



**AGENDA
REGULAR MEETING
FREEPORT CITY COUNCIL
MONDAY, OCTOBER 5, 2020 at 6:00 P.M.**

Mayor:

Brooks Bass

Council Members:

Ken Green

Jerry Cain

Sandra Loeza

Roy Yates

City Manager:

Timothy Kelty

THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, WILL MEET ON MONDAY, THE 5th DAY OF OCTOBER 2020, AT 6:00 P.M., AT THE FREEPORT, POLICE DEPARTMENT, MUNICIPAL COURT ROOM, 430 NORTH BRAZOSPORT BOULEVARD FREEPORT TEXAS

BECAUSE OF THE PUBLIC HEALTH THREAT, SEATING WILL BE POSITIONED TO MEET THE REQUIREMENTS OF THE CDC, AND ATTENDEES WILL BE REQUIRED TO WEAR A FACE MASK.

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

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

OR

AUDIO VISUAL CONFERENCE CALL USING:

PCs, Macs®, Chromebooks™, iOS and Android™ phones and tablets.

International dial-in numbers: https://fccdl.in/i/council_mtg_100520

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

https://join.freeconferencecall.com/council_mtg_100520

enter access code 5678901# and the online meeting code is: council_mtg_100520.

OR

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

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

THE MEETING IS BEING HELD FOR THE FOLLOWING PURPOSES:

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

INVOCATION AND PLEDGE OF ALLEGIANCE: (Council Member)

CITIZENS' COMMENTS:

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

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

1. Emergency management briefing COVID-19. **(Motley/Garivey)**
2. Presentation by Freese and Nichols on the TWDB Grant.
3. Presentation by Freese and Nichols regarding Golf Course Bank erosion.

COUNCIL BUSINESS – REGULAR SESSION:

4. **Public Hearing:** Public Hearing and possible action on Gregory Subdivision, a two-lot subdivision of the Mike Gregory Called 2.739 Acre Tract recorded in Clerk's File No. 20-033374 of the Brazoria County Official Records and situated in the John McNeel Survey Abstract 92 Brazoria County, Texas. **(Shoemaker)**
5. **Public Hearing:** Public Hearing and possible action on Lyon Subdivision a two-lot subdivision of the Charles E. and Paula O. Lyon called 22.703 Acre Tract. Recorded in County Clerks File No. 13-014345 of the Brazoria County Official Records situated in the Stephen F. Austin 7-1/3 League Abstract 20, City of Freeport, Brazoria County, Texas. **(Shoemaker)**
6. **Public Hearing:** Public Hearing and possible action on Pena Subdivision a combination of lots 485 and 486, Block 3 of the Bar X Ranch Subdivision Section 2, recorded in Volume 16, Page

119-128 of the Brazoria County Plat Records situated in the Samuel Carter Survey, Abstract 53, Brazoria County, Texas. **(Shoemaker)**

7. Consideration and possible action adopting Federal Procurement Policies & Procedures and a Resolution No. 2020-2660 to Amend the City's existing Purchasing Policy Accordingly. **(Russell)**
8. Consideration and possible action on Resolution No. 2020-2661 authorizing the submission for City of Freeport for an application for the Community Development Block Grant-Mitigation (CDBG-MIT) 2016 HUD MID grant program administered by the Texas General Land Office (GLO). **(Russell)**
9. Consideration and possible action on Resolution No. 2020-2662 authorizing the submission for City of Freeport for an application for the Community Development Block Grant-Mitigation (CDBG-MIT) Harvey HUD MID grant program administered by the Texas General Land Office (GLO) **(Russell)**
10. Consideration and possible action approving Resolution No. 2020-2656 to Amend the Investment Policy. **(Russell)**
11. Consideration and possible action approving Resolution No. 2020-2657 authorizing submission of FICA Application and designating signatories. **(Russell)**
12. Consideration and possible action of approving Resolution No. 2020-2658 for a policy revision to the Personnel Policy Handbook regarding the establishment maintenance of computer passwords. **(Ferguson)**
13. Consideration and possible action on the approval of an amendment to the Freeport EDC By-Laws. **(Holman)**

WORK SESSION:

14. The City Council may deliberate and make inquiry into any item listed in the Work Session.

- A. Mayor Brooks Bass announcements and comments.
- B. Councilman Green Ward A announcements and comments.
- C. Councilman Cain Ward B announcements and comments.
- D. Councilwoman Loeza Ward C announcements and comments.
- E. Councilman Yates Ward D announcements and comments.
- F. City Manager Tim Kelty announcements and comments.
- G. Updates on current infrastructure.
- H. Update on reports / concerns from Department heads.

CLOSED SESSION:

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

COUNCIL BUSINESS – REGULAR SESSION:

ADJOURNMENT:


16. Adjourn.

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

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

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

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


Betty Wells, City Secretary
City of Freeport, Texas



City Council Agenda Item # 3

Title: Presentation by Freese and Nichols, Inc. regarding bank erosion at Golf Course from Hurricane Harvey

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

N/A. This presentation is intended for information purposes only. The topic will be further discussed with Council for direction at a later meeting date.

Item Summary:

The river bank on the golf course near holes 10, 11 and 12 experienced bank erosion from Hurricane Harvey. The presentation by Freese and Nichols, Inc. will update Council on the damages, FEMA's portion of the project, and options moving forward.

Background Information:

The City of Freeport is working with FEMA to complete repairs at several locations damaged during Hurricane Harvey. This project in particular is for river bank erosion that will require coordination with the Army Corps of Engineers and the General Land Office.

Special Considerations:

N/A

Financial Impact:

FEMA has estimated the total project cost for this project to be \$228,888.00. Of that, the Federal Share (90%) is \$205,999.20 and the City's portion (10%) is \$22,888.80. This does not account for engineering fees which are estimated to be capped at 15% (or \$34,333) with the same proportional split. Overall, the City could receive up to \$236,898 for these repairs.

Board or 3rd Party recommendation:

N/A

Supporting Documentation:

N/A



City Council Agenda Item # 4

Title: Discuss and take action on Gregory Subdivision a 2 lot subdivision of the Mike Gregory called 2.739 Acre Tract Recorded in Clerk's File No. 20-033374 of the Brazoria County Official Records and Situated in the John McNeel Survey Abstract 92 Brazoria County, Texas September 2020.

Date: October 5, 2020

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the re-plat of subject property

Item Summary:

Hold public hearing and upon closing of public hearing approve replat.

Background Information:

Combine two lots for construction of single family home

Special Considerations

This property is Located in the City's ETJ.

Financial Impact:

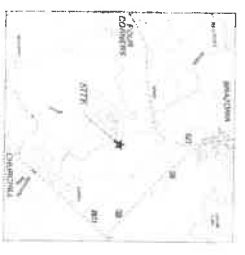
None

Board or 3rd Party recommendation:

Planning and Zoning was scheduled to hold a public hearing on September 22, 2020. Due to tropical Storm Beta that meeting was canceled. Legal counsel advised that the best option would be for council to hold their public hearing and approve the plats. This is due to new State that requires that the City take action within 30 days.

Supporting Documentation:

Copy of plat and associated paperwork will be attached.

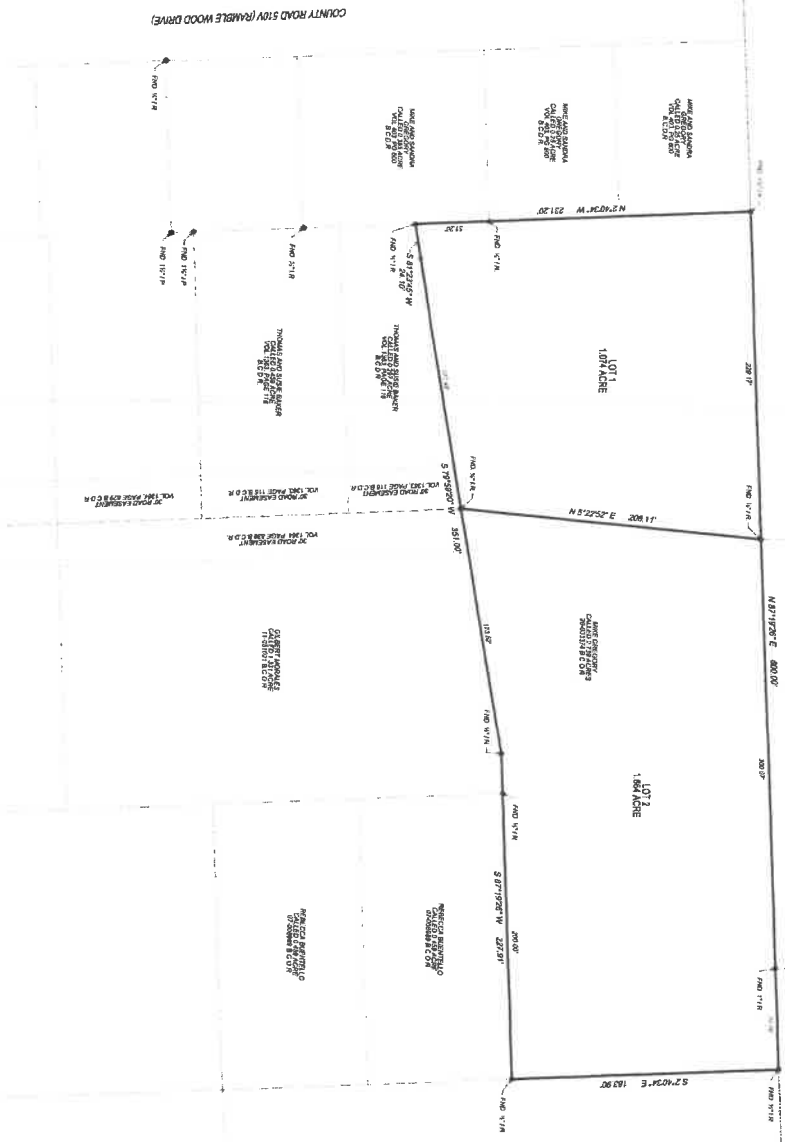


W. H. HAYES
Surveyor
May 8 1822

Y. P. RICE
May 8 1822

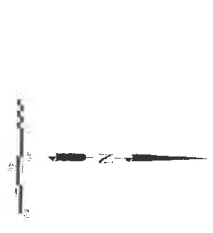


DOYLE & WACHSLETTER, INC.
Surveyors
1001 W. WASHINGTON ST. SUITE 100
HOUSTON, TEXAS 77002
713-866-1111



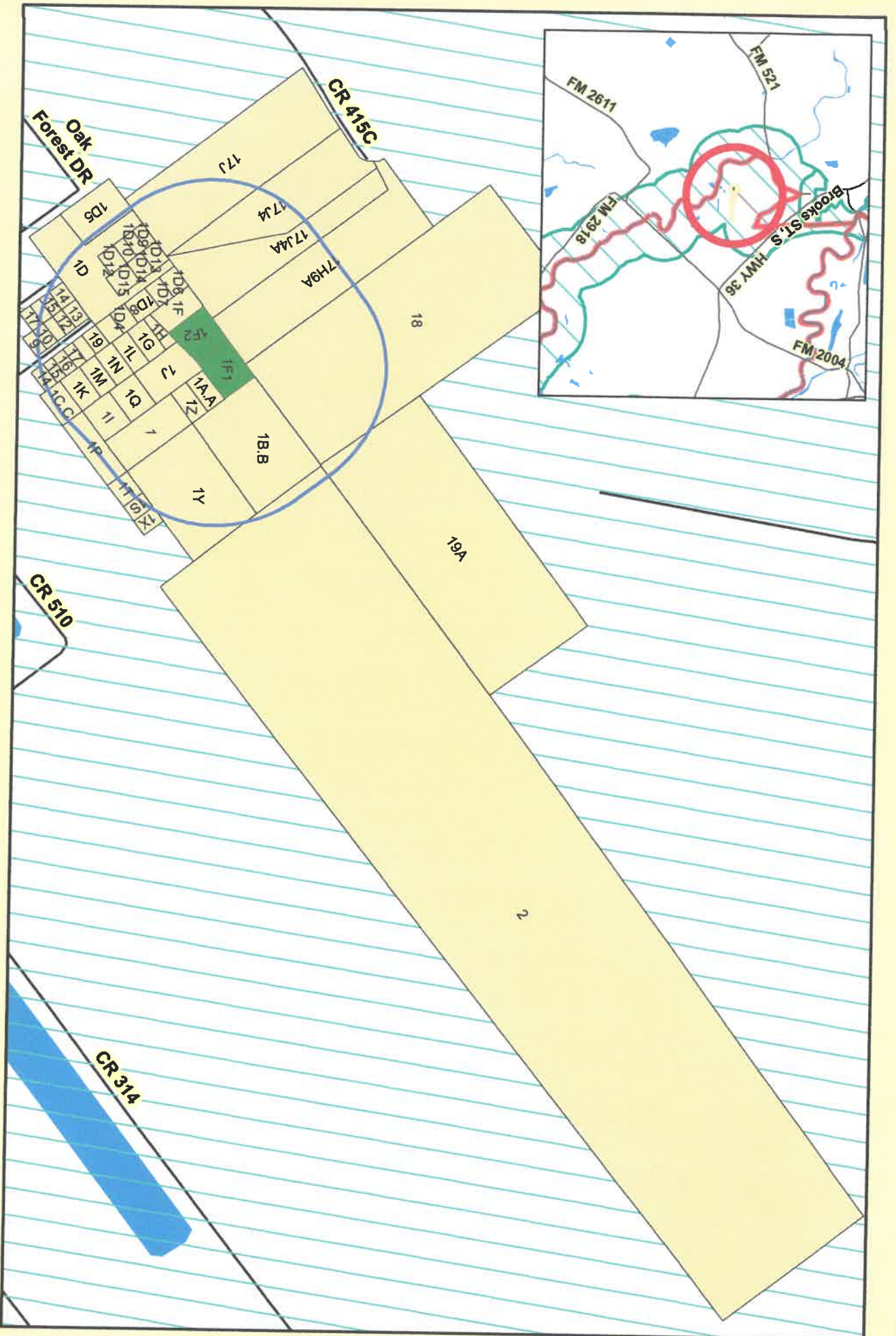
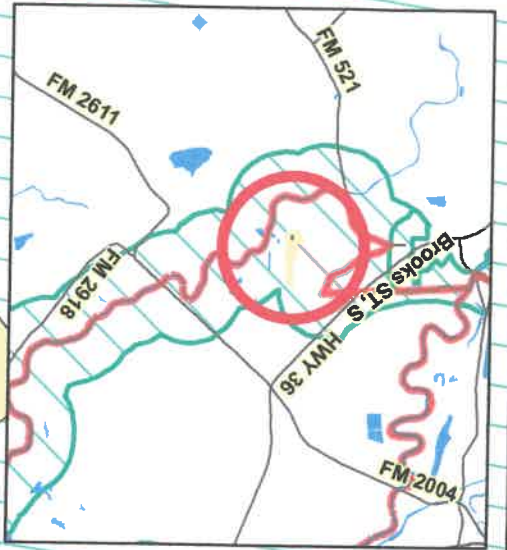
WILLIAM CUMMINS SURVEY
ABSTRACT 59

JOHN MOHEEL SURVEY
ABSTRACT 92



GREGORY SUBDIVISION
* 2 LOT 2, BLOCK 1
WILEY GREGORY TRACT
CALLED "GREGORY TRACT"
RECORDED IN
CLERK'S FILE NO. 80 02374
BRAZORIA COUNTY, TEXAS
JOHN MOHEEL SURVEY
NO. 1001 W. WASHINGTON ST.
HOUSTON, TEXAS 77002

Doyle & Wachstetter, Inc.
SURVEYORS
1001 W. WASHINGTON ST. SUITE 100
HOUSTON, TEXAS 77002
713-866-1111



Legend

- 253416
- Buffer
- Buffered Parcels
- City Limit
- ROADS
- City of Freeport ETJ
- Water

Replat Property Location Map

Property ID 253416

0 0.04 0.08 0.16 0.24 0.32
Miles

Author: Laura Tolar
Document Path: S:\GIS Data\253416 replat 200ft w template.mxd



City Council Agenda Item # 5

Title: Discuss and take action on Lyon Subdivision a two lot subdivision of the Charles E. and Paula O. Lyon called 22.703 acre tract recorded in county clerks file no, 13-014345 of the Brazoria county official records situated in the Stephen F. Austin 7-1/3 league abstract 20 city of Freeport Brazoria county, Texas.

Date: October 5, 2020

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the re-plat of subject property

Item Summary:

Hold public hearing and upon closing of public hearing approve replat.

Background Information:

Subdivide lot and sale lot 2

Special Considerations

This property is Located in the City's ETJ.

Financial Impact:

None

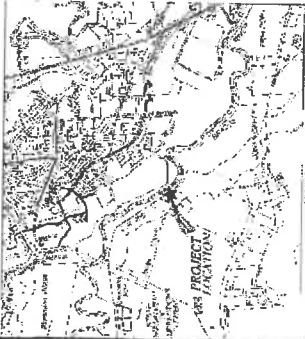
Board or 3rd Party recommendation:

Planning and Zoning was scheduled to hold a public hearing on September 22, 2020. Due to tropical Storm Beta that meeting was canceled. Legal counsel advised that the best option would be for council to hold their public hearing and approve the plats. This is due to new State that requires that the City take action within 30 days.

