INCURRED BY INDEMNITEES BUT ONLY AFTER FINAL ADJUDICATION AND TO THE EXTENT AND PERCENT THAT PROFESSIONAL OR PROFESSIONAL'S AGENTS ARE FOUND NEGLIGENT OR OTHERWISE AT FAULT. AS USED IN THIS AGREEMENT, FINAL ADJUDICATION INCLUDES ANY NEGOTIATED SETTLEMENT AND RELEASE OF CLAIMS, WITHOUT LIMITATION AS TO WHEN A NEGOTIATED SETTLEMENT AND RELEASE OF CLAIMS OCCURS.**



**Section 10. Notices.** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice:

**CITY**

City of New Fairview  
Attn: John Cabrales, Jr.  
City Administrator  
999 Illinois Ln  
New Fairview, TX 76078-3940

**PROFESSIONAL**

Pacheco Koch Consulting Engineers, LLC  
Attn: Christopher J. Cha, P.E.  
Public Infrastructure Market Leader

\_\_\_\_\_  
\_\_\_\_\_

**Section 11. No Assignment.** Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

**Section 12. Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**Section 13. Waiver.** Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 14. Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Wise County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Wise County, Texas.

**Section 15. Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

**Section 16. Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**Section 17. Gender.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

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

**Section 19. Exhibits.** All exhibits to this Agreement and to the Project Work Order are incorporated herein by reference and shall be considered as part of the Contract Documents, for all purposes, wherever reference is made to the same.

**Section 20. Entire Agreement.** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

**Section 21. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 22. Right To Audit.** City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

**Section 23 Dispute Resolution.** In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

**Section 24 Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.** Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the TEX. LOC. GOV'T CODE and Section 2252.908 of the TEX. GOV'T. CODE (having filed a 1295 form with the Texas Ethics Commission and the City).

**Section 25 Boycott Israel.** The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the Professional; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (TEX. GOV'T. CODE, Chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the TEX. GOV'T. CODE, Section 808.001, as amended.

**Section 26 Energy Company Boycotts.** Professional represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or alternatively, (2) the verification required by Section 2274.002 of the TEX. GOV'T. CODE does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Professional shall promptly notify City.

**Section 27 Firearm Entities and Trade Association Discrimination.** Professional verifies that:

(1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the TEX. GOV'T. CODE does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Professional shall promptly notify City.

**EXECUTED**, by the City on \_\_\_\_\_.

**CITY:**

By: \_\_\_\_\_  
John Cabrales, Jr.  
City Administrator

**PROFESSIONAL:**

By: \_\_\_\_\_  
Christopher J. Cha, P.E.  
Public Infrastructure Market Leader

**EXHIBIT "A"**  
**SCOPE OF WORK**

**AND**

**EXHIBIT "B"**  
**COMPENSATION AND METHOD OF PAYMENT**

## **EXHIBIT "C"** **REQUIRED INSURANCE**

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Engineer is not intended to, nor shall it in any manner limit or qualify the liabilities and obligations assumed by the Engineer under the Agreement.

A. **Commercial General Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Engineers.

B. **Professional Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the Engineer or any person employed or acting on the Engineer's behalf (including but not limited to sub-Agreements). For policies written on a "claims-made" basis, Engineer agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this Agreement. The Engineer is solely responsible for any additional premium for the supplemental extended reporting period.

No "claims made" policies are acceptable without prior approval by the City. If approved, coverage must be maintained for two years after the completion of this Agreement.

C. **Business Automobile Liability Insurance** – Limit of liability not less than \$1,000,000 per occurrence Engineer agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Should the Engineer not own any automobiles, the business auto liability requirement shall be amended to allow the Engineer to agree to maintain only Hired & Non- Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

D. **Additional Insured Endorsements** The Engineer agrees to endorse the City as an Additional Insured on each insurance policy required to be maintained, with the exception of the professional liability policy.

E. **Waiver Of Subrogation** Waiver of subrogation in favor of the City for each required policy. When required by the insurer or should a policy condition not permit Engineer to enter into a pre-loss agreement to waive subrogation without an endorsement, then Engineer agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Engineer enter into such an agreement on a pre-loss basis.

F. **Deductibles, Coinsurance Penalties, & Self-Insured Retention** Engineer shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

G. **Subcontractor's Insurance** The Engineer shall agree to cause each subcontractor employed by Engineer to purchase and maintain insurance of the type specified, provided the Engineer's insurance does not afford coverage on behalf of the subcontractor.

H. **Certificate Of Insurance** Engineer shall furnish the City with proof of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best's rating of B+ or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. Engineer has the affirmative obligation to advise the City at the address listed below within 5 business days of the cancellation or substantial change of any required insurance policy, and failure to do so shall be construed as a breach of this Agreement.

Failure of the City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

In the event the City is notified that a required insurance coverage will cancel or non-renew during the Agreement period, the Engineer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to Engineer until coverage is reinstated. If the Engineer fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Engineer's expense.

**EXHIBIT "D"**  
**REQUIREMENTS FOR ALL INSURANCE DOCUMENTS**

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth herein during the term of its agreement with the City. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of New Fairview accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

**INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENTS**

With reference to the foregoing insurance requirements, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of New Fairview shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement.
2. A waiver of subrogation in favor of The City of New Fairview shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
3. All insurance policies shall be endorsed to the effect that The City of New Fairview will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of New Fairview as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, requires that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.
6. All insurance policies shall be endorsed to require the insurer to notify the City of New Fairview of any material change in the insurance coverage.
7. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.



9. Professional may maintain reasonable and customary deductibles, subject to approval by The City of New Fairview.
10. Insurance must be purchased from insurers having a minimum A.M. Best's rating of VII.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professionals obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Professional shall furnish the City of New Fairview with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of New Fairview within ten (10) business days after contract award and prior to starting any work by the successful Professional's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of New Fairview, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of New Fairview. The certificate of insurance and endorsements shall be sent as provided in the Notice and upon receipt, shall be attached hereto, as part of Exhibit D.

**Project Work Order**

**Professional Services Master Agreement**

PROJECT TITLE: New Fairview – Latham Lane

CLIENT NAME: City of New Fairview

OWNER NAME (if different): \_\_\_\_\_

DATE OF WORK ORDER: February 2, 2023

PROJECT WORK ORDER NUMBER PWO-00001

PROJECT LOCATION: Latham Lane, New Fairview, Texas

CONTRACTOR PROJECT NUMBER: \_\_\_\_\_

This Project Work Order between Client and Pacheco Koch Consulting Engineers, LLC is set forth pursuant to our “Professional Services Master Agreement” executed on *January 11, 2011*.