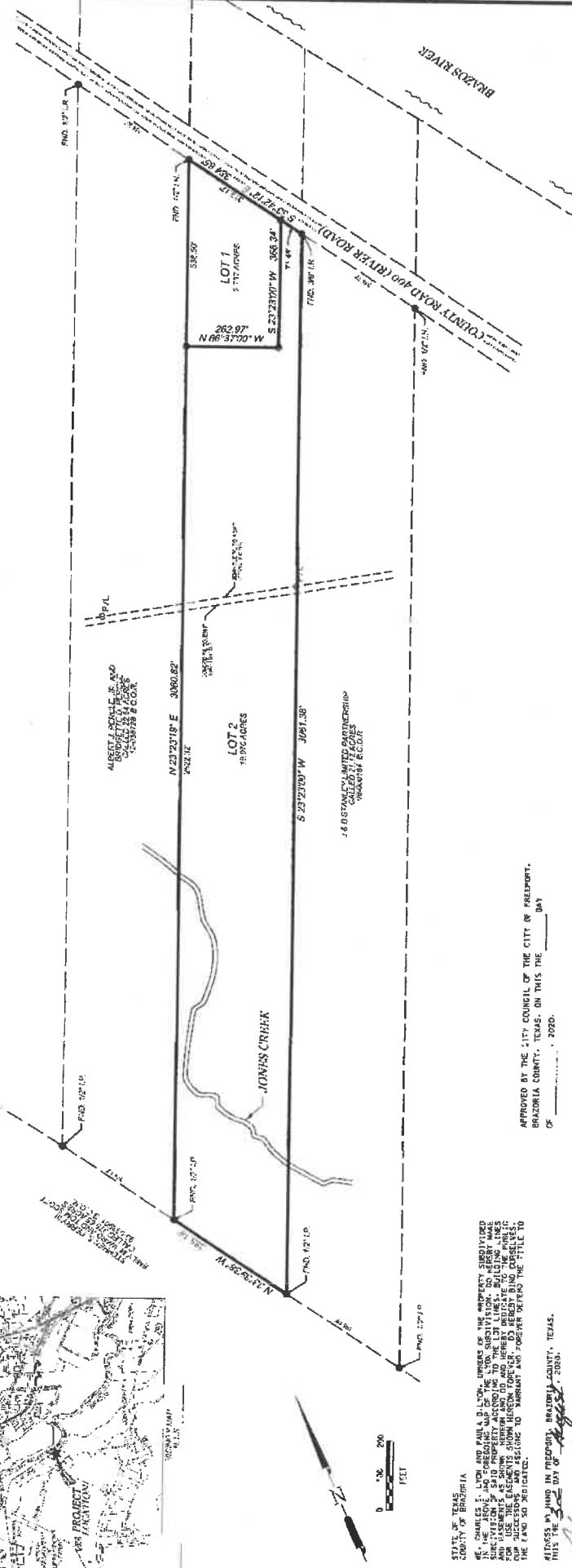
Supporting Documentation:

Copy of plat and associated paperwork will be attached.

BRAZORIA COUNTY TEXAS



**STEPHEN F. AUSTIN 7 1/3 LEAGUE
ABSTRACT 20**



- NOTES:**
1. ALL CORNER MARKS AND BEARINGS ARE RELATIVE TO THE TEXAS STATE PLACING COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83).
 2. 0 DEVICES SET 4' FROM ROAD 8' W/4P
 3. NO TITLE COMMITMENT WAS PROVIDED FOR THIS SURVEY. THERE MAY BE OTHER DEVICES WITHIN THE LIMITS OF THIS ZONE AND PARTIALS WITHIN THE LIMITS OF ZONE AND PARTIALS DATED JUNE 25, 1989.
 4. BUILDING LINES MAY BE SUBJECT TO THE CITY OF FREEPORT BUILDING RESTRICTIONS.
 5. THE PURPOSE OF THIS REPORT IS TO DIVIDE THE PROPERTY INTO 2 LOTS.

APPROVED BY THE PLANNING BOARD OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, ON THIS THE 3 DAY OF August, 2020.

ROOFS BASS, MAYOR
COUNCILMEMBER, KEV GREEN
WARD A

COUNCILMEMBER, JERRY CALIN
WARD B

COUNCILMEMBER, RYAN E. YATES
WARD C

ATTEST:
SPECIAL PLACINGS COORDINATOR,
CITY SECRETARY, LAURIA TOAR

APPROVED BY THE PLANNING BOARD OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, ON THIS THE 3 DAY OF August, 2020.

Kate O'Connell
CITY SECRETARY

Paula D. Lyon
CITY CLERK

LYON SUBDIVISION
A TWO LOT SUBDIVISION OF THE
CHARLES E. AND PAULA D. LYON
CALLED **22.703 ACRE TRACT**
RECORDED IN
COUNTY CLERK'S FILE NO. 19-014346
OF THE
BRAZORIA COUNTY OFFICIAL RECORDS
SITUATED IN THE
STEPHEN F. AUSTIN 7-1/3 LEAGUE
CITY OF FREEPORT
BRAZORIA COUNTY, TEXAS
MARCH 2020

STATE OF TEXAS
COUNTY OF BRAZORIA

I, **CHRISTOPHER S. WACHSTEINER**, REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSE NO. 10000, DO HEREBY CERTIFY THAT I AM THE SURVEYOR OF RECORD FOR THE ABOVE PROPERTY AND THAT THIS PLAN CORRECTLY REPRESENTS THE SURVEY MADE BY ME.

Chris C. Wachsteiner
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NUMBER 0517

Kate O'Connell
CITY CLERK

Loren Eric Hayes
MEMBER

Nicole Mireles
MEMBER

Cliff Vandenberg
MEMBER

APPROVED BY THE PLANNING BOARD OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS, ON THIS THE 23 DAY OF August, 2020.

Kate O'Connell
CITY CLERK

Paula D. Lyon
CITY CLERK

Doyle & Wachsteiner, Inc.
Surveying and Mapping GPS/GIS
141 COMMERCIAL STREET, SUITE 7534
FREEPORT, TX 77541
PHONE: 936-953-9592 FAX: 936-953-9596
TXLA NO. 002408

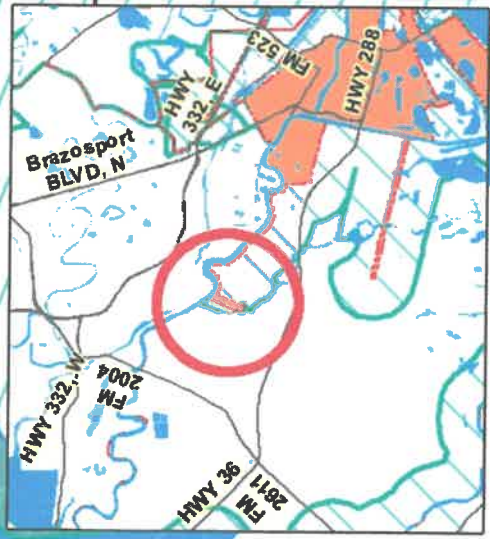
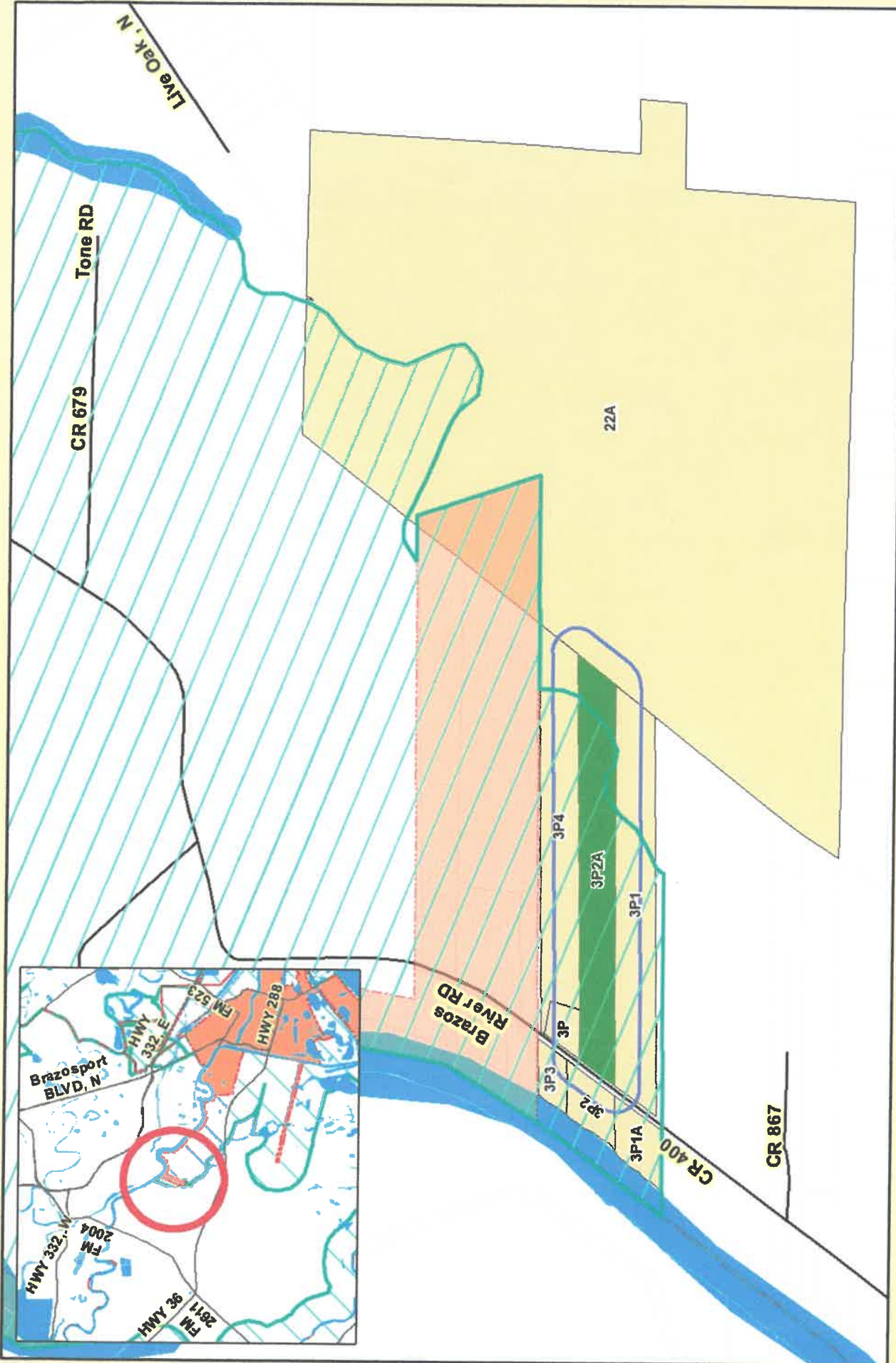


Kate O'Connell
CITY CLERK

Paula D. Lyon
CITY CLERK

Kate O'Connell
CITY CLERK

Paula D. Lyon
CITY CLERK



Legend

[Green Box]	524451
[Blue Box]	200' Buffer
[Hatched Box]	200' Buffer Parcels
[Black Line]	ROADS
[Red Line]	City of Freeport ETJ
[Blue Line]	City Limit
[Blue Area]	Water

Replat Property Location Map

Property ID 524451

0 0.05 0.1 0.2 0.3 0.4 Miles

Author: Laura Tolar
 Document Path: S:\GIS Data\524451 replat 200ft w template.mxd





City Council Agenda Item # 6

Title: Discuss and take action on Pena subdivision a combination of lots 485 and 486, block 3 of the Bar x Ranch subdivision section 2 recorded in volume 16, page 119-128 of the Brazoria county plat records situated in the Samuel Carter survey abstract 53 Brazoria County, Texas August 2020

Date: October 5, 2020

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the re-plat of subject property

Item Summary:

Hold public hearing and upon closing of public hearing approve replat.

Background Information:

Combine two lots for construction of single family home

Special Considerations

This property is Located in the City's ETJ.

Financial Impact:

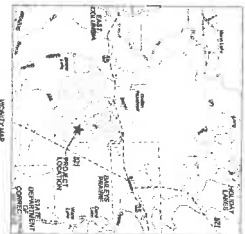
None

Board or 3rd Party recommendation:

Planning and Zoning was scheduled to hold a public hearing on September 22, 2020. Due to tropical Storm Beta that meeting was canceled. Legal counsel advised that the best option would be for council to hold their public hearing and approve the plats. This is due to new State that requires that the City take action within 30 days.

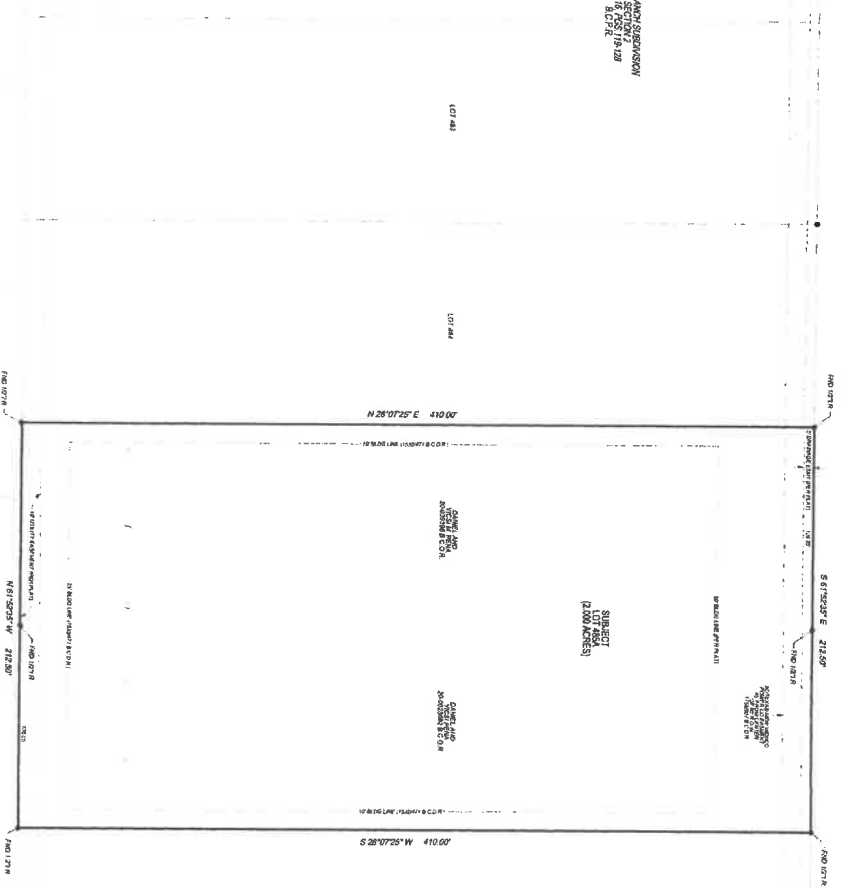
Supporting Documentation:

Copy of plat and associated paperwork will be attached.



NOTE:
1. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.
2. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.
3. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.
4. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.
5. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.
6. THE INTEREST OF SAUER IN RELATION TO THIS SURVEY IS LIMITED TO THE INTEREST OF SAUER AS SHOWN ON THE ORIGINAL RECORDS OF THE COUNTY CLERK'S OFFICE.

BRAXTON SUBDIVISION
SECTION 2
104 & 105 B.O.C.N.
104 & 105



BRAXTON COUNTY, TEXAS
SECTION 2
104 & 105 B.O.C.N.
104 & 105

BRAXTON COUNTY, TEXAS
SECTION 2
104 & 105 B.O.C.N.
104 & 105

BRAXTON COUNTY, TEXAS
SECTION 2
104 & 105 B.O.C.N.
104 & 105



BRAXTON SUBDIVISION
SECTION 2
104 & 105 B.O.C.N.
104 & 105

PENA SUBDIVISION
A SUBDIVISION OF
L.O.S 488 AND 489 4666 B.O.C.N. 3
BRAXTON SUBDIVISION
SECTION 2
VOLUME 18, PAGE 118-120
BRAXTON COUNTY PLAT RECORDS
SAUER, CARTER SURVEY
ABSTRACT 53
BRAXTON COUNTY, TEXAS

Doyle & Wachstetter, Inc.
Surveying and Mapping GPS/GIS
101 COMMERCE STREET, BRAXTON
BRAXTON, TEXAS 75758
PH: 817-338-9299


Legend

- 184068 2008 Buffer
- Subdivided Parcels
- City Limit
- ROADS
- Parcels
- City of Freeport ETJ
- Water


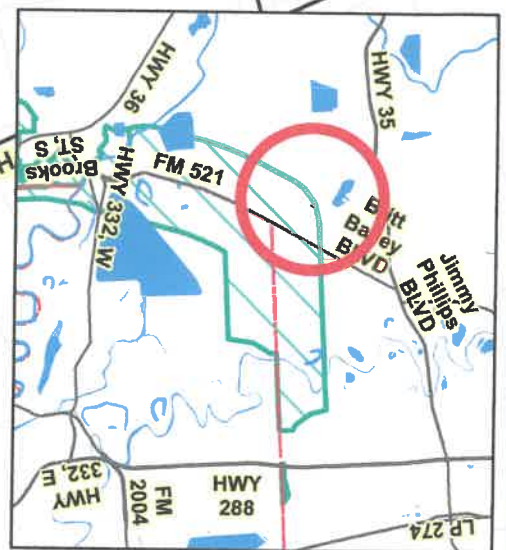
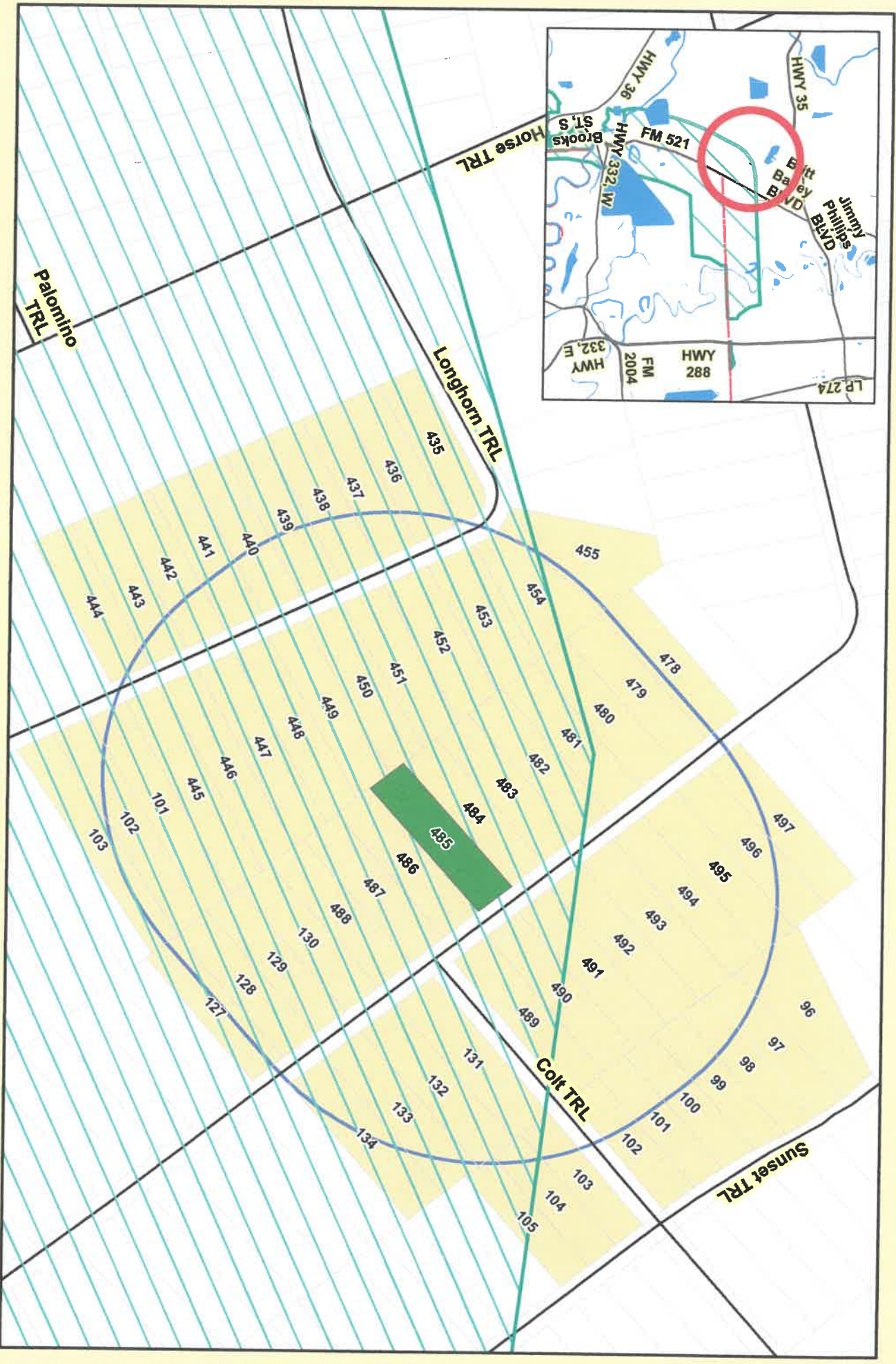
Replat Property Location Map

Property ID 184068

Author: Laura Tolar
 Document Path: S:\GIS Data\184068 replat
 200ft w template.mxd



0 0.02 0.04 0.08 0.12 0.16 Miles



City Council Agenda Item # 7

Title: Consider Adopting Federal Procurement Policies & Procedures and a Resolution to Amend the City's existing Purchasing Policy Accordingly

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

Staff recommends approval of the Federal Procurement Policies & Procedures and adoption of the Resolution to amend the City's Purchasing Policy accordingly.

Item Summary:

The proposed amendments to the City's Purchasing Policy are to add revisions under Section K, Procedures for Federal Grants, to be compliant with grant requirements. The following provisions are proposed to be added:

Policies

1. Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and 2 CFR 200.318 – 2 CFR 200.326 to Appendix II to Part 200.
2. All procurement transactions will be conducted in a manner providing full and open competition.
 - a. No unreasonable requirements are placed on firms in order for them to qualify;
 - b. No unnecessary experience or excessive bonding required;
 - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. No organizational conflicts of interest;
 - f. If a "brand name" product is specified, an equal or like product is acceptable; and
 - g. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.

3. All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
4. All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
5. If the City of Freeport uses a prequalified list when acquiring goods or services, the City of Freeport will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
6. All procurement transactions must conform to applicable local, state, and federal laws and regulations.

Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate.

Procedures

Procurement Cycle Steps

Contract Cost and Price - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323).

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$50,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

Negotiation of Profit - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b)

2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the lesser of the Federal Simplified Acquisition Threshold or the \$50,000 threshold defined in state law (Local Government Code §262.003 for counties and §252.021 for municipalities).

Background Information:

The City's Purchasing Policy was originally approved by Council June 3, 2019. The Purchasing Policy is intended to achieve the following Objectives:

- Ensure that the City acquires, stores, disburses, utilizes and disposes of goods and services uniformly and economically
- Provide the City with quality products and services at the best possible price
- Ensure that the City abides by the City's Charter and its adopted annual budget
- Help all departments understand and use established purchasing procedures and abide by applicable state and federal laws
- Help all departments in meeting the procurement needs of the City
- Encourage participation of small and minority businesses, women's business enterprises, and labor surplus area firms.

Special Considerations:

Changes to the current policy are necessary to ensure the City is compliant with Federal grant requirements.

Financial Impact:

N/A

Board or 3rd Party recommendation:

N/A

Supporting Documentation:

Procurement Policies and Procedures for Federal Grants
Amendments to the City's Purchasing Policy
Resolution with Exhibit



Brooks Bass
Mayor

Tim Kelly
City Manager

City of Freeport Procurement Policies and Procedures for Federal Grants

Policies

1. Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and 2 CFR 200.318 – 2 CFR 200.326 to Appendix II to Part 200.
2. All procurement transactions will be conducted in a manner providing full and open competition.
 - a. No unreasonable requirements are placed on firms in order for them to qualify;
 - b. No unnecessary experience or excessive bonding required;
 - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. No organizational conflicts of interest;
 - f. If a “brand name” product is specified, an equal or like product is acceptable; and
 - g. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
3. All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
4. All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
5. If the City of Freeport uses a prequalified list when acquiring goods or services, the City of Freeport will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
6. All procurement transactions must conform to applicable local, state, and federal laws and regulations.
7. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;



- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Procedures

Procurement Cycle Steps

Need Defined—City of Freeport department submits request and specifications. Purchaser reviews request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

Procurement Method Selected—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the City of Freeport.

Contract Cost and Price - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323).

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$50,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

Solicitation— City of Freeport creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.

Receipt of Bids and Responses to Solicitation—Vendors submit their response to the solicitation.

Evaluation and Awards— City of Freeport reviews the responses from vendors, determines compliance with the solicitation and makes an award recommendation based on the pre-defined best value criteria.

Negotiation of Profit - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b)

The City of Freeport will use one of the following five methods of procurement described at 2 CFR Section 200.320: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals.

1. Simplified Acquisition Procedures for Purchases Below Micro-Purchase Threshold

For purposes of this section, the micro-purchase threshold is \$3,000.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the City of Freeport must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the lesser of the Federal Simplified Acquisition Threshold or the \$50,000 threshold defined in state law (Local Government Code §262.003 for counties and §252.021 for municipalities. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

For service contracts that are under the small purchase threshold and do not fall under professional services as defined in Section 2254.002(2) of Local Government Code, the City of Freeport may receive quotes and award the contract to any reasonable and responsible bidder. The local governing body has the final authority to award contracts.

3. Construction and Materials Contracts

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts,

- transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- e. Any or all bids may be rejected if there is a sound documented reason.

4. Professional Services Contracts

This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. Proposals must be solicited from an adequate number of qualified sources;
- c. The City of Freeport must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The City of Freeport may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals

This method may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- d. After solicitation of a number of sources, competition is determined inadequate.

These Policies and Procedures are implemented through of the City of Freeport's administrative team of:

City Manager

Finance Director

City Secretary

Brooks Bass, Mayor

Date



City of Freeport Purchasing Policy

Revised October 5, 2020

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Section 1: Purchasing Policies, Objectives, and Ethics

A. Purchasing Policy

The procedures listed below provide an outline of the overall purchasing process.

It is the policy of the City to assure fair competitive access to governmental procurement by responsible vendors/contractors and to conduct business activities in such a manner as to foster public confidence in the integrity of the City.

Therefore, regardless of the expenditure it is the policy of the City to garner competition that produces the highest quality goods at the lowest possible price regardless of whether the item or service is subject to bid.

B. Purchasing Objectives

These policies are intended to:

- Ensure that the City acquires, stores, disburses, utilizes and disposes of goods and services uniformly and economically
- Provide the City with quality products and services at the best possible price
- Ensure that the City abides by the City's Charter and its adopted annual budget
- Help all departments understand and use established purchasing procedures and abide by applicable state and federal laws
- Help all departments in meeting the procurement needs of the City
- Encourage participation of small and minority businesses, women's business enterprises, and labor surplus area firms.

C. Legal Authority

The City has attempted to incorporate local, state and federal laws into this manual. The City, however, does not warrant that these policies include all such laws. Local, state and federal laws will prevail over these rules where applicable.

Texas Local Government Code 252.002 (Municipal Charter controls in case of conflict)

Legal requirements which affect the acquisition of goods and services include the following:

- *Texas Local Government Code, Chapter 252* requires that before a municipality may enter into a contract, except for those items exempted under *Chapter 252.022* or other law, that requires an expenditure of more than **\$50,000.00** from one or more municipal funds, the municipality must comply with the procedure prescribed as appropriate therein for competitive sealed bidding or competitive sealed proposals.
- *Texas Local Government Code, Chapter 171* requires local government officials to disclose conflicts of interest and sets forth rules that require officials to abstain where they are in a position to vote or make a decision on any matter involving a business entity or real property for which they have an interest in.

- *Texas Government Code Title 10, Chapter 2254*, also known as the Professional Services Act, governs the local government procurement of various professional services. *Chapter 2254* prohibits the procurement selection of architects or engineers based on bid price and requires government entities to first select the most qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price.
- *The State of Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code*, states that a registered professional engineer must be hired to prepare plans, specifications, and estimates for any public works activities in accordance with this Act. The engineer must directly supervise the project in order to ensure the public health, safety, and welfare.

D. Disclosure of Certain Relationships

The Texas Local Government Code, Chapter 176 requires a vendor that wishes to conduct business or be considered for business with the City of Freeport, Texas to file a conflict of interest questionnaire. The Disclosure Act applies to all persons or businesses who conduct business with the City, including those who submit bids on city contracts, make purchases of surplus city property, or participate in any other purchase or sales transactions with a city.

Vendors or respondents who meet the following criteria must fill out a conflict of interest questionnaire no later than the 7th day after the person begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City:

A vendor or respondent that:

- contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity; or
- Is an agent of a person described in Subdivision (1) in the person's business with a local governmental entity. Any person who meets the criteria, as for enforcement to ensure the veracity of the vendors, the statute makes it a Class C Misdemeanor to violate the vendor disclosure provisions.

E. Certificate of Interested Parties (Form 1295)

Section 2252.908 of the Texas Government Code states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

A business entity must enter the required information on Form 1295 online at <https://www.ethics.state.tx.us/File/> and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with City.

F. Purchasing Ethics

The City wants to promote and protect its governmental integrity. The purpose of this section is to provide guidance to all City employees involved in the procurement process so that they may conduct

themselves in a manner that is compatible with the best interest of the City. For more guidance regarding the City's Code of Ethics, please refer to the City's Ethics Policy found under Title IX of the Code of Ordinances, Chapter 100.

The employees of the City responsible for purchasing shall:

- Purchase the proper goods or services to address the City's needs
- Get the best possible price for goods or services
- Have goods or services available when and where the City needs it
- Assure a continuing supply of needed goods and services
- Guard against misappropriation of City funds
- Facilitate cooperation with other governmental units
- Maximize competition from responsible bidders
- Safeguard public funds and receive the best value for the public dollar
- Never use public spending to enrich elected officials or City employees
- Never make purchases for personal use in the City's name
- Ensure all procurement transactions will be conducted in a manner providing full and open competition:
 - No unreasonable requirements are placed on firms in order for them to qualify.
 - No unnecessary experience or excessive bonding required.
 - Noncompetitive pricing practices between firms or between affiliated companies is disallowed.
 - Noncompetitive contracts are disallowed except for when there is an approved exception.
 - No organizational conflicts of interest.
 - If a "brand name" product is specified, an equal or like product is acceptable.
 - A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
- Ensure all procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- Ensure all procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals
- If a prequalified list when acquiring goods or services is used, the City will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
- Ensure all procurement transactions must conform to applicable local, state, and federal laws and regulations.

Perception is Everything. Even if a procurement decision is sound, the method determination should be documented and will be open to public inspection. If a decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. And, if the opinion is that the City has "favorite companies we always do business with", our job is to set the record straight

with all who may have this complaint. It is important that awards are made based on competition and/or best value for the City, that the reason(s) for those awards are documented and defensible, and that a decision is based on fact and in the best interest of the City.

G. Participating in Procurements with Family or Friends

It shall be a breach of ethics for any employee of the City of Freeport to participate directly or indirectly in procurement for the City of Freeport when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

H. Gratuities

It shall be a violation of city employment to offer, give or agree to give any employee of the City of Freeport, or for any employee of the City of Freeport to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or sub-contract, or to any solicitation or proposal therefore pending before the City of Freeport.

I. Kickbacks

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a vendor/subcontractor under a contract to the prime vendor/contractor or higher tier subcontractor for any contract for the City of Freeport, or any person associated therewith, as an inducement for the award of a sub-contract or order.

J. Confidential Information

It shall be a violation of City policy for any employee of the City of Freeport knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

K. Purchase of Materials, Equipment, And Supplies for Personal Use

No employee may purchase City property for his/her own personal use unless it is purchased through the City's public auction or through the sealed bid procedures of the City. This includes new and used equipment, materials or supplies.

L. Private Purchases Through City Facilities

No employee may use the purchasing power of the City of Freeport to make a private purchase. In addition, employees should not have private purchases sent to the City to be paid for by the employee.

M. Tax Exempt Status

The City of Freeport is exempt from Federal, State, and Local taxes except in certain prescribed cases. An exemption certificate is available from the Finance Department and will be furnished to any of the City's suppliers upon request. Employees making purchases for the City out of personal funds will not be reimbursed for sales tax paid.

N. Tax Exempt Status for Purchase of Personal Property

Employees may not use the City's tax-exempt status for purchases of personal property. Anyone avoiding payment of sales tax by using this exemption may be liable for prosecution under Texas Penal Code, Chapter 39.

O. Definitions

The following definitions are intended to assist you in understanding the language used throughout this manual. When using this manual, if you find a word or words that you may not clearly understand and if it is not defined in this section, please do not hesitate to contact someone in Finance for clarification and/or interpretation.

Appropriated – The City Council appropriates funds through the adoption of the annual budget and subsequent amendments. Appropriated funds are funds that are able to be used for the purchase of goods and services, another way of saying this would be to say funds are budgeted and authorized for the intended purchase.

Award - Approval by the City Council, City Manager, Financial Director or their designee, under whose authority a purchase order is issued.

Best Value - If the sealed competitive bidding requirement applies to the contract for goods or services, the contract may be awarded to the lowest, Responsible Bidder or to bidder who provides goods or services at the best value for the City. In determining the best value for the City, we may consider:

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the City's needs;
- the bidder's past relationship with the City;
- the impact on the ability of the City to comply with laws and rules relating to contracting with;
- historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long-term cost to the City to acquire the bidder's goods or services, and
- any relevant criteria specifically listed in the request for bids or proposals.

Bid advertisement - A public notice put in a newspaper of general circulation, containing information about an Invitation for Bid or a Request for Proposal.

Bid list - A list of vendors who have indicated in writing an interest in submitting bids for particular categories of goods and services. This list is a compilation of recommended vendors from the department and a database of vendors maintained by Purchasing.

Blanket Purchase Order – A blanket purchase order is an open purchasing agreement between the City and a vendor to provide multiple purchases under a single Purchase Order number when the exact quantities are unknown.

Bonds:

- **Bid Bond** - A bond required of a contractor that ensures that the contractor will enter into the contract for which he has submitted a formal written bid and/or proposal.
- **Payment Bond** - A bond required of the contractor that ensures that all suppliers and subcontractors of the contractor will be paid for work and/or material supplied in the course of the contract.
- **Performance Bond** - A bond required of the contractor that guarantees vendor performance during the execution of the contract.

Capital equipment – Property with a useful life of at least two years and a purchase cost of at least \$5,000.

Check Request – Prescribed stamp/form for requesting payment to a vendor for purchase of less than \$1,000. The Department Head and/or their designee must sign this form.

Commodity code - A specific group of goods or services categorized into distinct classes that have been assigned a numerical reference number within the purchasing and inventory system.

Competitive bidding - The process wherein a vendor openly competes with other vendors, through a formal or informal process, for the City's business.

Component purchases – Purchases of component parts that in normal purchasing practices would be purchased in one purchase.

Consulting Services - The service of studying or advising the City under a contract that does not involve the traditional relationship of employer and employee.

Contract - An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time, during which purchases are made of the commodity specified.

Contractor - The successful vendor(s) awarded a contract by the City.

Delivery date – The date by which goods or services are needed.

Emergency – Purchases that are made to meet a critical, unforeseen need of the City, where the City's ability to serve the public would be impaired if purchase is not made immediately. Emergency purchases are exempt from standard purchasing procedures and must qualify for exemption as outlined in *Texas Local Government Code 252.022*.

Encumbrance - The process wherein the City reserves funds for the purchase of supplies, goods, services, and equipment in one budgetary-accounting period, and pays for the purchase in another budgetary-accounting period.