**I. Contract Documents**

This project work order, any resulting change orders, and the Professional Services Master Agreement comprise the contract documents, and there are no other general or supplementary conditions further stipulated.

**II. Project Description**

*Survey and engineering for roadway and drainage reconstruction for a CDBG funded project.*

**III. Client and Pacheco Koch Consulting Engineers, LLC Responsibilities**

1. Client Responsibilities
2. Pacheco Koch Responsibilities

*(See Exhibit “A”)*

**IV. Deliverables**

*Drainage analysis of existing conditions. Final plan set with construction documents per CDBG requirements*

**V. Schedule**

1. Services will commence on February 6, 2023 and will proceed for 400 number of working days.
2. Notice to Proceed is understood to be this work order signed, dated, and fully executed by both Consultant and Pacheco Koch .

**VI. Staff**

1. Pursuant to completion of this work order, Pacheco Koch will utilize the following primary personnel under the designated roles listed:

**a. Ryley Paroulek, 14418, Project Manager**  
*Execute all deliverables and manage Client*  
 (817) 999-3614  
 (817) 412-7155

**VII. Project Work Order Attachments:**

*See attached Exhibit "A" and "B"*

**VIII. Form of Contract**

1. The estimated project cost is:

*See attached Exhibit "B"*


2. Pacheco Koch will issue invoices on an approximate 4-week cycle.

**ACCEPTED AND AGREED TO:**

**Client Name (Client):**

**Pacheco Koch Consulting Engineers, LLC**

\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
Christopher J. Cha, P.E.

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
*Public Infrastructure Market Leader*

\_\_\_\_\_  
(Title)

**ADDRESS FOR GIVING NOTICES:**

*(If Different than Professional Services Master Agreement)*

**ADDRESS FOR GIVING NOTICES:**

*(If Different than Professional Services Master Agreement)*

Attachments: A Scope of Services  
 B Fee  
 C Insurance

EXHIBIT 'A' — SCOPE OF SERVICES  
CITY OF NEWFAIRVIEW — LATHAM LANE

PROJECT DESCRIPTION:

The project consists of pavement reconstruction and drainage improvements and resurfacing of Latham Lane.

BASIC SERVICES:

- A. Project Management, Coordination & Permitting
1. Manage the Team:
    - Lead, manage and direct design team activities
    - Ensure quality control is practiced in performance of the work
    - Communicate internally among team members
    - Allocate team resources
  2. Communications and Reporting:
    - Attend a pre-design project kickoff meeting with CITY staff to confirm and clarify scope, understand CITY objectives, and ensure economical and functional designs that meet CITY requirements.
    - Conduct review meetings with the CITY at the end of each design phase.
    - Prepare and submit monthly invoices in the format acceptable to the CITY.
    - Prepare and submit monthly progress reports.
    - Prepare and submit baseline Project Schedule initially and Project Schedule updates.
    - Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
    - With respect to coordination with permitting authorities, CONSULTANT shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. CONSULTANT shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.

EXHIBIT A to Agreement between the  
City of New Fairview, Texas (CITY)  
and Pacheco Koch Consulting  
Engineers, LLC, (CONSULTANT) for  
Consulting Services

3. Constructability Review:
  - Prior to the final review meeting with the CITY, the CONSULTANT shall schedule and attend a project site visit with the CITY Project Manager and Construction personnel to walk the project. The CONSULTANT shall summarize the CITY's comments from the field visit and submit this information to the CITY in writing.
4. Utility Clearance:
  - The CONSULTANT will consult with the CITY, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. CONSULTANT will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
  - CONSULTANT will provide plans to and coordinate with utility CITY related to the relocation efforts of franchise utilities that remain in conflict with the proposed construction.

B. Drainage Analysis

1. Prepare preliminary drainage analysis. Prepare following items as indicated:
  - Driveway culvert analysis
  - Road culvert analysis
  - Ditch analysis
  - Budget analysis for CDBG application
2. Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs.

C. Final Design (90% & 100% Submittals)

1. Prepare final construction plans. Prepare the following sheets for this submittal:
  - Cover Sheet
  - General Notes
  - Project Layout & Control Sheets
  - Roadway Plan & Profile Sheets  
Scale 1"=20' Horizontal; 1"=4' Vertical
  - Drainage Plan & Profile Sheets (Culverts)  
Scale 1"=20' Horizontal; 1"=4' Vertical
  - Erosion Control Plan
  - Detail Sheets

EXHIBIT A to Agreement between the  
City of New Fairview, Texas (CITY)  
and Pacheco Koch Consulting  
Engineers, LLC, (CONSULTANT) for  
Consulting Services

2. Incorporate final CITY review comments into the plans and construction contract documents to finalize construction plans for proposed improvements.
3. Finalize construction contract documents including CITY standard specifications, special technical specifications, and special conditions (if any).
4. Estimate of final construction quantities and final opinions of construction cost.
5. Submit (1) sealed (100%) set of final plans and construction documents.

D. Bid Phase Services

CONSULTANT will support the bid phase of the project as follows:

1. Bid Advertisement:
  - CONSULTANT shall prepare and submit to CITY a draft Bid Advertisement for publishing by the CITY.
2. Bid Document Distribution:
  - The CONSULTANT shall sell construction plans and contract bid documents. The CONSULTANT shall also maintain a plan holders list of documents sold.
3. Bidder Assistance:
  - The CONSULTANT will develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders' questions and requests, and the response thereto. The CONSULTANT will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda.
  - Attend the prebid conference in support of the CITY.
  - Attend the bid opening in support of the CITY.
4. Bid Analysis and Recommendation of Award:
  - The CONSULTANT will tabulate and review all bids received for the construction project, assist the CITY in evaluating bids, and recommend award of the contract.
  - The CONSULTANT will assist the CITY in determining the qualifications and acceptability of prospective contractors, subcontractors, and suppliers.
  - The CONSULTANT shall make a recommendation of award to the CITY.

EXHIBIT A to Agreement between the  
City of New Fairview, Texas (CITY)  
and Pacheco Koch Consulting  
Engineers, LLC, (CONSULTANT) for  
Consulting Services

5. Conformed Construction Documents:
  - Upon award of a contract by the CITY, the CONSULTANT shall assist with the execution, assembly and distribution of the construction contract documents for the Project., as well as three (3) full size (22"x34") sealed (100%) set of final plans.
6. Distribution of Plan set to Contractor:
  - Upon award of a contract by the CITY, the CONSULTANT shall distribute full sized (22"x34") sealed (100%) set of final plans to the Contractor, up to three (3) sets.