Expedite – When the purchasing process is accelerated through normal procedures in order to prevent work stoppage or loss of government's money.

FOB destination point – Free on Board (FOB); the vendor pays freight charges to the destination; title to goods passes to buyer at his receiving dock; freight claims must be filed and handled by the seller.

FOB shipping point – Free on Board (FOB); shipment becomes 'collect' from seller's shipping dock; freight charges may be prepaid and added to the invoice; City pays freight charges; title to goods passes to buyer at the shipping dock of seller; freight claims must be filed and handled by buyer.

Goods - A generic term that includes all types of property to be purchased by the City; equipment, supplies, materials, components and repair parts.

Invitation to Bid – This is a formal written document that requests from bidders a firm price and delivery details for specified merchandise listed on a purchase requisition. An Invitation to Bid is always required when the anticipated level of expenditure will be greater than \$50,000.

Lowest Responsible Bidder – This is the vendor who offers the lowest bid which meets all the specifications, requirements, terms and conditions of the Invitation to Bid. It is expressly understood that the lowest responsible bid includes any related costs to the City, using a total cost concept. The term "responsible" refers to the financial and practical ability of the bidder to perform the contract. The term is also used to refer to the experience or safety record of the vendor.

Personal Services - Services provided to the City personally by a particular individual. Any contribution of machinery and equipment compared to total cost must be substantially less than the contribution of wages.

Planning Services - Services primarily intended to guide the City to ensure the orderly and coordinated development of land areas.

Professional Services – services as defined by state law: accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; professional nursing; or services provided in connection with the professional employment or practice of a person who is licensed or registered as: a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

Purchase - An act that includes the acquisition of goods or services, to include the act of leasing personal or real property. Separate, sequential, and component purchases shall be treated as a single purchase.

Purchasing - The act, function, and responsibility for the acquisition of goods and services.

Purchase order - A formal, binding, legal agreement issued by the City's Purchasing Coordinator. A purchase order is requested by a departmental requisition that details the merchandise or services required. When accepted by a vendor without qualifications within a specified time period, the agreement becomes a contract. A Purchase Order grants the vendor the authority to deliver the goods or services and invoice for the same. It is the City's commitment to accept the goods or services and pay for them at the agreed price.

Purchase Requisition Form – Prescribed form filled out by departments at the same time the purchase order is entered into the financial software for approval. This form must be signed by the Department Head and submitted to the Finance Department as backup for the purchase order.

Request for Proposal - A formal written document requesting that potential vendors make an offer for services to the City. The Request for Proposal method of procurement may be used for goods or services including high technology and insurance when it is determined that the proposal process provides the best value to the City. When the RFP is used for the selection of professional services as allowed in the Local Government Code 252.022(a)(4), the City shall comply with Local Government Code 2254.003 in the procurement of these services. The City shall not award a contract for these

services based on competitive bids but shall make the selection and award on the basis of demonstrated competence and qualifications for a fair and reasonable price. Fees must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations and may not exceed any maximum(s) provided by law.

Request for Qualifications - a formal written document used when soliciting providers of architectural, engineering or land surveying services. The City shall comply with Local Government Code 2254.004 in the procurement of these services. The City must first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications. After a firm has been selected based on qualifications and experience, then a fair and reasonable fee shall be negotiated. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City shall formally end negotiations with that firm and select the next most highly qualified firm and begin negotiations with that provider for a fair and reasonable price.

Reverse Auction - Single or multiple-item, open, descending-price auction. The initiator specifies the opening bid price and bid decrement. Each bidder submits a successively lower bid and at the end of the auction, bidders with the lowest bid win. Each winning bidder sells at a price equal to the bid he/she made.

Separate purchases – Purchases made separately of items that in normal purchasing practices would be purchased in one purchase.

Sequential purchases – Purchases made over a period of time of items that in normal purchasing practices would be purchased in one purchase.

Services - A generic term to include all work or labor performed for the City on an independent contractor basis, including maintenance, construction, manual, clerical or professional services.

Sole source – Purchases of goods or services that are available from only one supplier. There may be just one vendor because of patents or copyrights, or simply because the vendor is the only one that supplies the good or service. These purchases are exempt from the standard bidding requirement and must qualify as outlined in *Local Government Code 252.022*.

Specifications - Statements containing a detailed description of the terms of the contract, as well as specific details for the goods and/or services. The details or specifications should be descriptive, but not restrictive.

Surplus – Item(s) no longer needed by a department, regardless of its value or condition.

Vendor - A generic term applied to individuals and companies alike, who provide goods and services to the City.

Section 2: Purchasing Process

A. Delegation of Purchasing Authority

The City Manager as authorized by the City Council of the City of Freeport has delegated to Department Heads and their designees the authority to procure materials and services for the City that are within the guidelines set-forth by this procurement policy. Department purchasing authority is limited to a single purchase of less than \$1,000.

A City Contract is always required when an on-site service is to be rendered to the City. Retroactive (after the fact) contracts are not acceptable. Only the City Council, the City Manager and Finance Director (within his/her purchasing limitations) are vested with authority to contract for the City of Freeport. The Finance Director may approve the purchase of goods or services that have been budgeted and are valued at less than \$10,000, without prior approval of the City Council or City Manager.

The City Manager may approve the purchase of goods or services that have been budgeted and are valued at less than \$50,000 without prior City Council approval. No contract or purchase order will be binding upon the City unless authorized by the City Council, City Manager, or Finance Director, as applicable, and unless the City Manager and/or Finance Director certifies that there is to the credit of the City office or department a sufficient appropriation and unencumbered balance to pay for the goods and/or services for which the contract or purchase order is to be issued. The City's purchase of goods and services shall be made according to a requisition from the Department Head whose budget or other approved appropriation source will be charged for the purchase. Any City personnel who authorize or attempt to authorize a purchase order without proper approvals will be subject to disciplinary action.

The Finance Department is designated as the Purchasing Office for the City within certain limitations. The primary responsibility of the Purchasing Office is to procure the best goods and services in a timely manner at the lowest possible cost to the City and to ensure that purchasing is conducted with strict adherence to applicable federal, state and local laws as well as this manual. This purpose is accomplished through updating of purchasing data, training/education of personnel and responsiveness to new techniques. The Finance Department will coordinate purchasing activities with the user department. The Finance Director will conduct random internal audits of departmental purchasing.

B. Total Dollar Limits/Approval Requirements

The purchasing limits stated herein assume that prior to purchase or request to purchase, the Department Head and/or their designee has verified sufficient funds are available in the budget line item affected. This is verified through the purchase order (encumbrance) process approved by the Finance Department.

The following standard approval route applies to All City Departments.

Total Amount of Request*	Type of Form Required	Type of Bid/Quotes Required	Department Head or Designee Approval Required	Finance Director Approval Required	City Manager Approval Required	City Council Approval Required
< 1,000	Check Request	Not Required	◆			
\$1,000 to \$2,999	Purchase* Order	Not Required	◆	◆	*If not low bid	
\$3,000 to \$49,999.99	Purchase* Order	3 Quotes	◆	◆	◆	*If not low bid
\$50,000 and above	Purchase* Order	Sealed Bids	◆	◆	◆	◆

* A Purchase Order is not required for recurring payments on annual contracts, that have already been procured in accordance with this policy, in which the quantities are unknown. Examples include but are not limited to utilities, phone, insurance premiums, fuel, etc. These payments should be paid following verification of quantity and contract compliance. If applicable, a Blanket Purchase Order may be set up for these vendors. A Purchase Order is required for recurring payments on annual contracts in which the exact amount is known (ex. janitorial services).

C. Purchases of Less Than \$3,000

Purchases of less than \$3,000 do not require competitive bidding. The requesting department shall solicit at least one quotation from a competent vendor. Telephone, fax, and e-mail quotations are acceptable. Department Heads or their approved designees may, without prior approval of the Finance Director or City Manager make purchases of less than \$3,000.

Department Head shall authorize an invoice for payment and forward a check request to the Finance Department.

D. Purchases of \$3,000 to Less Than \$50,000

Purchases of \$3,000 to less than \$50,000 will require a purchase order form with at least three quotes unless and interlocal contract or cooperative purchasing is utilized. The Department Head must contact at least two (2) Historically Underutilized Businesses (HUB) on a rotating basis based on information provided by the comptroller pursuant to Chapter 2161, Government Code unless the list fails to identify a HUB that provides similar goods or services in Brazoria County, as authorized by the *Texas Local Government Code, Chapter 252.0215*. If the Department Head proposes to award the contract to a person or entity other than the apparent lowest quote, the Department Head shall obtain the prior written approval of the City Manager.

If a purchase is \$3,000 or greater, the Department Head must submit approval prior to purchase in the form of a purchase requisition/purchase order to the Finance Department. Department Heads or their approved designees may authorize the invoice for payment once the City receives the items.

E. Purchases of \$50,000 or More

City Council shall approve in advance all expenditures for \$50,000 or more. Except as provided in the *General Exemptions Section 252.022 of the Texas Local Government Code*, the City must issue a competitive sealed bid or competitive sealed proposal as authorized by *Texas Local Government Code Chapter 252* and award the bid to the lowest responsible bidder.

The user department shall be responsible for the preparation of specifications for any formal bids for goods, services, or contractual needs. Formal bids shall include legal advertising, invitations to bids, pre-bid conferences (as necessary), documented bid openings and official bid tabulations. All bids must be awarded by City Council. The goods and/or services may be acquired by the issuance of a purchase order or execution of a contract.

Bid notices shall indicate when and where bids will be opened; be published in the official newspaper of the City once a week for two consecutive weeks beginning at least fourteen days before the bid opening; shall be published in a form approved by the City Secretary.

F. General Purchasing Provisions

General Rules Applicable to All Contracts

- a. Each Department Head is responsible for:
 - Coordinating with the Finance Department to establish and maintain a list of vendors
 - Establishing clear, nonrestrictive bid specifications
 - Receiving and inspecting all deliveries to ensure that the goods and/or services comply with the bid or proposal specifications.
- b. The City Secretary is responsible for maintaining bids or proposals and related information according to the City's Records Management Program. Unless otherwise specified by state law, records related to bids or proposals (including purchase orders, invitations to bid, and bid tally sheets) are public records.
- c. The Department Head shall charge a purchase to the appropriate account number regardless if the account contains available budgeted funds. Overrun line items shall require a budget amendment.

G. Prompt Payment Act

Texas Government Code, Chapter 2251, commonly known as the Texas Prompt Payment Act, generally requires that the City pay bills not later than 30 days after the goods and services are received, or the date the invoice is received, whichever is later. Each Department Head shall submit to the Finance Department any bill or invoice within 15 calendar days of receipt.

H. Consideration of The Location of a Bidder's Principal Place of Business

In purchasing under this title any real or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government area and whose bid is within 3% of the lowest bid price received by the local

government from a bidder who is not a resident of the local government area, the local government may enter into a contract with:

the lowest bidder; or the bidder whose principal place of business is in the local government area if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government area created by the contract award, including the employment of residents of the local government area and increased tax revenues to the local government. This does not prohibit a Council from rejecting all bids.

Texas Local Government Code 271.905

I. Preference for Recycled Products

The City encourages the use of recycled products and products that may be recycled or reused. The City will give preference to products made of recycled materials if the products meet applicable specifications as to quantity and quality. *Texas Health and Safety Code 361.426*

The Finance Director may review procurements for the purchase of goods, supplies, equipment, and materials to:

- Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials
- Encourage the use of products made of recycled materials
- Ensure to the most economically feasible extent that the City purchases products that may be recycled when they have served their intended use

J. Municipal Contracts

Annual Contracts - The City may use an annual fixed price contract to obtain required goods or services from a chosen vendor for a specified time period. These contracts eliminate the necessity of bidding commodities each time they are needed. Annual contracts in which the quantities are pre-determined require a purchase order.

Contracts Requiring Issuance of Debt, Certificates of Obligation or Lease-Purchase Agreements

If the City Manager, or a Department Head intends to finance a contract for goods or services through issuance of bonds, debt, certificates of obligation (CO), certificates of participation, tax anticipation notes, lease-purchase agreements, or any other means, then the City Manager or Department Head must, before soliciting bids, receive approval from the City Attorney and City Council for such financial arrangements.

Texas Local Government Code Chapter 271

K. Procedures for Federal Grants

Policies

- 1) Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas

- Government Code Chapter 573, Texas Local Government Code Chapter 171, and 2 CFR 200.318 – 2 CFR 200.326 to Appendix II to Part 200.
- 2) All procurement transactions will be conducted in a manner providing full and open competition.
 - a. No unreasonable requirements are placed on firms in order for them to qualify;
 - b. No unnecessary experience or excessive bonding required;
 - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. No organizational conflicts of interest;
 - f. If a “brand name” product is specified, an equal or like product is acceptable; and
 - g. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
 - 3) All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
 - 4) All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
 - 5) If the City of Freeport uses a prequalified list when acquiring goods or services, the City of Freeport will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
 - 6) All procurement transactions must conform to applicable local, state, and federal laws and regulations.
 - 7) Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate. The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:
 - h. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - i. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - j. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - k. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - l. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Procurement Cycle Steps

- **Need Defined**— The City of Freeport, TX submits request and specifications. Purchaser reviews request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

- Procurement Method Selected—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the City of Freeport.
- Contract Cost and Price - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323).

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$50,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

- Solicitation - City of Freeport creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.
- Receipt of Bids and Responses to Solicitation - Vendors submit their response to the solicitation.
- Evaluation and Awards - City of Freeport review the responses from vendors, determine compliance with the solicitation and make an award recommendation based on the pre-defined best value criteria.
- Negotiation of Profit - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b).

The City of Freeport will use one of the following five methods of procurement described at 2 CFR Section 200.320: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals.

1. Simplified Acquisition Procedures for Purchases Below Micro-Purchase Threshold

For purposes of this section, the micro-purchase threshold is \$3,000.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the City of Freeport must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the lesser of the Federal Simplified Acquisition Threshold or the \$50,000 threshold defined in state law (Local Government Code §262.003 for counties and §252.021 for municipalities). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

For service contracts that are under the small purchase threshold and do not fall under professional services as defined in Section 2254.002(2) of Local Government Code, the City of Freeport may receive quotes and award the contract to any reasonable and responsible bidder. The local governing body has the final authority to award contracts.

3. Construction and Materials Contracts

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e. Any or all bids may be rejected if there is a sound documented reason.

4. Professional Services Contracts

This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. Proposals must be solicited from an adequate number of qualified sources;
- c. The City of Freeport must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- e. The City of Freeport may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals

This method may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- d. After solicitation of a number of sources, competition is determined inadequate.

L. Construction Projects

If the contract is for the construction of public works, the following is required for bidding:

- a. Prepare plans and specifications in conjunction with bidding and contract documents:
 - The proposed specifications shall include workers' compensation requirements. *Texas Labor Code 406.096*
 - If the proposed project includes excavation work, then the proposed specifications shall include excavation requirements and pay items. *Texas Health and Safety Code 756.023*
 - The proposed specifications shall include bonding requirements. *Texas Local Government Code Chapter 252.044; also, Texas Government Code Chapter 2253*
 - The proposed specifications shall include prevailing wage rate schedules. *Texas Government Code Chapter 2258*
- b. Sealed plans and specifications.
- c. Line items with estimated quantities and price estimate.

Texas Local Government Code Chapter 252.044; also, Texas Government Code Chapter 2253

Section 3: Exemptions to Competitive Bidding

Chapter 252.022 of the State of Texas Local Government Code allows certain exemptions to the Competitive Bids process. **The following are the exemptions allowed:**

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;
3. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
4. A procurement for personal, professional or planning services;
5. A procurement for work that is performed and paid for by the day as the work progresses;
6. A purchase of land or a right-of-way;
7. A procurement of items that are available from only one source, including:
 - a. items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
 - b. films, manuscripts, or books;
 - c. gas, water, and other utility services;
 - d. captive replacement parts or components for equipment;
 - e. books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
 - f. management services provided by a non-profit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
8. A purchase of rare book, papers, and other library materials for a public library;
9. Paving drainage, street widening, and other public improvements, or related matters if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;
10. A public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
11. A payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;
12. Personal property sold:
 - a. at an auction by a state licensed auctioneer;

- b. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
 - c. by a political subdivision of this state, a state agency of this state, or an entity of the federal government;
 - d. under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;
13. Services performed by blind or severely disable person;
14. Goods purchased by a municipality for subsequent retail sale by the municipality;
15. Electricity; or
16. Advertising, other than legal notices.

A. High Technology Procurement

High technology procurement means the procurement of equipment, goods, or services of a highly technical nature including:

- a. data processing equipment and software and firmware used in conjunction with data processing equipment;
- b. telecommunications equipment and radio and microwave systems;
- c. electronic distributed control systems, including building energy management systems; and
- d. technical services related to those items.

The City may utilize a request for proposals to procure high technology products and services. Requests for proposals are similar to competitive bids. Prior to utilizing a request for proposal, a Departmental Director must receive approval from the City Manager. The Department shall write specifications using performance standards rather than a written description of the good or service. The specifications shall also list the factors by which the City will judge the proposal, and the weight assigned to each factor.

- 1. Vendors must submit proposals of their own design for a system to satisfy the requirement set forth in the proposal. Proposals may incorporate entirely different hardware or services to accomplish the same performance.
- 2. After the City receives the proposals, the Department Head may enter into negotiations with as many vendors as have submitted feasible proposals to arrive at the best possible proposal.

Texas Local Government Code 252.001(4); 252.021(c)

B. Emergency Services

An emergency is an unforeseen situation that adversely and unduly affects the life, health, or convenience of the citizens of the City, or a circumstance that would cause a loss to the City (such as an inordinate amount of down time).

Texas Local Government Code 252.022 (1), (2) & (3)

In an emergency, the Department Head may proceed with an emergency acquisition. If the cost is \$3,000 or more, the Department Head shall send a confirming requisition (including a brief

explanation of the purchase) and invoices to the Finance Department and City Manager as soon as possible. The Finance Department will then assign a purchase order number and advise the user department to forward that number to the appropriate vendor.

C. Professional Services

Professional services mean services within the scope of the practice, as defined by state law, of accounting, architecture, land surveying, medicine, optometry, professional engineering, or real estate appraisers. The City may not select a provider of professional services or a group or association of providers or award a contract for services based on competitive bids submitted for a contract or services, but shall make the selection and award:

- a. based on demonstrated competence and qualifications to perform the services; and
- b. a fair and reasonable price.

Professional contract fees:

- a. must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
- b. may not exceed any maximum provided by law.

Texas Government Code §2254.002, §2254.003

The City shall first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and negotiate with that contract provider a fair and reasonable price.

If the City cannot negotiate a satisfactory contract with the most highly qualified provider, then the City shall formally end negotiations with that provider, select the next most highly qualified provider and to negotiate a contract at a fair and reasonable price.

The City will continue contract selection and negotiations with providers until the City enters into a contract. The City Manager and/or the appropriate Department Head will execute contracts for the City.

D. Work That Is Performed and Paid for By the Day as The Work Progresses

If the City hires a contractor for a project on a daily basis and pays for work daily as the work progresses, the procurement of services is exempt from competitive bidding requirements.

E. Purchase of Rare Books, Papers, And Other Library Materials for A Public Library

Competitive bidding provisions do not apply to the purchase of rare books, however, books available from more than one jobber or source must be purchased using the regular purchasing process.

F. Developer Participation Contracts

The City Council must approve Developer Participation Contracts over \$3,000 in advance. *Texas Local Government Code 212.071*

G. Interlocal Contracts and Cooperative Purchasing

The City Council must approve interlocal contracts or agreements with other political subdivisions of this state, a state agency of this state or an entity of the federal government administered by a regional planning commission.

The Department Heads will prepare appropriate documentation for purchase orders as needed or required by a particular COOP. The department will receive related paperwork supporting the purchase. The authorization for payment shall include the appropriate signatures and include contract numbers.

The City of Freeport may satisfy the competitive bid requirement of state law by purchasing goods and services through any of the following, including but not limited to:

- a. The Texas Building and Procurement Commission
- b. The Houston-Galveston Area Council Cooperative Purchasing Program (H-GAC Buy)
- c. The Texas Local Government Purchasing Cooperative (BuyBoard)
- d. The National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector and/or Communities Program Management, LLC, a California limited liability company d/b/a U.S. Communities (collectively, "OMNIA Partners, Public Sector")
- e. An interlocal agreement with another governmental entity that has complied with state law purchasing requirements
- f. Texas Procurement Center
- g. Any other agency or entity that state law provides will satisfy the competitive bid requirements

Texas Local Government Code Chapter 271; also, Texas Government Code Chapter 791

H. Media Advertising

A purchase order or quotation form is not required for advertising in the City Official Public Newspaper. The invoice shall be authorized for payment by the Department Head and forwarded to the Finance Department. *Texas Government Code 2051.041*

Section 4: Credit Card/Procurement Card Purchases

The Procurement Card (hereinafter “P-Card”) is a purchasing tool which offers an alternative to the traditional purchase order process. Additionally, the timelines established by this policy allow the City to take full advantage of the cash rebate incentive offered by the issuing financial institution on P-Card purchases.

The City of Freeport established the P-Card Program as part of an effort to extend trust downward into the organization and to increase operational efficiency. As such, employees have a responsibility to adhere to this policy. Having a City of Freeport P-Card is a privilege, not a right.

The P-Card is issued to individual employees only. No other person is permitted to use another employee’s P-Card. As a Cardholder, the employee is responsible for the appropriate use of City funds and is responsible for all charges made with the card. Although the P-Card is issued to the employee, it remains City property and may be rescinded at any time.

Personal charges shall not be made on the card. Improper use of the card may be considered misappropriation of City funds, which may result in disciplinary action, up to and including termination and criminal prosecution.

Cardholders must comply with internal control procedures in order to protect the City’s assets. These procedures include, but are not limited to keeping itemized receipts, reconciling transactions, reviewing monthly statements and following proper security measures. A Cardholder must surrender his/her card upon termination of employment. All purchasing policies and procedures must be followed when using the P-Card.

It is the expectation of the City that departments seek information from multiple vendors to ensure that the best value and price are obtained for all P-Card purchases. The following procedures outline appropriate P-Card use.

A. Program Administration

1. The Finance Department is responsible for the day to day management of the P-Card program.
2. The designated Program Administrator acts as the City’s point of control for the P-Card program, monitors all usage of the P-Card, and is the point of contact for any Cardholder questions or problems.
3. The Program Administrator has the authority, with the approval of the Finance Director, to cancel or suspend a P-Card for any employee at any time for reasons as stated in this policy.

B. P-Card Issuance & Transaction / Monthly Limits

1. When P-Cards are requested for new users, the Department Head will be able to designate an "Administrative Designee." This employee is responsible for managing the reconciliation of the Cardholder's P-Card (e.g. an Executive Assistant).
2. Cardholder standard expenditure limits are as follows:

Cardholder Class	Per/Single Transaction	Per Month
Individuals	\$999.99	\$10,000
City Manager	\$2,999.99	\$10,000
Mayor	\$2,999.99	\$10,000
Finance Department	\$15,000*	\$100,000*

** To be used for payment of bills only per authorization by the Finance Director.*

3. Department Heads may request lower limits. Higher limits or a different Cardholder Class may be requested to accommodate the employee's job function and may be considered with documentation to justify the request or change. The request must be approved by the Department Head, Finance Director and City Manager. (Note: Request for a one-time increase in single or monthly transaction limits may be made by the P-Card holder and approved by Finance. It is the Cardholder's responsibility to inform their Department Head of the increase.)

C. Department P-Cards

Department P-Cards may be issued in the name of an individual department. These cards would be kept in the Purchasing Office until such time as they would be needed by the department for an emergency related issue. Department Cards must be requested in the same manner as a standard P-Card and released for use only after Purchasing receives notice from the City Manager allowing the use of the card

D. Finance Department P-Card

A P-Card will be issued and signed out to an individual within Finance for payment of certain invoices that the city receives during the course of business with the sole purpose of receiving additional cash rebate incentives from the P-Card program.

The individual to which the P-Card is signed out will be the custodian of the P-Card and will have the sole responsibility within Finance for maintaining the P-Card and adhering to the requirements of this Policy during the custodial time period.

E. P-Card Usage Guidelines

1. P-Card Basics

- a. If the monthly limit is reached, Cardholders must utilize the traditional purchase order process, or the Cardholder may request (by email with a copy to the Cardholder's supervisor) a temporary increase in the monthly transaction limits from the Program Administrator. If Cardholder is at the place of business and needs to increase the single transaction limits on their P-Card, they must call the designated P-Card Administrator and make the request. Any requests granted will only be done if they fall within the standard allowable limits as set forth in this policy. An email will be generated to the Cardholder and appropriate Supervisor confirming the telephone conversation and the action taken.
- b. The Cardholder shall not use the P-Card to circumvent any other established City policy, i.e. splitting a \$3,000.00 transaction to two transactions of \$1,500.
- c. The Cardholder is responsible for all charges made with the P-Card.
- d. Cardholders must comply with internal control procedures in order to protect the City's assets. These procedures include, but are not limited to keeping itemized receipts, reconciling transactions, reviewing monthly statements and following proper security measures.
- e. The employee is to use the P-Card only for the types of purchases described in this policy and failure to do so may result in disciplinary action up to and including termination and/or criminal prosecution.
- f. P-Card limits may also be raised in the event of an emergency at the sole discretion of the City Manager.

2. Acceptable Purchases on P-Card (Examples – but not limited to)

- a. Subscriptions and books
- b. Seminars, training, membership dues, registration
- c. Catering and delivery services
- d. Off-site Required maintenance/repairs for which no contract required
- e. On-site maintenance/repairs under \$500 total cost for which no contract required
- f. Over-the-counter retail purchases
- g. Travel related purchases (Note: When traveling, food is best paid by per diem.)
- h. Computer peripherals (through IT only)
- i. Software under \$500.00 (no license agreements) (through IT only)
- j. Business related meals with documentation of meeting subject and attendees
- k. Fuel (for City vehicles only when traveling outside City or motorcycle officers)
- l. Rentals (on case by case basis and only with approval of Finance Director)

3. Prohibited P-Card Uses (Examples – but not limited to)

Purchases of restricted items listed below and purchases of \$1,000 or more must continue to be processed in accordance with established purchasing guidelines.

The procurement P-Card is NOT to be used for the following:

- a. Purchase of capital equipment
- b. Purchase utilizing Grant funds
- c. Capital projects
- d. Onsite contractual services over \$500 (contract / PO needed)
- e. Alcoholic beverages (except where otherwise permitted by policy)
- f. Cash advances/travelers checks/gift cards
- g. Separate, sequential, and component purchases or any transaction made with intent to circumvent City Purchasing Policy
- h. Spouse/Family expenses incurred while traveling
- i. Purchases made with vendors not located in the U.S. (except where previously approved)
- j. Items for personal use
- k. Fines of any kind
- l. Maintenance agreements

4. Proof of Purchase - Documentation

- a. Adequate documentation, including original itemized receipts must be maintained to record the transaction and support the legitimate business purpose of all transactions made with the P-Card.
- b. Original documentation must be retained by Cardholder until attached to the Monthly Statement showing the Cardholder purchases.

5. Sales Tax

- a. The City is tax exempt. Cardholders are responsible for ensuring the merchant does not include sales tax in the transaction.
- b. *The Exception is tax paid to most restaurants, hotels, airlines, and other travel related merchants. Cities are not exempt from hotel tax and certain other federal and state taxes that are not the standard sales tax. (Note: When traveling, food is best paid by per diem and no receipt is needed.)***
- c. If tax is included, the Cardholder will immediately be responsible for ensuring that the merchant or the cardholder reimburses the tax amount to the City.
- d. Cardholders will be provided a copy of the City's tax exemption certificate upon request.

F. Monthly Reconciliation Process

1. Purchasing will notify Cardholders and make available monthly account statements available.

2. Reconciled statements are due back to Purchasing within five (5) business days from the receipt of the statement notification email.
3. To complete the reconciliation process, the following steps must be completed:
 - a. Itemized receipts (generally including purchase date, vendor name, item description, quantity, unit price, and total charge), with the account number and purpose of the purchase written on the sheet to which they are attached, are to be attached in the same order as the listed transactions appear on the monthly statement.
 - b. For meals, per the IRS and the City's auditor, all meals between employees or with staff for any reason must document the names of all attendees. See specific requirements and examples below:
 - Business Meals between Staff – Required Information: Names of staff attending, purpose of meeting, where, when.
 - Training with Staff – Required Information: Names of all attending the training, purpose of the training, where and when the training was held.
 - Meetings and Business Meals – Required Information: Names of all staff attending, names of any other person(s) in attendance, purpose of meeting or business meal, where and when.

Exceptions:

- Meetings with Staff, Consultant and External Committee Members or any combination of this: Name of all staff present, name of any/all consultants, engineers, architects, etc., present, name of the committee only (if applicable, e.g. EDC Board, Planning & Zoning Committee, etc.), and the agenda stating the purpose of the meeting.
 - Meals Provided for "Events" require just the explanation of the "event", when and where and a brief description of who was present (e.g. food for Police promotional ceremony).
- c. For credits, a print screen will be accepted as backup documentation, but receipts are best, if available. Credits must be explained and charged back to original account.
 - d. For "In and Out" transactions (i.e. transactions made in error and credited back within the same day), print screens will be accepted as backup documentation but receipts are best, if available. Such transactions must be explained, charged and credited to the same account and approved electronically.
 - e. For sales tax, charges must be either refunded by credit to the P-Card or reimbursed to the City – proof of reimbursement to the City must be attached to the P-Card statement.
 - f. For tips in excess of 20%, charges must be refunded to the City and proof of reimbursement to the City must be attached to the P-Card statement.

- g. For missing receipts, the Cardholder must attach to the P-Card statement a written memo signed by the Cardholder's Supervisor explaining the purchase transaction and listing the amount.
- 4. The Cardholder and the Cardholder's Supervisor (or above) must sign each statement, with a legible printed name written below the signature.
- 5. Signing the Cardholder's statement is verifying all transactions listed were made in compliance with this and all other city policies.
- 6. Failure to provide Purchasing with proper documentation and timely reconciliation will be considered an administrative violation of the Policy and subject to P-Card suspension and/or revocation.

G. Receipt of Goods & Payment / Dispute of Charges

1. Receipt of Goods & Services/Returning Item(s)

- a. The Cardholder is responsible for ensuring receipt of goods and services and for any follow up with the vendor to resolve any delivery problems, discrepancies or damaged goods.
- b. Returning Item(s): Items should be returned directly to the vendor by whichever means the vendor requires. The Cardholder is responsible for verifying proper credit is posted for any returned items. Cash refunds are not allowed.

2. Payment

- a. The City is fully responsible for P-Card payment and liability. The P-Card will not, in any way, affect the employee's personal credit.

3. Unauthorized Purchases and Fraudulent Charges

- a. All unauthorized purchases must be resolved in an appropriate method so the City does not bear the cost of the purchase. Such purchases will be handled and resolved in accordance with the following procedure:
 - i. Cardholder will return the unauthorized item to the merchant for credit on the P-Card account and submit the itemized credit receipt as part of a monthly statement remittance.
 - ii. If the item cannot be returned, the Cardholder will be required to submit payment for the full amount of the purchase.
 - iii. In addition, an unauthorized purchase may subject the Cardholder to lower P-Card limits, disciplinary action, and/or revocation of P-Card privileges.
 - iv. Any fraudulent charges should be reported immediately. The P-Card will be cancelled by the issuing bank and a new card will be issued. The cardholder will not have access to P-Card privileges until a new card has been received.

4. Discrepancies and Dispute Procedures

- a. The Cardholder is responsible for correcting any erroneous charges, disputed items, or returns. Disputed charges can result from failure to receive goods or services, fraud or

misuse, altered charges, defective merchandise, incorrect amounts, duplicate charges, credits not processed, sales tax charged, etc.

- b. The Cardholder's first step in resolving an erroneous charge is to contact the vendor. (Note: By law, vendors are not permitted to bill a P-Card for purchases until the items have been shipped. Hotels may bill for first night.)

H. Cancellation & Renewal Of P-Cards

1. Lost or Stolen P-Cards

- a. It is the responsibility of the Cardholder to immediately report a lost or stolen P-Card.

2. Termination, Resignation or Re-assignment

- a. Upon notice of termination or resignation, it is the responsibility of the Supervisor and Human Resources to notify Finance immediately. In addition, the supervisor must retrieve the P-Card at such time and return to Finance.
 - i. The Cardholder is responsible for submitting all receipts to the Supervisor.
 - ii. The Cardholder's P-Card will be disabled on the date of resignation or notification of retirement, not the last day of employment.
 - iii. The Supervisor or designee is responsible for submitting the monthly statement with all receipts on time.
- b. Upon notice of staff re-assignment within the City, it is the responsibility of the Supervisor and Human Resources to notify Finance immediately. Finance will review specific P-Card requirements for that person and after discussion with the new supervisor, the P-Card may be cancelled, suspended, limits changed to reflect new responsibilities or MCC codes adjusted.

3. Renewal of Existing P-Cards

- a. Approximately 30 days prior to the expiration date of the card, the bank will automatically send a new card to Finance. Finance will notify Cardholders when the cards are ready to be picked up. Cardholders must turn in their old card to Purchasing in order to receive their new card. New cards must be picked up in person by the Cardholder.

I. Accountability

The cardholders and their appropriate supervisors are responsible for ensuring that this policy and procedure is adhered to. The Finance Department is responsible for monitoring and enforcement.

As a public entity, the City is expected to be able to demonstrate to the public that it has spent tax dollars wisely. All participants in the P-Card program are responsible for ensuring purchases made with the card will withstand the scrutiny of the press, public and internal audits. Therefore, Finance may conduct audits of all P-Card statements and review for the following:

1. Personal Misuse:

- a. Personal misuse includes the following:
 - i. Purchases of prohibited items

- ii. Assignment, transfer, or “loaning” of an individual card to an unauthorized person,
 - iii. Use of a P-Card by a suspended or terminated employee, and
- b. When personal misuse is suspected, the Cardholder will immediately be notified by email their supervisor and Department Head will be copied.
- c. If Finance does not receive a response with one (1) business day, the card will be suspended and changed to reflect a zero-transaction limit and an email sent to the Cardholder, their supervisor, and Department Head.
- d. Based on the severity of the misuse, disciplinary measures – to be decided by the Department Head and City Manager – may include personnel action up to and including termination and legal action.

2. Administrative Infractions:

- a. Administrative infractions include the following violations related to the lack of proper and timely reconciliation of individual Cardholder accounts:
 - i. Transaction Missing Electronic Approval,
 - ii. Late Submittal of Monthly Reconciliation,
 - iii. Missing Itemized Receipt
 - iv. Missing Detailed Information
 - v. Transactions Including Sales Tax
 - vi. Transactions Including Tip Changes in Excess of 20% of the total bill.
- b. When administrative infractions occur, the Purchasing Office will email the Cardholder (and person designated as being responsible for compiling the Cardholder’s monthly reconciliations), with a copy to their supervisor and Department Head in order to resolve the discrepancy prior to authorizing payment of the charge to the bank.
 - i. If the same infraction occurs three months in a row, the ACM will be notified and the Program Administrator will recommend and discuss with their ACM if any further action should be taken.
- c. Training will be provided to all P-Card users and administrative designees with the distribution of new P-Cards. Any administrative designee with an infraction within the first three months of use will be required to repeat the training.