E. Construction Administration

1. Preconstruction Conference:
  - The CONSULTANT shall attend the preconstruction conference in support of the CITY.
2. Public Meeting:
  - After the pre-construction conference, the CONSULTANT shall provide project exhibits and attend a public meeting, if any are scheduled, to help explain the proposed project to interested parties. The CITY shall select a suitable location and extend the invitation to the affected parties and the public as deemed appropriate.
3. Site Visits:
  - The CONSULTANT shall visit the project site at appropriate intervals as construction proceeds to observe and report on progress. It is estimated that one (1) visit per month will be made by the CONSULTANT.
4. Shop Drawing and Lab Report Review
  - The CONSULTANT shall review shop and erection drawings submitted by the contractor for compliance with design concepts. The CONSULTANT shall review laboratory, shop, and mill test reports on materials and equipment.
5. Instructions to Contractor
  - The Engineer shall provide necessary interpretations and clarifications of contract documents, review change orders and make recommendations as to the acceptability of the work, at the request of the CITY.
6. Contractor's Payment Estimates
  - The Engineer shall review monthly and final estimates for payments to contractors. The payment estimates shall include appropriate certifications.
7. Final Inspection
  - The Engineer shall attend final inspection of the Project with representatives of the CITY and the construction contractor.

8. Record Drawings:

- Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one (1) set of the record drawings (with "record drawing stamp" bearing the signature of the Engineer and the date) to the CITY on a CD-ROM disk or flash drive containing scanned 22"x34" black and white PDF images.

SPECIAL SERVICES:

A. Field Survey

1. Establish Survey Control

Establish survey control along each street or intersecting streets as necessary. These control points will be established based on and tied to established City horizontal and vertical control points. The horizontal control for each street in the PROJECT will be established on the State Plane Coordinate System (NAD'83 Surface Coordinates) from CITY monumentation. Control points will be established using 5/8" iron rods, 18" long. These control points will be established using GPS and conventional surveying methods.

2. Benchmark Loop

A benchmark circuit will be established, based on the vertical control points provided. These benchmarks will be located outside of the construction limits and put in such a place so that they may be easily found for future use. Benchmarks will be located at about 1,000' intervals and will be referenced. Benchmarks shall be looped in accordance with good surveying practice prior to field surveys. All control leveling work will be performed using appropriate modified second order procedures with closed loops into the PROJECT vertical control.

3. Existing Streets, Driveways and Right-of-Way

Existing streets, driveways and right-of-way will be profiled and cross-sectioned at 50' intervals and to a point at least 20' outside of the Right-of-Way line. Low points, high points and other unique features will be noted. Pavement surfacing will be determined by visual inspection only. Intersecting streets will be profiled and cross-sectioned to a point at least 50' beyond the roadway being replaced.

4. Existing Drainage Channels and Drainage Area Verification

Existing drainage channels and swales will be profiled and cross sectioned within the immediate vicinity of the PROJECT, 100' upstream and downstream. Low points, high points and any other unique features will be noted. Additional surveying may be necessary to verify the limits of drainage areas.



5. Existing Underground and/or Overhead Utilities

Utility CITY's will be contacted, on an as-needed basis, and requested to assist in locating existing utilities identified for the PROJECT. Above ground features of existing utilities within the proposed Right-of-Way for the limits of the PROJECT will be field located, including elevations of sanitary and storm sewer manhole flowlines and water/gas valve stems. The location of utilities between above ground features will be determined from visual inspection, utility records, and/or from locations determined by the respective utility companies. The utilities will be tied to the PROJECT control points and depths determined in sufficient detail to identify potential conflicts with proposed construction. The excavation and other costs required to expose or probe the underground utilities will be the responsibility of others.

6. Right-of-Way

Right-of-Way lines along the PROJECT will be located. This information will be included on the PROJECT's plan sheets.

7. Existing Storm Sewers and Culverts

The size of existing culverts will be measured and tied along with existing headwalls, channels and aprons. The size, length, and flowline elevation of existing storm sewers will be surveyed. Drainage areas contributing to the PROJECT or conveying water from the PROJECT will be determined through field investigations and available topographic mapping.

8. Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

The Surveyor will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

Services not included in this contract:

- *Construction inspection services*
- *Pole foundations are standards and no special foundation will be designed to accommodate custom situations.*
- *As-built surveys of constructed improvements*
- *Subsurface Utility Engineering*
- *Geotechnical Investigation*
- *Public hearings or City Council/Commission meetings*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*

EXHIBIT A to Agreement between the  
City of New Fairview, Texas (CITY)  
and Pacheco Koch Consulting  
Engineers, LLC, (CONSULTANT) for  
Consulting Services

- *Reset property corner monumentation disturbed or removed during or after construction*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*  
*Phase II Environmental Site Assessments*
- *Permitting with TxDOT or any other agency*
- *Storm Water Pollution Prevention Plans (SWPPP)*

**END OF EXHIBIT 'A'**

EXHIBIT 'B' — COMPENSATION AND METHOD OF PAYMENT

CITY OF NEW FAIRVIEW — LATHAM LANE

COMPENSATION:

For all professional services included in EXHIBIT 'A', Scope of Services, the CONSULTANT shall be compensated a lump sum fee of \$67,500 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT A, including all labor materials, supplies, and equipment necessary to deliver the services.

Basic & Special Services		
A.	Project Management, Coordination & Permitting	\$ 6,500.00
B.	Drainage Analysis	\$13,150.00
C.	Final Design (90% & 100% Submittals)	\$25,800.00
D.	Bid Phase Services	\$ 4,500.00
E.	Construction Administration	\$ 2,700.00
F.	Field Survey	\$14,850.00
TOTAL		\$67,500.00

**METHOD OF PAYMENT**

The CONSULTANT shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the CONSULTANT.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to the CONSULTANT plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times the CONSULTANT'S cost.

**END OF EXHIBIT 'B'**

## ATTACHMENT C

### INSURANCE

A. *Insurance.* Westwood shall, during the life of this Agreement, maintain the following insurances:

1. Commercial General Liability (occurrence form not less than):
  - \$2,000,000 General Liability
  - \$2,000,000 Products and Completed Operations Aggregate
  - \$1,000,000 Personal and Advertising Injury
  - \$1,000,000 Each Occurrence
  - \$10,000 Medical Expense
2. Commercial Automobile Liability (all scheduled auto, hired and non-owned autos):
  - \$1,000,000 Combined Single Limit
3. Umbrella
  - \$5,000,000 Aggregate
  - \$5,000,000 Each Occurrence
4. Workers Compensation
  - \$1,000,000 Each Accident
  - \$1,000,000 Policy Limit
  - \$1,000,000 Each Employee

*Professional Liability Errors and Omissions Insurance.* Westwood shall carry Professional Liability Errors and Omissions insurance with limited contractual liability in the amount of \$2,000,000 per claim and in the aggregate for the duration of this Agreement.



**CITY OF NEW FAIRVIEW, TEXAS  
RESOLUTION No. 202302-06-119**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT AND PROJECT WORK ORDER WITH PACHECO KOCH CONSULTING ENGINEERS, LLC FOR THE SURVEY AND ENGINEERING FOR ROADWAY AND DRAINAGE RECONSTRUCTION FOR A CDBG- FUNDED PROJECT, IN AN AMOUNT NOT TO EXCEED \$67,500.**

**WHEREAS**, The City Council on December 5, 2022, authorized the submission of a 2023-2024 Texas Community Development Block Grant (TxCDBG) application to the Texas Department of Agriculture for drainage work and road reconstruction for Latham Lane in the Chisholm Hills subdivision, and

**WHEREAS**, The City's Project submission will be for Latham Lane in the Chisholm Hills subdivision. This Project is currently estimated at \$738,500, but engineering survey and design is needed in order to get a more accurate estimate of costs; and

**WHEREAS**, the City will need to enter into a Professional Services Agreement (PSA) with the City's contract engineering firm, Pacheco Koch Consulting Engineers, LLC, to obtain the needed engineering services to in turn submit this survey and design for the TxCDBG grant application.

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

That the City Administrator is hereby authorized to execute a Professional Services Agreement and Project Work Order, in an amount not to exceed \$67,500.

**PRESENTED AND PASSED** on this 20th day of February, 2023, at a Regular meeting of the New Fairview City Council.

\_\_\_\_\_  
JOHN TAYLOR, Mayor

ATTEST:

\_\_\_\_\_  
BROOKE BOLLER, City Secretary



**CITY COUNCIL  
AGENDA MEMO**

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Prepared By: Susan Greenwood, Municipal Court Administrator

February 20, 2023

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**Municipal Court of Record**

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**DESCRIPTION:**

Receive, consider, and act on an Ordinance amending Chapter 2, “Administration and Personnel”, Article 2.06, “Municipal Court”, Division 1, “Generally”, of the City of New Fairview Code of Ordinances, by repealing Division 1 in its entirety and adding a new “Division 1”, establishing the Municipal Court as a Court of Record.

**BACKGROUND INFORMATION:**

Both non- record court and a court of record have jurisdiction over fine-only offenses, however a court of record also has authority over some civil proceedings under the Texas Government Code, the Texas Transportation Code, and Texas Local Government Code. Becoming a court of record gives the City more authority over junk vehicles, substandard buildings, health, safety, and nuisance offenses. However, the City Council must create the court of record through an Ordinance adopted by the City Council.

In a non-record municipal court, a defendant may appeal the judgment of the municipal court to the appellate court handling municipal court appeals, usually a county court at law or county court, and have a *trial de novo*, (i.e., a completely new trial on the entire case conducted as if there had been no trial in the first instance). A defendant may even skip a non-record municipal court altogether by entering a plea and appealing the case to the appellate court. This is informally referred to as a “leapfrog appeal.” The subsequent trial in the county court controls the outcome of the case. The trial de novo at the county level is eliminated by having a municipal court of record.

A court of record expedites the enforcement of code city-ordinance violations because defendants cannot avoid a municipal court proceeding (i.e., no “leapfrog appeals”). With a court of record, the city maintains local control over these violations, appeals are decreased because the violators cannot simply enter a plea and then appeal the case to the county. If a case is appealed and the judgment affirmed, the fine assessed at the municipal court level is imposed and collected by the municipal court.

A municipal court of record also has additional authority pursuant to Section 30.00005 of the Texas Government Code, and that section also gives the city's governing body the authority to provide additional jurisdictional powers to the court by ordinance.

A non-court of record is not required to record any proceedings. A trial in a municipal court of record must be recorded, either by a court reporter or by an electronic recording device, if the defendant requests a record. A recording is required, since the appeal is based on the municipal court trial, rather than by *de novo* (new trial) proceedings at a county court. However, the Court can use the same equipment that is used for City Council Meetings. Disposition of the appeal is based on the transcript from the municipal court recording, the parties' briefs, and oral arguments, if any.

Additionally, a Record court requires that judges be licensed by the state as an attorney in good standing, who has practiced for at least two years. A non-record court doesn't require an attorney to be a judge. A judge of a municipal court of record has the authority to authorize administrative warrants for code enforcement, for example. authorize search warrants. Currently, our judge is not a licensed attorney. Staff will bring to Council resumes of qualified licensed attorneys that are interested in being appointed as our municipal court presiding judge.

The City Council had a work session discussion on this at the February 6, 2023, meeting. Staff was directed to bring back an ordinance for the creation of a Municipal Court of Record. The Municipal Court of Record will not become effective until May 1, 2023 to allow for the contract with the current Municipal Court Judge to expire. This will also allow staff time to look into qualified licensed attorneys that are interested in being appointed as our Municipal Court Judge and find a Prosecutor dedicated to court services. The prosecutor does not have to be an attorney from the same firm as the city attorney but must be appointed by the Council in order to prosecute.

Staff recommends approval of the Ordinance.

### **FINANCIAL CONSIDERATION:**

None.

### **RECOMMENDED MOTIONS:**

I mover to **Approve/Deny** an Ordinance amending Chapter 2, "Administration and Personnel", Article 2.06, "Municipal Court", Division 1, "Generally", of the City of New Fairview Code of Ordinances, by repealing Division 1 in its entirety and adding a new "Division 1", establishing the Municipal Court as a Court of Record.

### **ATTACHMENT(S):**

1. Ordinance 2023-04-106



**ORDINANCE NO 2023-04-106**

**AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION AND PERSONNEL", ARTICLE 2.06, "MUNICIPAL COURT", DIVISION 1, "GENERALLY", OF THE CITY OF NEW FAIRVIEW CODE OF ORDINANCES, BY REPEALING DIVISION 1 IN ITS ENTIRETY AND ADDING A NEW "DIVISION 1", ESTABLISHING THE MUNICIPAL COURT AS A COURT OF RECORD; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING FOR AMENDMENTS TO THE CODE OF ORDINANCES; PROVIDING FOR A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of New Fairview, Texas ("City") is a Type A General Law Municipality located in Cooke County, created in accordance with Chapter 6 of the Texas Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, Chapter 30 of the Texas Government Code authorizes the City to establish its municipal court as a municipal court of record; and

**WHEREAS**, the state law provides that the City Council of the City of New Fairview ("City Council") may establish a municipal court of record by ordinance; and

**WHEREAS**, the City Council deems it necessary to establish a municipal court of record to provide a more efficient disposition of cases arising within the City; and

**WHEREAS**, the City Council wishes to provide for a more effective means to enforce the ordinances and laws of the City.