3. Policy Violations:

- a. When violations are found, the Finance will email the Cardholder, with a copy to their supervisor and Department Head.
- b. The Purchasing Office will work with the Department Head to resolve the issue prior to payment of the transaction being authorized. In cases where policy exceptions are granted, a memo signed by the City Manager will be required.
- c. Personal charges shall not be made on the card. Improper use of the card may be consider misappropriation of City funds, which may result in disciplinary action, up to and including termination and criminal prosecution.

Section 5: Disposal of City Property

A. Property Disposal

Sometimes City property may outlive its usefulness and become unserviceable or obsolete. Before a department removes any property from service, the Department Head shall first determine if it can be transferred to another user department for continued service. If it is determined that a property item is no longer serviceable to the City, the Director shall request permission from the City Manager to dispose of the item.

Items may be disposed of by one of the following methods:

- Public auction
- Trade-in on new equipment
- Sealed bids
- Scrap material
- Destruction as unsalvageable
- Negotiated price by Council

In addition to the methods of disposal as listed above, the city may contract to convey property either to another governmental entity or a non-profit corporation in accordance with law providing that such entity or corporation agrees to use such equipment for public purpose.

The condition of the item to be salvaged or surpluses shall dictate the most advantageous method of disposal.

Section 6: Electronic Procurement

Chapter 252.0415(a) of the State of Texas Local Government Code allows for the receipt of bids or proposals through electronic transmission, provided the following rules ensure the identification, security, and confidentiality of the electronic bids or proposals. All electronic bids or proposals must remain effectively unopened until the proper time.

A. Identification

Invitations to Bid, Requests for Proposals, Request for Qualifications and Requests for Applications will be advertised and issued in the manner prescribed by law and the City's Purchasing Policy. A notification will be added to bid terms and conditions stating vendors should submit responses electronically through the City's website and/or third-party service provider's website at the appropriate electronic address listed. Such responses shall be accessible only by a designated City employee with a password for such address and documentation of the time of access shall be maintained.

B. Security

At the specified bid closing time, a designated City employee will open all bids and the bid tabulation summary assembled from the City's website and/or by a third-party service provider's website. **By law a bid that is submitted non-electronically will be accepted and then entered electronically by a designated City employee after bid opening** as stated in the bid or proposal document terms and conditions.

C. Confidentiality

A designated City employee will read aloud all bid responses received by closing time and date to any interested parties present at the bid opening. After the tabulation of bids or proposals, City shall will post bid tabulations electronically on the City's website and/or a third-party service provider's website with a qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that the City accepts such bid as responsive. After evaluating bids, proposals, applications, and statements of qualifications the City will post tabulations and award information, once available, online through the City's website and/or service provider's website."

RESOLUTION NUMBER 2020-2660

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, APPROVING AND ADOPTING AMENDMENTS TO THE PURCHASING POLICY FOR THE CITY OF FREEPORT; PROVIDING FOR INCORPORATION OF PREAMBLE AND AN EFFECTIVE DATE.

WHEREAS, the City Council adopted Resolution Number 2019-2588 on June 3, 2019, establishing a Purchasing Policy that clearly defines authority, responsibility, and established procurement guidelines for the organization; and

WHEREAS, such Purchasing Policy needs to be amended; a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the City Council hereby finds that the amended Purchasing Policy should be approved.

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

Section 1. The facts and statements contained in the preamble are hereby found to be true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The Purchasing Policy attached hereto as "Exhibit A" is hereby amended and adopted as the Purchasing Policy of the City of Freeport.

Section 3. This Resolution shall become effective immediately upon its passage.

DULY PASSED, APPROVED AND ADOPTED on this the ____ day of October 2020.

Brooks Bass, Mayor
City of Freeport, Texas

ATTEST:

Betty Wells, City Secretary
City of Freeport, Texas

APPROVED AS TO FORM AND CONTENT:

Christopher Duncan, City Attorney
City of Freeport, Texas

Exhibit "A"
City of Freeport
Purchasing Policy

government from a bidder who is not a resident of the local government area, the local government may enter into a contract with:

the lowest bidder; or the bidder whose principal place of business is in the local government area if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government area created by the contract award, including the employment of residents of the local government area and increased tax revenues to the local government. This does not prohibit a Council from rejecting all bids.

Texas Local Government Code 271.905

I. Preference for Recycled Products

The City encourages the use of recycled products and products that may be recycled or reused. The City will give preference to products made of recycled materials if the products meet applicable specifications as to quantity and quality. *Texas Health and Safety Code 361.426*

The Finance Director may review procurements for the purchase of goods, supplies, equipment, and materials to:

- a. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials
- b. Encourage the use of products made of recycled materials
- c. Ensure to the most economically feasible extent that the City purchases products that may be recycled when they have served their intended use

J. Municipal Contracts

Annual Contracts - The City may use an annual fixed price contract to obtain required goods or services from a chosen vendor for a specified time period. These contracts eliminate the necessity of bidding commodities each time they are needed. Annual contracts in which the quantities are pre-determined require a purchase order.

Contracts Requiring Issuance of Debt, Certificates of Obligation or Lease-Purchase Agreements

If the City Manager, or a Department Head intends to finance a contract for goods or services through issuance of bonds, debt, certificates of obligation (CO), certificates of participation, tax anticipation notes, lease-purchase agreements, or any other means, then the City Manager or Department Head must, before soliciting bids, receive approval from the City Attorney and City Council for such financial arrangements.

Texas Local Government Code Chapter 271

K. Procedures for Federal Grants

Policies

- 1) Those closely involved in the establishment of the written selection criteria and selection shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from grant-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas

Government Code Chapter 573, Texas Local Government Code Chapter 171, and 2 CFR 200.318 – 2 CFR 200.326 to Appendix II to Part 200.

- 2) All procurement transactions will be conducted in a manner providing full and open competition.
 - a. No unreasonable requirements are placed on firms in order for them to qualify;
 - b. No unnecessary experience or excessive bonding required;
 - c. Noncompetitive pricing practices between firms or between affiliated companies is disallowed;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. No organizational conflicts of interest;
 - f. If a "brand name" product is specified, an equal or like product is acceptable; and
 - g. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
- 3) All procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- 4) All procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 5) If the City of Freeport uses a prequalified list when acquiring goods or services, the City of Freeport will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
- 6) All procurement transactions must conform to applicable local, state, and federal laws and regulations.
- 7) Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate. The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:
 - h. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - i. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - j. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - k. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - l. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Procurement Cycle Steps

- **Need Defined**— The City of Freeport, TX submits request and specifications. Purchaser reviews request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

- Procurement Method Selected—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the City of Freeport.

- Contract Cost and Price - A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323).

The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as \$50,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.88

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a).

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable.

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed.

- Solicitation - City of Freeport creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.
- Receipt of Bids and Responses to Solicitation - Vendors submit their response to the solicitation.
- Evaluation and Awards - City of Freeport review the responses from vendors, determine compliance with the solicitation and make an award recommendation based on the pre-defined best value criteria.
- Negotiation of Profit - Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b).

The City of Freeport will use one of the following five methods of procurement described at 2 CFR Section 200.320: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals.

1. Simplified Acquisition Procedures for Purchases Below Micro-Purchase Threshold

For purposes of this section, the micro-purchase threshold is \$3,000.

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the City of Freeport must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost less than the lesser of the Federal Simplified Acquisition Threshold or the \$50,000 threshold defined in state law (Local Government Code §262.003 for counties and §252.021 for municipalities). ~~do not cost more than the Simplified Acquisition Threshold.~~ If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

For service contracts that are under the small purchase threshold and do not fall under professional services as defined in Section 2254.002(2) of Local Government Code, the City of Freeport may receive quotes and award the contract to any reasonable and responsible bidder. The local governing body has the final authority to award contracts.

3. Construction and Materials Contracts

In order for sealed bidding to be feasible, the following conditions should be present:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- e. Any or all bids may be rejected if there is a sound documented reason.

4. Professional Services Contracts

This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. Proposals must be solicited from an adequate number of qualified sources;
- c. The City of Freeport must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- e. The City of Freeport may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals

This method may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- d. After solicitation of a number of sources, competition is determined inadequate.

~~6. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.~~

~~The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:~~

- ~~a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;~~
- ~~b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;~~
- ~~c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;~~
- ~~d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;~~
- ~~e.a. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and~~
- ~~f. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:

 - ~~— Placing qualified small and minority businesses and women's business enterprises on solicitation lists;~~
 - ~~— Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;~~
 - ~~— Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;~~
 - ~~— Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;~~
 - ~~— Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.~~~~



City Council Agenda Item # 8

Title: Consideration and possible action regarding a Resolution authorizing the submission for City of Freeport for an application for the Community Development Block Grant – Mitigation (CDBG-MIT) 2016 HUD MID grant program administered by the Texas General Land Office (GLO).

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

Staff recommends approval of the Resolution.

Item Summary:

The proposed Resolution is to submit a CDBG-MIT 2016 HUD MID application for up to \$6,000,000.00 of grant funds to provide citywide sewer collection improvements. It also commits a match of 1% (up to \$60,000) and designates the Mayor and City Manager as Authorized Representatives for the grant. A separate project is being proposed to be submitted under the CDBG-MIT Harvey HUD MID application.

Based on the eligibility and scoring requirements for the grant, staff proposes submitting the Sanitary Sewer Collection System Rehabilitation for the 2016 HUD MID Application. The substantially complete application will publicly be posted for at least a 14-day public comment period, per the requirements of the grant.

Background Information:

The City of Freeport intends to apply for the upcoming Community Development Block Grant – Mitigation (CDBG-MIT) funding from the Texas General Land Office (GLO). Applications for this opportunity are due October 28, 2020.

Proposed projects must clearly identify how they will reduce the impacts of one or more of the following risks: severe coastal flooding, riverine flooding, storms, and/ or tornadoes.

For the 2016 Floods State Mitigation Competition, each project has a maximum of \$10 million and minimum of \$3 million that applicants can apply for. The minimum amount is to encourage applicants to submit projects that have the ability to have a significant impact and to encourage applicants to submit joint applications. The number of projects allowed is limited to one per application.

If an applicant is eligible for multiple MIT-program competitions (e.g., 2015 Floods, 2016 Floods or Hurricane Harvey Competitions), the same project(s) cannot be submitted in each competition. If a project is a phase of a larger project, the phase of the project submitted must be viable as a stand-alone project.

Special Considerations:

2016 Floods State Mitigation Competition Scoring Criteria

Question(s)	Criteria	Maximum Points
What is the project service area's Composite Disaster Index?	County Composite Disaster Index	10
What is the project service area's Social Vulnerability Index (SoVI)?	Social Vulnerability Index	10
What is the project service area's Per Capita Market Value?	Per Capita Market Value	10
Does the project meet the low-to moderate-income (LMI) HUD National Objective?	LMI National Objective	20
Is the project type identified in a Local Adopted Plan?	Project type Identified in Local Adopted Plan	5
What is the applicant's management capacity?	Management Capacity	15
What is the total project application amount per total project beneficiaries?	Total project application amount per total project beneficiaries	15
What is the percentage of project beneficiaries out of the total population within the applying jurisdiction(s)?	Percentage of total project beneficiaries out of the total population within a jurisdiction(s)	10
What percentage of project costs being requested are coming from non-CDBG funding sources?	Non-CDBG Leverage (a minimum value of 1% of the CDBG-MIT funds requested)	5
Total Possible Points		100
<i>Tie Breaker: Higher Poverty Rate</i>		

**Applications that do not score a minimum of 65 points will only be considered after all applications scoring greater than this amount have been funded.*

Financial Impact:

The City must also commit to contributing a cash match in the amount of up to 1% or \$60,000.00 toward application activities.

Supporting Documentation:

- CDBG-MIT: Budget Justification of Retail Costs
- Map of Project
- Resolution



CDBG-MIT: Budget Justification of Retail Costs (Former Table 2)

Cost Verification Controls must be in place to assure that construction costs are reasonable and consistent with market costs at the time and place of construction.

Applicant/Subrecipient:	City of Freeport					
Site/Activity Title:	Sanitary Sewer Collection System Rehabilitation					
Eligible:						
Materials/Facilities/Services	\$/Unit	Unit	Quantity	Construction	Acquisition	Total
Mobilization	\$ 1,130,900.00	LS	1	\$ 1,130,900.00	\$ -	\$ 1,130,900.00
Pre Construction Sewer Main Cleaning (8"-15")	\$ 5.00	LF	26000	\$ 130,000.00	\$ -	\$ 130,000.00
Pre Construction Sewer Main Cleaning (27"-36")	\$ 9.00	LF	2000	\$ 18,000.00	\$ -	\$ 18,000.00
CIPP Sanitary Sewer (8")	\$ 39.00	LF	20000	\$ 780,000.00	\$ -	\$ 780,000.00
CIPP Sanitary Sewer (10")	\$ 42.00	LF	5000	\$ 210,000.00	\$ -	\$ 210,000.00
CIPP Sanitary Sewer (12")	\$ 60.00	LF	1000	\$ 60,000.00	\$ -	\$ 60,000.00
CIPP Sanitary Sewer (36")	\$ 253.00	LF	2000	\$ 506,000.00	\$ -	\$ 506,000.00
Internal Reconnects on CIPP	\$ 310.00	EA	280	\$ 86,800.00	\$ -	\$ 86,800.00
Remove and Replace 8" Sanitary Sewer	\$ 90.00	LF	6000	\$ 540,000.00	\$ -	\$ 540,000.00
Remove and Replace 10" Sanitary Sewer	\$ 110.00	LF	1400	\$ 154,000.00	\$ -	\$ 154,000.00
Remove and Replace 12" Sanitary Sewer	\$ 140.00	LF	500	\$ 70,000.00	\$ -	\$ 70,000.00
Point Repair (6"-8")	\$ 3,040.00	EA	80	\$ 243,200.00	\$ -	\$ 243,200.00
Point Repair (10"-12")	\$ 3,040.00	EA	24	\$ 72,960.00	\$ -	\$ 72,960.00
Point Repair (36")	\$ 7,700.00	EA	8	\$ 61,600.00	\$ -	\$ 61,600.00
Bypass Pumping	\$ 110,000.00	LS	1	\$ 110,000.00	\$ -	\$ 110,000.00
Post Construction CCTV (6"-12")	\$ 4.00	LF	33900	\$ 135,600.00	\$ -	\$ 135,600.00
Post Construction CCTV (36")	\$ 6.00	LF	2000	\$ 12,000.00	\$ -	\$ 12,000.00
Manhole Rehab - 4ft Diameter, 8ft Height - 1" Cementitious	\$ 1,020.00	EA	100	\$ 102,000.00	\$ -	\$ 102,000.00
Manhole Rehab - 4ft Diameter, 8ft Height - Epoxy Lining	\$ 3,520.00	EA	100	\$ 352,000.00	\$ -	\$ 352,000.00
Manhole Rehab - Frame and Cover Replacement	\$ 760.00	EA	100	\$ 76,000.00	\$ -	\$ 76,000.00
Pavement Repair	\$ 99.00	SY	500	\$ 49,500.00	\$ -	\$ 49,500.00
TOTAL	\$ 1,261,147.00			\$ 4,900,560.00	\$ -	\$ 4,900,560.00

1. Identify and explain the annual projected operation and maintenance costs associated with the proposed activities.

2. Identify and explain any special engineering activities.

<p>Seal</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Date:</td> <td style="width: 50%;"></td> </tr> <tr> <td>Phone Number:</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 20px;"> <p>Signature of Registered Engineer/Architect Responsible For Budget Justification:</p> </td> </tr> </table>	Date:		Phone Number:		<p>Signature of Registered Engineer/Architect Responsible For Budget Justification:</p>	
Date:							
Phone Number:							
<p>Signature of Registered Engineer/Architect Responsible For Budget Justification:</p>							



Lake Jackson

PARK RD
ENTRANCE RD

CHLORINE RD

PARK RD

CENTER RD

MEDIAN RD

CANAL RD

STATION RD

ELECTRIC RD

BENZENE RD

IRON RD

TIN RD

NICKEL RD

CROCKET LN

BOWIE LN

SLAUGHTER

KELLEY LN

TRAVIS

CR 338

VICTO



RESOLUTION 2020-2661

A RESOLUTION OF THE CITY COUNCIL OF FREEPORT, TEXAS, AUTHORIZING THE SUBMISSION OF A COMMUNITY DEVELOPMENT BLOCK GRANT-MITIGATION (CDBG-MIT) 2016 HUD MID APPLICATION TO THE TEXAS GENERAL LAND OFFICE AND AUTHORIZING THE MAYOR AND CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICERS AND AUTHORIZED REPRESENTATIVES IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE CDBG-MIT PROGRAM.

WHEREAS, the City of Freeport desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, certain conditions exist related to disastrous events, which represent a threat to the public health, safety and welfare; and

WHEREAS, it is necessary and in the best interests of to apply for funding under the CDBG-MIT Program;

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

1. That a CDBG-MIT application is hereby authorized to be filed with the Texas General Land Office for funding consideration under the Community Development Block Grant-Mitigation.
2. That the application be for up to \$6,000,000.00 of grant funds to provide citywide sewer collection improvements.
3. That the Mayor and City Manager are designated as the Chief Executive Officers and Authorized Representatives to act in all matters in connection with this application and participation in the CDBG-MIT Program.
4. That the Mayor and City Manager are designated to oversee all grant activities so as to ensure there are no Conflicts of Interest.
5. That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.
6. That contributing funds in the amount of up to \$60,000.00 in cash are committed by the City of Freeport toward application activities.

Passed and approved this _____ day of _____, 2020.