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

**SECTION 1. INCORPORATION OF PREMISES.** The foregoing recitals are the findings of the City Council and are incorporated into this Ordinance as if set forth fully herein.

**SECTION 2. AMENDMENTS.** Chapter 2, "Administration and Personnel", Article 2.06, "Municipal Court", Division 1, "Generally", of the City's Code of Ordinances is hereby amended, which shall read in its entirety from the date of passage as follows:

**DIVISION 1. GENERALLY**

**§ 2.06.001 Creation of municipal court of record**

- (a) The City Council hereby finds and determines that the creation of a municipal court of record is necessary to provide for the more efficient disposition of cases arising in the City and more effectively enforce the ordinances of the City.
- (b) The municipal court shall become a municipal court of record from and after the 1st day of May 2023 and shall be designated as the "Municipal Court of Record No. 1 in the City of New Fairview,

Texas.”

- (c) The municipal court shall meet and hold regular sessions to hear and determine all cases arising before it, such sessions to be held and called by the municipal court judge. The municipal court may be in continuous session, either day or night.

### § 2.06.002 Jurisdiction

The municipal court of record has the jurisdiction and authority provided by Section 30.00005 of the Texas Government Code, as amended, and shall have:

- (a) Concurrent jurisdiction with a district court or county court at law under Subchapter B, Chapter 54, Texas Local Government Code, with the City’s territorial limits and property owned by the City located in the City’s extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances;
- (b) Civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Texas Local Government Code, or Subchapter E, Chapter 683, Texas Transportation Code;
- (c) Authority to issue:
  - (1) Search warrants for the purpose of investigation a health and safety or nuisance abatement ordinance violation; and
  - (2) Seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises; and
- (d) The municipal court of record has all jurisdiction and authority provided by any Texas Statute or judicial decision for municipal courts or municipal courts of record. Nothing contained in this section shall be construed to limit or otherwise restrict the jurisdiction of the municipal court of record.

### § 2.06.003 Judge

- (a) Appointment. The municipal court of record shall be presided over by a magistrate who shall be appointed by the City Council and shall be known as the “chief municipal court judge.” The municipal judge must be a licensed attorney in good standing in the State of Texas and must have two or more years of experience in the practice of law in Texas. The municipal judge must be a citizen of the United States and a resident of the State of Texas.
- (b) Assistant judges. The council shall appoint assistant judges as it deems necessary. Such assistant judges shall be appointed and removed in the same manner as the chief municipal court judge and shall serve in the absence of and have all the authority of the chief municipal court judge as provided by state law.
- (c) Terms. The chief municipal court judge shall be selected and appointed or reappointed for a term of two (2) years, commencing May first of odd numbered years. The appointment or reappointment of assistant judges shall be for a term of one (1) year from the date of their appointment or reappointment and shall be initiated upon the recommendations of the chief municipal court judge, concurred in by the City Council.
- (d) Salary. The City Council shall set compensation for the chief municipal court judge and any additional assistant judges.
- (e) Authority of chief judge. Unless otherwise directed by the City Council, the chief municipal court judge may prescribe such rules and procedures, not inconsistent with the laws of the state and ordinances of the city, as are necessary for the orderly trial of cases in the municipal court; further, he or she shall direct the assignment of cases, matters, or proceedings pending in the municipal court;

and further, he or she shall prescribe the conditions under which assistant municipal judges shall sit as judge.

- (f) Submission of budget. The chief municipal court judge shall submit annually to the city secretary a budget estimate of the revenues of the municipal court and the expenses of conducting the affairs thereof for the ensuing fiscal year.
- (g) Removal. A municipal judge may be removed from office at any time for the reasons stated and consisted with Section 30.000085 of the Texas Government Code, as amended.
- (h) Vacancies. If a vacancy occurs in the office of municipal judge, the City Council shall, by ordinance, provide for the appointment of a qualified person to fill the office for the remainder of the unexpired term.

#### § 2.06.004 Clerk

- (a) Appointment. Within the municipal court system there is hereby created the office of clerk of the municipal court. The city manager, chief municipal court judge, and the City Council have the authority to appoint a clerk of the municipal court of record, who shall be known as the municipal court clerk.
- (b) Tasks. The clerk of the municipal court shall keep the records of the municipal court of record, issue process, and generally perform the duties that a clerk of a county court at law exercising criminal jurisdiction performs for that court. In addition, the clerk shall maintain an index of all court judgments in the same manner as county clerks are required by law to prepare for criminal cases arising in county courts. The municipal court clerk shall perform all duties in accordance with state statutes and city ordinances. The municipal court clerk shall be a duly qualified notary public.
- (c) Removal. The City Council may remove the court clerk for incompetence, misconduct, malfeasance in office, or other reason after the clerk is given due notice and an opportunity to be heard in his or her own defense.
- (d) Power. The municipal court clerk shall have the power to administer oaths and affidavits, make certificates, affix the seal of the court thereto, and otherwise perform all acts necessary in issuing process of the municipal court and conducting the business thereof.
- (e) Responsibilities. The municipal court clerk shall be responsible for the proper administration of the affairs of the municipal court clerk's office and shall:
  - (1) Maintain and keep a record of the business of the municipal court;
  - (2) Collect and account for all fines paid in all cases filed in the municipal court;
  - (3) Maintain and keep a record of all bonds filed with the municipal court; and
  - (4) Perform any duties as may be from time to time authorized, delegated, or required by the chief municipal court judge or the City Council.
- (f) Deputy clerks. The city manager, chief municipal court judge, and the city council have the authority to appoint one or more deputy clerks who, when acting in such capacity, shall have the same authority as the clerk.

#### § 2.06.005 Court Reporter

- (a) Court reporter. A court reporter may be provided to preserve the record in cases tried before the municipal court according to Section 30.00010 of the Texas Government Code, as amended. The court reporter must meet the qualifications provided by law for official court reporters. The court reporter or court staff may use written notes, transcribing equipment, video or audio recording equipment, or a combination of those methods to record the proceedings of the court. The court

reporter or court staff are not required to record testimony in any case unless the judge or one of the parties requests a record in writing, and files the request with the court before trial.