Brooks Bass, Mayor

Attest:

Betty Wells, City Secretary



City Council Agenda Item # 9

Title: Consideration and possible action regarding a Resolution authorizing the submission for City of Freeport for an application for the Community Development Block Grant – Mitigation (CDBG-MIT) Harvey HUD MID grant program administered by the Texas General Land Office (GLO).

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

Staff recommends approval of the Resolution.

Item Summary:

The proposed Resolution is to submit a CDBG-MIT Harvey HUD MID application for up to \$6,000,000.00 of grant funds to provide citywide sewage treatment plant improvements. It also commits a match of 1% (up to \$60,000) and designates the Mayor and City Manager as Authorized Representatives for the grant. A separate project is being proposed to be submitted under the CDBG-MIT 2016 HUD MID application.

Based on the eligibility and scoring requirements for the grant, staff proposes submitting the Replacement of a 1.6 MGD Steel Package Plant for the Harvey HUD MID Application. This project will include a Steel Package Plant, Plant Foundation, Helical Piling for foundation, and Miscellaneous Sitework and Yard Piping. The substantially complete application will publicly be posted for at least a 14-day public comment period, per the requirements of the grant.

Background Information:

The City of Freeport intends to apply for the upcoming Community Development Block Grant – Mitigation (CDBG-MIT) funding from the Texas General Land Office (GLO). Applications for this opportunity are due October 28, 2020.

Proposed projects must clearly identify how they will reduce the impacts of one or more of the following risks: hurricanes/tropical storms/tropical depressions, severe coastal flooding and riverine flooding. Each proposed project under the Hurricane Harvey State Mitigation Competition Round 1 must have a total proposed cost between \$3 million to \$100 million. The number of projects allowed is limited to one per application. Each applicant may submit a total of three individual applications and three joint applications.

If an applicant is eligible for multiple MIT-program competitions (e.g., 2015 Floods, 2016 Floods or Hurricane Harvey Competitions), the same project(s) cannot be submitted in each competition.

If a project is a phase of a larger project, the phase of the project submitted must be viable as a stand-alone project.

Special Considerations:

Hurricane Harvey State Mitigation Competition Scoring Criteria

Question(s)	Criteria	Maximum Points
What is the project service area's Composite Disaster Index?	County Composite Disaster Index	10
What is the project service area's Social Vulnerability Index (SoVI)?	Social Vulnerability Index	10
What is the project service area's Per Capita Market Value?	Per Capita Market Value	10
Does the project meet the low-to moderate-income (LMI) HUD National Objective?	LMI National Objective	20
Is the project type identified in a Local Adopted Plan?	Project type Identified in Local Adopted Plan	5
What is the applicant's management capacity?	Management Capacity	15
What is the total project application amount per total project beneficiaries?	Total project application amount per total project beneficiaries	15
What is the percentage of project beneficiaries out of the total population within the applying jurisdiction(s)?	Percentage of total project beneficiaries out of the total population within a jurisdiction(s)	10
What percentage of project costs being requested are coming from non-CDBG funding sources?	Non-CDBG Leverage (a minimum value of 1% of the CDBG-MIT funds requested)	5
What mitigation or resiliency measures have been taken by the applicant(s)?	Mitigation/Resiliency Measures	5
Total Possible Points		105
<i>Tie Breaker: Higher Poverty Rate</i>		

**Applications that do not score a minimum of 65 points will only be considered after all applications scoring greater than this amount have been funded.*

Financial Impact:

The City must also commit to contributing a cash match in the amount of up to 1% or \$60,000.00 toward application activities.

Supporting Documentation:

CDBG-MIT: Budget Justification of Retail Costs
 Project Map
 Resolution



CDBG-MIT: Budget Justification of Retail Costs (Former Table 2)

Cost Verification Controls must be in place to assure that construction costs are reasonable and consistent with market costs at the time and place of construction.

Applicant/Subrecipient:	City of Freeport, Texas					
Site/Activity Title:	Replacement of a 1.6 MGD Steel Package Plant					
Eligible:						
Materials/Facilities/Services	\$/Unit	Unit	Quantity	Construction	Acquisition	Total
Steel Package Plant - Vendor supplied tankage, equipment and electrical complete in place to replace an existing 1.6 mgd package plant that is at the end of its useful life	\$ 4,411,900.00	LS	1	\$ 4,411,900.00	\$ -	\$ 4,411,900.00
Plant Foundation	\$ 750.00	CY	330	\$ 247,500.00	\$ -	\$ 247,500.00
Helical Piling for foundation	\$ 11,800.00	EA	17	\$ 200,600.00	\$ -	\$ 200,600.00
Misc Sitework and Yard Piping	\$ 90,000.00	LS	1	\$ 90,000.00	\$ -	\$ 90,000.00
TOTAL	\$ 4,514,450.00			\$ 4,950,000.00	\$ -	\$ 4,950,000.00

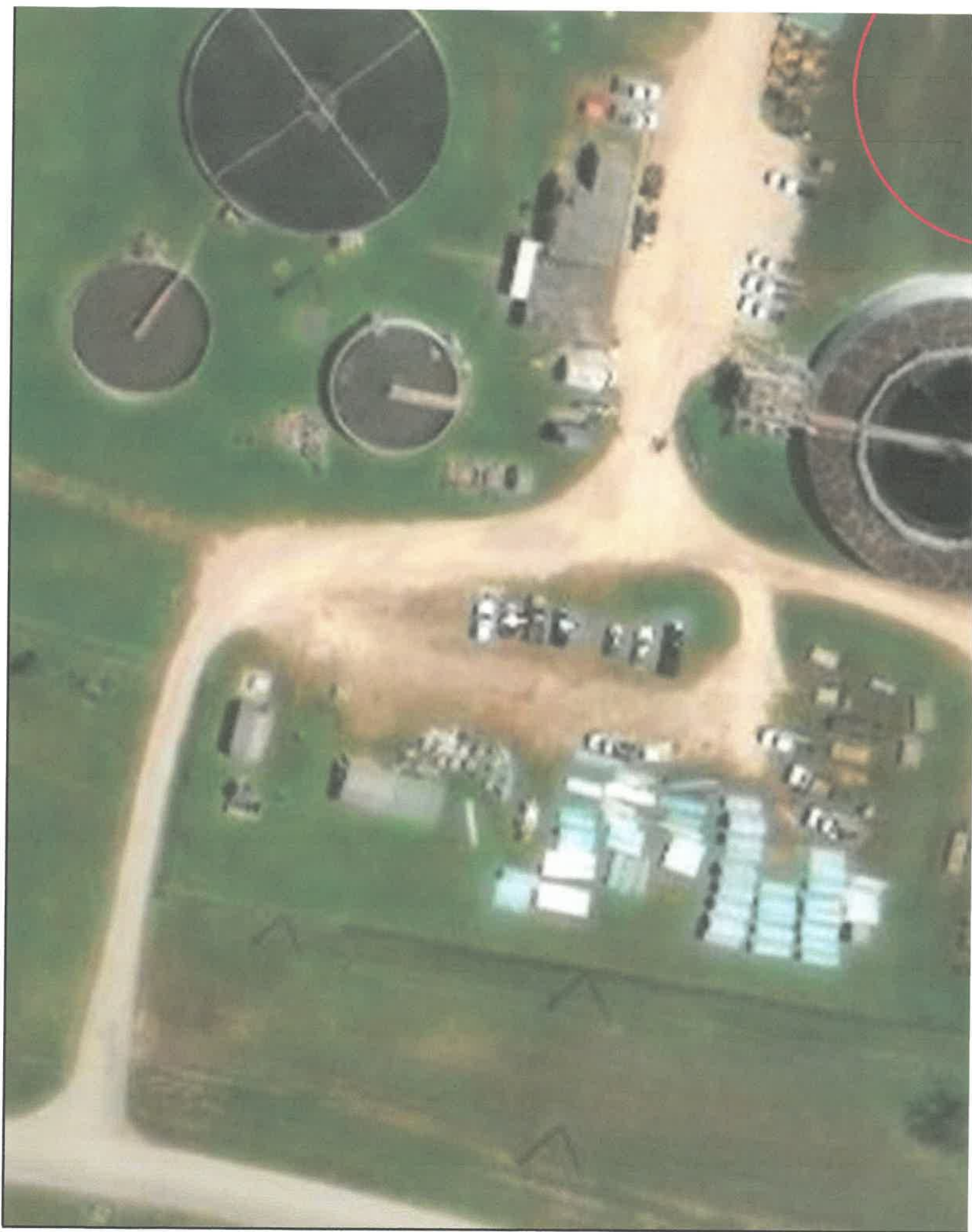
1. Identify and explain the annual projected operation and maintenance costs associated with the proposed activities.

It is anticipated that the current operational costs for electricity and labor for operation and maintenance of the plant will consistent with the City's current expenditures for these activities.

2. Identify and explain any special engineering activities.

Seal

Date:	
Phone Number:	
Signature of Registered Engineer/Architect Responsible For Budget Justification:	



RESOLUTION 2020-2662

A RESOLUTION OF THE CITY COUNCIL OF FREEPORT, TEXAS, AUTHORIZING THE SUBMISSION OF A COMMUNITY DEVELOPMENT BLOCK GRANT-MITIGATION (CDBG-MIT) HARVEY HUD MID APPLICATION TO THE TEXAS GENERAL LAND OFFICE AND AUTHORIZING THE MAYOR AND CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICERS AND AUTHORIZED REPRESENTATIVES IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE CDBG-MIT PROGRAM.

WHEREAS, the City of Freeport desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, certain conditions exist related to disastrous events, which represent a threat to the public health, safety and welfare; and

WHEREAS, it is necessary and in the best interests of to apply for funding under the CDBG-MIT Program;

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

1. That a CDBG-MIT application is hereby authorized to be filed with the Texas General Land Office for funding consideration under the Community Development Block Grant-Mitigation.
2. That the application be for up to \$6,000,000 of grant funds to provide citywide sewage treatment plant improvements.
3. That the Mayor and City Manager are designated as the Chief Executive Officers and Authorized Representatives to act in all matters in connection with this application and participation in the CDBG-MIT Program.
4. That the Mayor and City Manager are designated to oversee all grant activities so as to ensure there are no Conflicts of Interest.
5. That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.
6. That contributing funds in the amount of up to \$60,000.00 in cash are committed by the City of Freeport toward application activities.

Passed and approved this _____ day of _____, 2020.

Brooks Bass, Mayor

Attest:

Betty Wells, City Secretary



City Council Agenda Item # 10

Title: Consider a Resolution Amending the Investment Policy to add U.S. Bank as an Approved Financial Institution.

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

Staff recommends approval of the Resolution.

Item Summary:

Staff proposes amending Exhibit "C" of the City's Investment Policy to add U.S. Bank, N.A. as a Financial Institution under the list of Approved Broker/Dealers, Financial Institutions and Investment Pools. Adding U.S. Bank, N.A. will enable the City to consider enrolling in a Federally Insured Cash Account program as recommended by the City's Financial Advisors.

Background Information:

The purpose of City's Investment Policy is to provide direction for investing the funds of the City of Freeport and to comply with Chapter 2256 of the Texas Government Code ("Public Funds Investment Act"), which requires each entity to adopt a written investment policy regarding the investment of its funds and any funds under its control. The investment policy addresses the methods, procedures and practices that must be exercised to ensure effective and judicious fiscal management of the City's funds.

Financial Impact: N/A

Supporting Documentation:

Resolution

RESOLUTION NUMBER 2020-2656

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, AMENDING THE INVESTMENT POLICY TO ADD U.S. BANK AS AN APPROVED FINANCIAL INSTITUTION; PROVIDING FOR INCORPORATION OF PREAMBLE AND AN EFFECTIVE DATE.

WHEREAS, Chapter 2256 of the Texas Government Code, commonly known as the "Public Funds Investment Act," requires the City to adopt an Investment Policy and Qualified Broker/Deal List by rule, order, ordinance or resolution; and

WHEREAS, the City Council must approve any amendments to such Investment Policy; and

WHEREAS, the proposed amendment to the Investment Policy, a copy of which is attached hereto as Exhibit "A," complies with the Public Funds Investment Act, as amended, and authorizes the investment of City funds in safe and prudent investments; and

WHEREAS, the City Council hereby finds that the proposed Amended Investment Policy should be approved.

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

Section 1. The facts and statements contained in the preamble are hereby found to be true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Exhibit C, Approved Broker/Dealers, Financial Institutions and Investment Pools, of the City of Freeport's Investment Policy is hereby amended as attached hereto as "Exhibit A".

Section 3. This Resolution shall become effective immediately upon its passage.

DULY PASSED, APPROVED AND ADOPTED on this the 21st day of September 2020.

Brooks Bass, Mayor
City of Freeport, Texas

ATTEST:

Betty Wells, City Secretary
City of Freeport, Texas

APPROVED AS TO FORM AND CONTENT:

Christopher Duncan, City Attorney
City of Freeport, Texas

EXHIBIT C

Approved Broker/Dealers, Financial Institutions and Investment Pools

Broker/Dealers

Financial Institutions

Texas Gulf Bank, N.A. (Primary Depository)

U.S. Bank, N.A.

Investment Pools

TexPool



City Council Agenda Item # 11

Title: Consideration of a Resolution Authorizing submission of FICA Application and Designating Signatories.

Date: October 5, 2020

From: Stephanie Russell, Assistant City Manager/Finance Director

Staff Recommendation:

Staff recommends approval of the resolution.

Item Summary:

The proposed resolution authorizes the submission of a FICA (“Federally Insured Cash Account”) Application and designates the City Manager and Assistant City Manager/Finance Director as signatories on the account. The designated signatories, acting singly, are authorized to give instructions to withdraw funds from the FICA Account on behalf of the City.

The FICA program is an efficient cash management solution that allows a client to deposit large sums of cash into a pool of federally insured certificates of deposits (“CD”). This program expedites an otherwise unmanageable process of allocating funds into several individual CDs.

Background Information:

The FICA is a treasury management program that extends the FDIC insurance coverage for CD’s and bank deposits. FDIC insurance is limited to \$250,000 per deposit; however, by spreading deposits across a network of more than 800 local banks, participants in the FICA program are able to qualify for FDIC insurance on deposits of up to \$100,000,000.

It meets all of the requirements of State statutes including the Texas Public Funds Investment Act (TX CODE 2256) and the “Collateral Act” (TX CODE 2257). The other benefits of this program are:

1. Safety – all funds are 100% FDIC insured 100% of the time.
2. Liquidity – “NEXT DAY”, redemptions are processed within 24 hours with no restrictions (no maturity or penalty for early withdrawal)
3. Yield – current yield on our FICA program is 0.40%
4. Access – all transaction and reporting functions can be managed by participants using the FICA online portal

Special Considerations:

N/A

Financial Impact:

The table below compares investment returns of a few commonly used municipal financial products including FICA:

Rates (as of)	Federally Insured Cash Account†† (FICA)	LGIP TexPool	T-Bills 12-Month	T-Bills 6-Month	T-Bills 3-Month
May-28	0.40%	0.23%	0.185%	0.183%	0.155%

Board or 3rd Party recommendation: This program has been recommended by the City's Financial Advisors, Masterson Advisors LLC.

Supporting Documentation:
Resolution
FICA Account Application

RESOLUTION NO. 2020-2657

A RESOLUTION OF THE CITY COUNCIL OF FREEPORT, TEXAS, AUTHORIZING THE SUBMISSION OF A FEDERALLY INSURED CASH ACCOUNT APPLICATION AND DESIGNATING SIGNATORIES.

WHEREAS, the City seeks to invest in a Federally Insured Cash Account ("FICA") program which allows the ability to protect the City's funds by placing them in deposit accounts at banks, savings institutions and credit unions in a manner that seeks to maintain full insurance of the funds by the Federal Deposit Insurance Corporation ("FDIC") or National Credit Union Administration ("NCUA"), whichever is applicable; and

WHEREAS, the application requires a designation of persons with legal capacity to sign on behalf of the City; and

NOW THEREFORE, IT IS HEREBY RESOLVED:

1. The City of Freeport approves the actions necessary to submit FICA Account Application on the City's behalf.
2. The following persons are hereby appointed to act as authorized individuals of the City, sign on behalf of the City, and give instructions to withdraw funds from the FICA Account on behalf of the City:

Timothy Kelty, City Manager
Stephanie Russell, Assistant City Manager/Finance Director

3. The City Secretary is authorized to certify such application and duly appointed individuals.

PASSED AND APPROVED this 21st day of September 2020.

ATTEST:

APPROVED:

Betty Wells, City Secretary

Brooks Bass, Mayor

APPROVED TO FORM AND CONTENT:

Christopher Duncan, City Attorney



MASTERSON
ADVISORS LLC

FICA® | For Advisors

**Application
Terms & Conditions**

FICA® Account Opening Instructions

Prospective account owners must complete all of the documents contained in this package to establish a Federally Insured Cash Account (FICA®) and return them to StoneCastle Cash Management, LLC (SCCM). The Account Owner is the person or entity in whose name the account will be held. The Account Owner must certify that they have the legal authority to execute the Account Opening Documents.

You must supply documentation to substantiate the existence of your organization (i.e, Articles of Incorporation/Formation /Organization, Trust Agreements, Partnership Agreement or other official documents). Please call the SCCM Client Services Team at (866) 343-5516 for information on what forms may be required.

Account Opening Documents include the following:

- 1) The completed FICA® Account Application**
- 2) FICA® Insured Depository Exclusion Disclosure Form (attached)**
- 3) FICA® Terms & Conditions**

To have documents reviewed before the account is established, you may scan and e-mail the documents as a PDF file to clientservices@stonecastle.com. SCCM reserves the right not to open the account for any prospective client. For additional information call the StoneCastle Client Services Team at (866) 343-5516.