- (b) Record; Not required to be present. If a record is made, it shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. The court reporter is not required to be present during proceedings of the municipal court of record, provided that proceedings that are required to be recorded are recorded by a good quality electronic recording device. If a case is appealed, the proceedings may be transcribed from the recording by an official court reporter.

#### **§ 2.06.006 Jury**

- (a) Right to trial. A person brought before municipal court and charged with an offense is entitled to be tried by a jury of six persons unless that right is waived in accordance with applicable law.
- (b) Qualifications. A juror for the municipal court must have the qualifications required of jurors by law and must be a resident of the city.
- (c) Compensation. A juror may receive compensation for each day and each fraction of a day in attendance on a municipal court jury as provided by law.
- (d) Selection. The municipal court clerk shall establish a fair, impartial, and objective juror selection process.

#### **§ 2.06.007 Appeals**

- (a) Appeals. A defendant has the right to appeal from a judgment or conviction in the municipal court of record. The state has the right to appeal as provided by the Texas Code of Criminal Procedure, Article 44.01.
- (b) Transcript fees. In the event of an appeal, the appellant shall pay a transcript preparation fee in the amount of twenty-five dollars (\$25.00). The transcript preparation fee does not include the fee for an actual transcript of the proceedings. The clerk shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the transcript preparation fee of twenty-five dollars (\$25.00) shall be refunded to the appellant. In addition to the transcript preparation fee, the fee for the actual transcript of proceedings and statement of facts must be paid by the appellant, pursuant to Sections 30.00014 and 30.00019 of the Texas Government Code.

#### **§ 2.06.008 Official jail**

The city jail, or any other jail facility as may be from time to time contracted with by the city, shall be designated as the official city jail for the city.

#### **§§ 2.06.009 through 2.06.030. Reserved**

**SECTION 3. SAVINGS/REPEALING.** 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 portions of said ordinances shall remain in full force and effect.

**SECTION 4. SEVERABILITY.** Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly

provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

**SECTION 5. ENGROSSMENT AND ENROLLMENT.** The City Secretary is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective on May 1, 2023.

**DULY PASSED, APPROVED, AND ADOPTED** by the City Council of the City of New Fairview, Texas on this the 20th day of February 2023.

**APPROVED:**

\_\_\_\_\_  
John Taylor, Mayor

**ATTEST:**

\_\_\_\_\_  
Brooke Boller, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robin Cross, City Attorney



**AGENDA ITEM: 7C**

**CITY COUNCIL  
AGENDA MEMO**

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**Prepared By: John Cabrales Jr, City Administrator**

**February 20, 2023**

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**City Legislative Priorities**

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**DESCRIPTION:**

Receive, consider, and act on a Resolution adopting the City’s Legislative Priorities.

**BACKGROUND INFORMATION:**

The 88th Texas Legislature convened on January 10 and will run through May 29. The Texas Legislature is made up of the 150-member Texas House of Representatives, known as the lower chamber, and the 31-member Texas Senate, known as the upper chamber. After the 2022 elections, Republicans hold 86 of the seats in the House and 19 of the seats in the Senate. Every odd-numbered year, the state Legislature gathers to pass a two-year state budget and other laws from January to May.

During the 2021 session, nearly 7,000 bills or significant resolutions were introduced; more than 2,000 of them would have affected Texas cities in some substantial way. In the end, over 1,000 bills or resolutions passed and were signed into law; more than 240 of them impacted cities in some way. The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2021, that percentage had increased to 31 percent. In other words, a quarter of the legislature’s work is directed at cities, and much of that work aims to limit municipal authority.

Topics already appearing in filed legislation this session include revenue caps, zoning, debt issuance, revised election procedures, and preemption of municipal authority affecting Texas cities ability to govern their own local affairs. Many cities typically adopt a legislative position or agenda that sets the priorities and key issues for the legislative session. City Councils also typically grant authority for the mayor and/or city manager to sign letters, provide testimony and other documents to communicate the city’s legislative priorities. This approach allows for a faster response to emerging issues.

Staff has reviewed the 2023-2024 Texas Municipal League (TML) Legislative Priorities and worked with city managers for other cities in Wise County in preparing local legislative priorities (attached). During past Legislative sessions, the role of cities has largely been to voice opposition to proposed legislation that would cause direct harm to the city or would interfere with the city’s ability to provide quality services to its residents. TML usually leads this opposition on major statewide issues and asks member

cities to participate by writing letters, testifying, or using other forms of communicating with state elected officials on key municipal issues.

Cities are the level of government most connected to, and thus most accountable to, the people they serve; as a result, the state should recognize and preserve local authority and support cities in their mission of providing quality local services to all Texans. State government should be a resource for cities, but decision-making authority should be placed at the municipal level whenever reasonable.

March 6 and 7, have been set for the next Wise County Legislative Days in Austin. This event is hosted by Bridgeport, Decatur & Wise County Chamber of Commerce, for their members. The City is a member of Wise County Chamber of Commerce, and Mayor Taylor and the City Administrator are planning on attending. As part of this event, there will be some coordinated legislative visits made by teams of participants that will visit with legislators and communicate the legislative priorities for the County, cities, school districts, businesses, and chamber members. Any legislative priorities adopted by the City will be included in these visits.

City Council had a work session discussion on February 6, 2023, and staff was directed to prepare a resolution on the City's Legislative Priorities and bring it for the Council's consideration.

Staff recommends approval of the Resolution.

**FINANCIAL CONSIDERATION:**

None

**RECOMMENDED MOTIONS:**

None, discussion only.

**ATTACHMENT(S):**

1. Legislative Priorities Resolution 202302-04-117



**CITY OF NEW FAIRVIEW, TEXAS  
RESOLUTION NO. 202302-04-117**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, ESTABLISHING PRIORITIES FOR THE 88<sup>TH</sup> LEGISLATIVE SESSION IN TEXAS, AUTHORIZING REPRESENTATION OF THE MUNICIPALITY IN ADVOCATING CERTAIN POSITIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of New Fairview finds it to be in the public interest, and necessary for the public health, safety, and welfare, that the City take positions on certain issues that may come before the 88th Texas Legislature; and

**WHEREAS**, the City Council finds legislative involvement to be a legitimate exercise of its elected duties as the governing body serving those who live, work, visit, and own property in the city limits and the extraterritorial jurisdiction; and

**WHEREAS**, the City Council understands that members of the Texas Senate and the Texas House of Representatives benefit from learning of the analysis performed and positions taken by locally elected public officials; and

**WHEREAS**, the City Council has identified the following items as being worthy of voicing a position on behalf of the people of New Fairview.

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

**A. Support: The City Council supports legislation that would:**

1. Allow for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments fail to address.
2. Provide additional funding to the Texas Department of Transportation for equitable transportation projects that would benefit cities and provide local, state, and federal transportation funding of transportation infrastructure.
3. Provide additional funding to the Texas Water Development Board, specifically the Rural Water Assistance Fund, Flood Infrastructure Fund, Clean Water State Revolving Fund, Drinking Water State Revolving Fund, State Water Implementation Fund for Texas, and the Texas Water Development Fund to provide cities with additional funding options and resources that provide for the



planning, acquisition, design, and construction of water and wastewater related infrastructure and other water quality improvements.

4. Provide enhanced notice requirements to potential buyers of property located within a public improvement district.
5. Treat broadband service similar to other critical utility infrastructure to ensure statewide availability, equity, and affordability for citizens and businesses.
6. Increase existing or create new grant program funding that provides financial assistance to local governmental public safety agencies for public safety resources, including legislation that supports the use and the purchase of body cameras and associated data storage costs.
7. Give cities more input in the municipal utility district development process within the city limits and ETJ, including legislation that promotes additional transparency in the process for cities and city residents.
8. Add safeguards to the formation of new municipal utility districts (MUDs) through the Texas Commission on Environmental Quality process, limit MUDs administrative costs, require MUDs to meet within the cities they levy taxes from, coordinate with local cities or counties on MUD board elections, and provide additional financial information to citizens in an open and transparent manner.

**B. Oppose: The City Council opposes legislation that would:**

1. Erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities, especially legislation that would:
  - a. provide for state preemption of municipal authority in general.
  - b. impose further revenue and/or tax caps of any type.
  - c. erode the ability of a city to issue debt.
  - d. erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, (7) short-term rentals, and (8) the extraterritorial jurisdiction (ETJ).
  - e. erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.
  - f. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators; or limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.
  - g. abolish the concept of the ETJ.

2. Limit the type of economic development incentives available to the city or that would limit any use of incentives by a city to enhance business recruitment and job creation.
- C. City officials are hereby authorized to advocate and otherwise convey positions expressed herein, and City staff is directed to provide a copy of this Resolution to the State Senator for District 12, and the State Representative for District 64.
- D. This Resolution shall be effective immediately upon approval.

**PASSED AND APPROVED** this the 20<sup>th</sup> day of February 2023.

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John Taylor, Mayor

ATTEST:

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Brooke Boller, City Secretary



AGENDA ITEM: 7D

## CITY COUNCIL AGENDA MEMO

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Prepared By: John Cabrales Jr, City Administrator

February 20, 2023

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### Social Media Policy for Elected and Appointed City Officials

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#### **DESCRIPTION:**

Receive, consider, and act on a Resolution adopting a Social Media Policy for Elected and Appointed City Officials.

#### **BACKGROUND INFORMATION:**

“Social media” is defined as a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. Social media has revolutionized how individuals interact with each other. These networks have also revolutionized how elected officials interact with constituents. Many cities in Texas are using social media as a tool to communicate with citizens. Rather than waiting until a monthly council meeting to hear from citizens in the “public comment” section of the agenda, many cities are able to routinely engage with citizens through their Facebook page, city Twitter account, or YouTube channel.

City officials , both elected and appointed, regularly use their social media accounts to engage with citizens. With this increased engagement, though, has come increased scrutiny. Not only should city officials be aware of the public outrage and political repercussions involved with social media posts but also their legal obligations and restrictions when using social media. As a result, municipalities are increasingly adopting social media best practices to guide and protect elected and appointed officials.

The City of New Fairview encourages the use of social media to discuss city programs, services and messages in an effort to expand the organization's connection to community stakeholders. Unfortunately, the City does not have a social media policy to provide clear and concise guidelines for social media use, which are applicable to any individual who represents the city in an online public environment. Approved guidelines and policies will be subject to change as new technologies and as new caselaw emerges. Key items:

- Staff research on social media best practices included a review of Texas Municipal League guidance on government social media participation, related legal issues, and other cities policies
- This policy is intended to empower all representatives of the city, whether elected or appointed, to use social media wisely and demonstrate personal accountability to the public.

- The proposed Council policy should help members address unique challenges such as (1) expression of personal vs. City views; (2) compliance with state and federal law; (3) fostering constructive public dialogue; and (4) keeping the New Fairview community informed.

Social media platforms can be both a blessing and a curse to cities. The bottom line, though, is that social media usage will continue to increase, and cities must utilize social media tools to meaningfully engage with citizens. The most important thing we, as government officials, can do is to have social media policies in place and to revisit these policies on a regular basis to ensure that city policies are keeping up with emerging technologies and governing caselaw. After ensuring these policies are in place, it is important to continue educating our city officials and staff to comply with and apply with policies consistently.

The City Council discussed this at the February 6, 2023, meeting and directed staff to bring back a Social Media Policy for elected and appointed city officials for Council consideration.

Staff recommend approval of the Resolution.

### **FINANCIAL CONSIDERATION:**

None, discussion only.

### **RECOMMENDED MOTIONS:**

I move to **Approve/Deny** a Resolution adopting a Social Media Policy for Elected and Appointed City Officials.

### **ATTACHMENT(S):**

1. Social Media Policy
2. Resolution 202302-05-118



# **Social Media Policy: City Elected and Appointed Officials**

## **Social Media Policy City Public Officials**

The term “social media” refers to forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. Some examples include, but are not limited to, Internet-based platforms such as Facebook, Twitter, Instagram, and YouTube.

Many local governments use social media as a tool to communicate with citizens. Rather than waiting until a regularly scheduled council meeting to receive citizen input, city officials are able to instantly interact with them via social media. Although this technology greatly increases communication outreach and efficiency, some restrictions are required in order to comply with federal and state law.

While elected officials and City Council-appointed board, committee and commission members (“Public Officials”) may maintain and use personal web pages and websites, blogs, and social networking sites, these elected/appointed officials should keep their status in mind with regard to the content of their activity on those sites.

The City's image as a professional organization is critical to maintaining the respect of its constituents. Although the City recognizes that elected and appointed officials (hereafter referred to collectively as "officials") may choose to express themselves by posting information upon social media platforms or by making comments on sites hosted by other persons, groups or organizations, by their having accepted the responsibilities of public service, officials likewise have a duty to the City of New Fairview and its operations.

If an official conducts any City business or communication from a personal account, business account, or an account created for a board/committee/ commission, officials should assume that City-related communications will be considered a public record subject to the Texas Public Information Act.

### **Professional and Personal Conduct Standards**

1. All City Public Officials (“Officials”) are expected to conduct themselves in a manner consistent with the City's policies and Standards of Conduct.
2. It is anticipated that from time to time, Officials will have access to information that is considered privileged or confidential under Texas State law. Such information is typically considered an exception to the public records law and may have specific penalties for inappropriate disclosure. By way of example, such information may include, but is not limited to, certain personnel information, non-public information from criminal investigations, and business trade secrets. Officials must not reveal any confidential or privileged information about the City, its constituents, its employees, or its contractors. Officials must be particularly careful to protect against the inadvertent disclosure of confidential or privileged information.
3. Officials are encouraged to be honest and accurate when posting information or news, and should quickly correct any mistakes, misstatements, and/or factual errors in content upon discovery. Officials should not post or share information known to be false about the City, its employees, constituents, other public officials, suppliers, vendors, or contractors.

4. Unless the official has been designated to serve as a spokesperson, officials should not represent themselves as a spokesperson for the City Council, a City board or committee, the City administration, or any City department.
5. Officials are expressly prohibited from using personal or professional social media to engage in any activity or conduct that violates federal, state, or local law. Officials are also prohibited from using professional social media accounts to circumvent election or campaign requirements, in campaigning for re-election, or endorsing other candidates for public office.
6. Social media content created by elected and appointed officials may be subject to the Texas Public Information Act and the City's records retention policy. Specific inquiries should be directed to the City Administrator.
7. Officials are subject to the Texas Open Meetings Act. As an example, officials should be mindful that posting content regarding City-related matters could inadvertently result in the violation of the Open Meetings Act if enough other public officials engage on the post, resulting in a quorum. If this occurs, the online conversation should immediately cease with no further posts by the officials and the City Secretary should be notified accordingly.
8. Officials are prohibited from using social media to engage in any activity that conflicts with their elected or appointed duties to the City.

### **Commenting on City Accounts**

The City of New Fairview uses social media to send and receive messages about city information, services and related programs with community stakeholders, including employees, vendors, citizens, media and other members of the public.

1. As with others who engage with the City on social media, elected or appointed officials should understand the City's current guidelines for public participation, which are subject to change as new technology and tools emerge, as well as new regulations and caselaw.
2. Currently, public comments are not allowed on the City-administered social media accounts.

### **Use of Personal Accounts**

As a policy-making body, Council members and City appointees may have latitude to publicly express thoughts and opinions on local issues. However, elected as well as appointed officials should be aware of additional risks related to their general participation on social media.

Public Officials should consider the following when using personal social media accounts:

- a. Removing elected titles from profiles used to identify a personal social media account.
- b. Include an introductory statement in the profile or about section of the account that defines the purpose and topical scope of the page, marking it as a personal and not a public official or governmental page:

*"This account is intended for personal use only. The views, postings, positions or opinions expressed on this site are my own and do not represent those of the City of New Fairview. If*

*you are a citizen of New Fairview and would like to discuss city business, please go to [official page] or contact me at [official email].”*

- c. Redirect information to official government sources and avoid making posts related to official duties or governmental bodies.
- d. Redirect political dialogue requests to an alternative means of communication (i.e. email, phone or other preferred social media account).
- e. Avoid commenting on local issues where other Council/Commission/Board members are also participating in discussion.
- f. Avoid making posts and/or comments on behalf of the City and/or the City Council and/or Planning and Zoning Commission or the Board/Committee to which elected, or to which appointed.
- g. Avoid making posts and/or comments in your official capacity as an elected – or appointed - official.
- h. Avoid making posts and/or comments regarding City business.
- i. Avoid responding to inappropriate comments or personal attacks on social media. If the commenter persists, redirect them to an alternate method of communication (i.e. email).
- j. Be aware that a personal social media account, depending on its content, may still be subject to the Public Information Act. Limit open-ended political and city business discussions from your personal social media accounts and redirect dialogue requests to an alternate channel.

## **Definitions**

For the purposes of this policy, unless otherwise stated, the following definitions apply:

1. Comment – a message posted by site visitors, either in response to an existing topic or introducing a new topic. In general, the user solely controls the content of comments, but often can be deleted, accepted or rejected prior to publishing by the site.
2. Connections – Any deliberate links between a user and a social media channel or page, whether it is initiated by the individual or by the site moderator. Terms used by various sites to describe a connection include friend, fan, follower, or subscriber.
3. Limited forum – a public forum created by the government voluntarily for expressive activity that may be restricted as to subject matter or class of speaker. Forum restrictions must be able to withstand strict judicial scrutiny of its effect on First Amendment rights.
4. Post – In relation to social media accounts or online activity, anything published in an online forum or social media account.
5. Social media – Internet based third-party platforms that facilitate interaction and engagement among individuals in a network or virtual community. Social media often offers a participatory environment and includes user-generated content such as videos, photos, videos, blogs, and



wikis.

6. Professional social media accounts are those accounts which are used for the promotion and exchange of information in a person's occupational capacity and or which are primarily associated with a job, business or enterprise.

### **Violation of Policy**

This policy is not meant to circumvent or bypass any of the other processes, policies or laws that are applicable to the City Council, Planning and Zoning Commission or City appointed Boards and Committees. Social media activity and conduct by Council members and appointed officials should not only comply with these policy terms, but all other processes, policies and laws that may apply as well.

### **Policy Updates**

The City Council reserves the right to update these terms of use at any time.



**CITY OF NEW FAIRVIEW  
RESOLUTION NO.202302-05-118**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, APPROVING AND ADOPTING THE CITY OF NEW FAIRVIEW POLICY FOR ELECTED OFFICIALS AND APPOINTED BOARDS, COMMISSIONS, AND COMMITTEES USING PERSONAL OR PROFESSIONAL SOCIAL MEDIA PLATFORMS; PROVIDING FOR THE INCORPORATION OF PREMISES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of New Fairview desires to provide for a social media policy for the City of New Fairview’s elected officials and appointed board, commission, and committee members; and

**WHEREAS**, the City Council finds it to be in the best interest of the City to implement such a policy.

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

**SECTION 1.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2.** The City Council does hereby approve and adopt the City of New Fairview Policy for Elected Officials and Appointed Boards, Commissions, and Committees Using Personal or Professional Social Media Platforms, attached hereto and incorporated herein as Exhibit “A” for all purposes.

**SECTION 3.** This Resolution shall become effective immediately upon its passage and approval.

**PASSED AND APPROVED** on this the 20<sup>th</sup> day of February 2023.

**City of New Fairview, Texas**

By: \_\_\_\_\_  
John Taylor, Mayor

**Attest:**

\_\_\_\_\_  
Brooke Boller, City Secretary