CLIENT PRIVACY NOTICE

Your privacy is of critical importance to us. This Privacy Notice sets forth our policies with respect to nonpublic personal information of account owners, prospective account owners and former account owners. These policies may be changed at any time, provided a notice of such change is given to you. You provide us with personal information such as your address, social security number, assets and/or income information, (i) in these account opening documents and related documents, (ii) in correspondence and conversations with StoneCastle's and its service provider's representatives and (iii) through transactions in the FICA Program. We also may collect personal information about you from third party sources for regulatory or compliance purposes. We do not disclose any of this personal information about our account owners, prospective account owners or former account owners to anyone other than to our affiliates. Notwithstanding the foregoing, we may disclose such personal information to our attorneys, auditors, brokers, regulators and certain service providers to the extent permitted by law and, in such case, only as necessary to facilitate the acceptance and management of your FICA Account. Thus, it may be necessary, under anti-money laundering and similar laws, to disclose information about account owners in order to open an account for them. We will also release information about you if you direct us to do so, if compelled to do so by law, or in connection with any government or self-regulatory organization request or investigation. We seek to carefully safeguard your private information and, to that end, restrict access to nonpublic personal information about you to those employees and other persons who need to know the information to enable StoneCastle to provide services to you. We maintain physical, electronic and procedural safeguards to protect your nonpublic personal information.

PATRIOT ACT

In compliance with the USA PATRIOT Act, all Financial Institutions are required to obtain the following information for all registered owners and all authorized individuals: **Corporate Name, Phone Number, Tax ID Number and Permanent Street Address. Corporate, Trust and Other Entity accounts require additional documentation.**

This information will be used to verify your true identity. We will return your application if any of this information is missing and we may request additional information from you for verification purposes.

FICA® Account Application

Account Owner Information			
Name of Entity:		Tax ID:	
Account Name (if different):			
Permanent Address (no P.O. boxes):			
Mailing Address (if different):			
City:		State:	Zip Code:
Phone:		E-Mail:	
S- Corporation: <input type="checkbox"/>	C-Corporation: <input type="checkbox"/>	Partnership: <input type="checkbox"/>	Foundation/Endowment: <input type="checkbox"/>
Public Funds: <input type="checkbox"/>	Trust: <input type="checkbox"/>	LLC: <input type="checkbox"/>	
Check here if you are a government entity or affiliated with a government entity: <input type="checkbox"/>			
Other:			

Your Bank Information For Wire Instructions (Where Withdrawals Will Be Sent)		
Bank Name:	Bank ABA:	
Name of Account:	Account Number:	
Name of Account (Use extra space if needed):		
Bank Address:		
City:	State:	Zip Code:
Name of Banking Office or Account Representative (When Applicable):		
Special Instructions (FBO/FFC):		

Online Access Authorization		
<i>I Authorize StoneCastle to provide the following individuals with in the organization access to the FICA Account. (Check Box If View Only)</i>		
Name:	Email:	View Only: <input type="checkbox"/>
Name:	Email:	View Only: <input type="checkbox"/>
Name:	Email:	View Only: <input type="checkbox"/>
Name:	Email:	View Only: <input type="checkbox"/>

Dealer/Registered Investment Advisor (If Applicable)	
Firm Name:	
Advisor Name:	Advisor Email:
Check to Authorize View-Only Access: <input type="checkbox"/>	

Account Owner Representation As Not A U.S. Employee Retirement Income Security Act Plan Asset
<p>The Account Owner and the person making the decision on behalf of such Account Owner to make a deposit in a FICA Account (if any) represents, warrants and certifies, by checking the box below, that on each date on which the Account Owner has a deposit in a FICA Account, the Account Owner is not subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the “Code”), or in the case of any governmental employee benefit plan, not subject to any law, statute, regulation, provision or other governing provision which is similar to Section 406 of ERISA or Section 4975 of the Code.</p>
Check Here: <input type="checkbox"/>

Account Owner Confirmation/Certification

By signing this form, the Account Owner certifies that:

- 1) Account Owner has the full authority and legal capacity to open and make deposits in a FICA Account and determined that FICA is an appropriate investment.
- 2) It has received a copy of the FICA Terms and Conditions and agrees to be bound by such terms and conditions as set forth on the date of this application or as amended thereafter. If introduced by a Third Party, the Account Owner further acknowledges that it has received a current copy of SCCM's Form ADV Part 2A of StoneCastle and has reviewed the Third Party Disclosure Statement.
- 3) It understands that StoneCastle, the StoneCastle Custodian and their service providers are not liable for any action resulting from instructions, which bear or appear to bear the signature of an authorized signor that reasonably appears to be genuine.
- 4) It agrees to be bound by the FICA website Conditions of Use and authorizes StoneCastle to provide online access in accordance with your instructions.
- 5) In the event of any conflict between the Resolutions referred to below under "Certification and Resolutions" and any other resolutions provided to StoneCastle, the Account Owner agrees that the Resolutions referred to below shall control.
- 6) Under penalty of perjury, all information provided in this Application is complete and accurate and will notify SCCM immediately of any material change occurring prior to the acceptance of its account.
- 7) I understand that my account assets may be transferred to my state of residence if no activity occurs within my account during the inactivity period specified in my state's abandoned property laws.
- 8) **Under penalty of perjury, I certify that (1) the Social Security or taxpayer identification number shown on this form is my correct taxpayer identification number, and (2) I am not subject to backup withholding as a result of either being exempt from backup withholding, not being notified by the IRS of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding, (3) I am a U.S. person (including a U.S. resident alien), and (4) I am exempt from FATCA reporting. The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.**

Account Owner(s) Signature (Persons With Legal Capacity To Sign On Behalf Of The Entity Named In The Account Owner Section)

Print Name:	Print Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

Send Completed Application To:

Email: clientservices@stonecastle.com
OR
Fax: (866) 779-8125

Note: To have documents reviewed before the account is established, you may scan and e-mail the documents as a PDF file to clientservices@stonecastle.com. SCCM reserves the right not to open the account for any prospective client. For additional information call the StoneCastle Client Services Team at (866) 343-5516.

If Applicable, Attach A Corporate Resolution And Incumbency Certificate Or Complete The Certification And Resolutions On Page 6; Also Complete Page 7.

CERTIFICATION AND RESOLUTIONS (COMPLETE THIS SECTION IF APPLICABLE) SKIP ONLY if this Application is accompanied by a separate Corporate Resolution and Incumbency Certificate.

I, , Corporate Secretary (or other Corporate Officer) of the above named Account Owner, do hereby certify that:

- 1) That (a) the Account Owner is authorized to open a FICA Account; (b) the Persons set forth below in paragraph 2 are authorized, to execute this Application and all other documents necessary to open a FICA Account and to give all instructions and directions to StoneCastle Cash Management (“SCCM”) in connection with the Account Owner’s FICA Account, including instructions to withdraw funds, change the Account Owner’s wire instructions and to otherwise transact on all FICA Accounts in any manner permitted by SCCM, and to designate persons to perform transactions with respect to each FICA Account; (c) Persons set forth below in paragraph 3 are authorized to give instructions to withdraw funds from the FICA Account; (d) SCCM may rely on this authorization until each of SCCM receives written notice revoking the authorization and until SCCM has reasonable time to act on such notice; and (e) in the event of any conflict between this certification and any other resolutions adopted by SCCM or provided to SCCM, the account holder agrees that these resolutions shall control.
- 2) The persons listed below have been duly appointed and qualified as, and currently are, authorized individuals of the Account Owner. I also certify that each person listed below holds the position listed opposite his or her name, and that the signatures below are the genuine original signatures of the persons indicated.

Name:	Title:	Signature:
Name:	Title:	Signature:
Name:	Title:	Signature:

- 3) The persons listed have authority, acting singly, to give instructions to withdraw funds from the FICA Account on behalf of the Account Owner and that the signatures below are the genuine original signatures of the persons indicated.

Name:	Signature:	
Name:	Signature:	
Name:	Signature:	
Signature of Secretary (Or Other Corporate Officer):		
(NOTE: This person cannot be one of the authorized signers)		
Name:	Title:	Date:

FICA[®] Impact (Optional)

Your deposits will be allocated only to banks that are community banks as defined by the Federal Reserve that have a most current Community Reinvestment Act examination rating of 1 or 2 (Outstanding or Satisfactory). The ratings demonstrate the bank's commitment to economic development initiatives such as job creation, expanding community programs, and improving financial access in local communities. These banks are a subset of the overall FICA[®] bank network.

By selecting this option you are opting out of all banks that do not meet the impact criteria noted above and the rate will be .10% lower than the FICA[®] rate. You may activate/deactivate this this feature at any time for any reason by contacting clientservices@stonecastle.com or calling 866-343-5516.

Check here to select this option and sign below.

FICA[®] Insured Depository Exclusion Disclosure

The undersigned requests that the Program Manager, StoneCastle Cash Management, LLC, exclude the following Insured Depositories from the Depositor's FICA Account. It is understood that if the depositor has any deposits at any of the Insured Depositories listed that they are not part of their FICA Account and are not covered under the FICA Terms and Conditions.

I do not wish to exclude any Insured Depositories at this time. Check here and sign below.

Instructions:

- 1) If you have any questions, please call the FICA Client Services Team at 1(866) 343-5516.
- 2) Complete all the information requested below, including the FDIC Certificate or NCUA Charter Number where appropriate.
- 3) You can obtain the FDIC Cert Number by visiting www2.fdic.gov/idasp/. You can obtain the NCUA Charter Number by visiting <http://mapping.ncua.gov/ResearchCreditUnion.aspx>.
- 4) If this list is longer, please include an Excel spreadsheet with the name of the financial institution, the FDIC Cert # / NCUA Charter #, City and State.
- 5) If you wish to exclude all credit unions from your FICA Account, please check the box below. By excluding all credit unions, the available capacity and rate on your FICA Account may be impacted
 I wish to exclude all credit unions from my FICA Account at this time.
- 6) Please sign and return.
- 7) If there is a change in this information, please complete a new form and e-mail a PDF file to clientservices@stonecastle.com.

Name of Insured Depository	FDIC Cert/NCUA Charter	City	State
1:			
2:			
3:			
4:			
5:			
6:			
7:			
8:			
FICA Account Owner:		Contact Name:	
Title:		Phone:	
Signature:		Date:	

Terms & Conditions

FEDERALLY INSURED CASH ACCOUNT (FICA®)

TERMS AND CONDITIONS

Client Name:

Date:

Introduction

The Federally Insured Cash Account program (“FICA® Program”) offered by StoneCastle Cash Management, LLC (“StoneCastle”) allows customers the ability to protect their money by placing it in deposit accounts at banks, savings institutions and credit unions (collectively, “Insured Depositories”) in a manner that seeks to maintain full insurance of the funds by the Federal Deposit Insurance Corporation (“FDIC”) or National Credit Union Administration (“NCUA”), whichever is applicable. Funds will be deposited within StoneCastle’s network of Insured Depositories (“Deposit Network”).

StoneCastle will direct the StoneCastle Custodian (as defined in Section 2 below) to deposit the funds that you deposit into your FICA Account with StoneCastle (“Deposits”), along with funds from other participants in the FICA Program (each, a “FICA Depositor”) into one or more federally insured accounts (each, a “Depository Account”) at multiple Insured Depositories. The Depository Account(s) at each Insured Depository will be in the name of one or more sub-custodians (each, a “Sub-Custodian”) acting as custodian for the persons or entities listed on its records.

The money from your FICA Account is deposited at Insured Depositories in a manner currently designed to maximize FDIC and/or NCUA insurance coverage, which is fully guaranteed by the full faith and credit of the U.S. government. Both the FDIC Standard Maximum Deposit Insurance Amount and the NCUA Share Insurance Fund’s maximum insurance amount (“SMDIA/SIFMIA”) are currently \$250,000 per depositor, per insured depository.

The FICA Program deposit insurance limit can be obtained by calling (866) 343-5516.

These Terms and Conditions for the FICA Program are supplemental to those contained in your existing account agreements you were furnished in connection with opening your account with your investment advisor (“Advisor”), if applicable.

YOU UNDERSTAND THAT BY ENROLLING IN THE FICA PROGRAM, YOU ARE INSTRUCTING STONECASTLE TO PLACE FUNDS RECEIVED FROM YOU INTO THE FICA PROGRAM. YOU ACKNOWLEDGE THAT YOU HAVE

RECEIVED AND CAREFULLY READ THESE TERMS AND CONDITIONS BEFORE ENROLLING IN THE FICA PROGRAM.

By opening a FICA Account, you agree to the Terms and Conditions set forth herein.

1) Deposit and Account Eligibility

The FICA Program does not require a minimum initial deposit to open a FICA Account, and there is no minimum amount required for subsequent deposits. In order to obtain FDIC and/or NCUA insurance in the FICA Program, you must provide proper and correct tax identification information to StoneCastle.

The FICA Program is open to Benefit Plans (as defined below) with the prior approval of StoneCastle and the StoneCastle Custodian, each at its discretion.

The term “Benefit Plans” is defined as (a) any “employee benefit plan” (as defined in Section 3(3) of Title I of ERISA) that is subject to the fiduciary responsibilities provisions of ERISA, (b) a plan described in Section 4975(e)(1) of the Internal Revenue Code of 1986 (the “Code”) that is subject to Section 4975 of the Code, (c) any entity whose underlying assets include “plan assets” (within the meaning of the Plan Asset Regulations as in effect immediately after the effective date of Section 3(42) of ERISA as added by the Pension Protection Act of 2006) by reason of any such plan’s investment in the entity (or as such term is otherwise defined in the regulations promulgated by the U.S. Department of Labor under Section 3(42) of ERISA) or (d) any governmental plan which is subject to any statute, regulation, rule, policy or procedure similar to Section 406 of ERISA or Section 4975 of the Code.

2) Information about StoneCastle, the StoneCastle Custodian and the Insured Depositories

StoneCastle is registered as an investment adviser with the Securities and Exchange Commission. StoneCastle is not, itself, a bank or broker-dealer.

U.S. Bank is a national banking association. U.S. Bank is not affiliated with StoneCastle. U.S. Bank will be acting as the account bank for StoneCastle for funds to be deposited within the Deposit Network. In this capacity, U.S. Bank is referred to herein

as the “StoneCastle Custodian.” In such capacity, the StoneCastle Custodian does not act as your custodian. StoneCastle has the right, in its sole discretion, to appoint a different StoneCastle Custodian at any time with prior notice.

You agree that StoneCastle may direct funds in your FICA Account into Insured Depositories, including any Insured Depositories affiliated with StoneCastle, the StoneCastle Custodian or any Sub-Custodian, subject to all applicable laws.

Each Insured Depository is a separate FDIC- or NCUA-insured depository institution. You can obtain publicly available financial information concerning any of the FDIC insured banks at www.fdic.gov or by contacting the FDIC Division of Depositor and Consumer Protection by letter at 550 17th Street, N.W., Washington, D.C. 20429 or by phone at 877-275-3342. You can obtain publicly available financial information concerning any of the NCUA insured credit unions at www.ncua.gov, or by contacting the National Credit Union Administration by mail at 1775 Duke Street, Alexandria, VA 22314 or by phone at (703) 518-6300. Neither StoneCastle nor the StoneCastle Custodian guarantees the financial condition of any Insured Depository, or the accuracy of any publicly available information concerning an Insured Depository.

The Depository Account(s) at each Insured Depository will be in the name of one or more Sub-Custodians. Each Sub-Custodian will be either a “Bank” as defined in Section 2(a)(5) of the Investment Company Act of 1940 or a wholly-owned subsidiary of a Bank. U.S. Bank and its affiliates may serve as a Sub-Custodian.

3) Appointment of StoneCastle as your Agent

By opening a FICA Account, you are appointing StoneCastle as your Manager and authorized agent to direct the StoneCastle Custodian pursuant to these Terms and Conditions, which StoneCastle may modify by notice to you in accordance with Section 21 “Changes to Terms and Conditions.”

In its capacity as your Manager and authorized agent, StoneCastle will be authorized to: (i) establish an omnibus StoneCastle account at the StoneCastle Custodian for the purpose of receiving all incoming funds of FICA Depositors, and from which all customer withdrawals are sent (“StoneCastle Custody Account”); (ii) keep records as to the amount of your money on deposit in each Insured Depository; (iii) take such action and sign all documentation which may be required for collection of any portion of the principal or interest on your FICA Account including any instrument required to affect any disposition of deposits; (iv) provide periodic electronic statements of account activity, account balances, tax reporting information, if applicable, and any other legally required information to receive payments for deposits and dispose of such payments as instructed; and (v) provide the foregoing services to you without charging any additional fees to you apart from a management fee (“FICA Fee”) that will be deducted from your FICA Account.

The StoneCastle Custodian has no responsibility or liability with respect to the actions or omissions of StoneCastle; it has no duty to oversee, monitor or supervise StoneCastle, and has no duty to investigate, confirm, verify or otherwise inquire into any instruction it receives from StoneCastle (or concerning the authority or accuracy thereof) with respect to your funds or your FICA Account. The StoneCastle Custodian will not be privy to instructions you may send to StoneCastle from time to time.

4) Transfers and Interest

Interest rates paid on deposits in Depository Accounts are determined by the Insured Depositories in their discretion based on prevailing economic and business conditions and such rates may change at any time without notice. The interest rate paid by any Insured Depository may fluctuate daily based on market conditions. The net interest earned on your deposits will be set forth in your account statement.

If your funds are received and deposited in the StoneCastle Custody Account by 3:00 p.m. (Eastern Time), your FICA Account will receive same day credit. In your monthly account statements, StoneCastle may estimate the aggregate amount of accrued but unpaid interest less any FICA Fee with respect to such interest, which amount cannot be withdrawn from your FICA Account until it is credited to the StoneCastle Custody Account. Any estimate of net accrued interest on your monthly account statement is for informational purposes only.

Each Insured Depository may profit from the difference between the interest it pays on the StoneCastle Custody Accounts and the income it earns on loans, investments, and other business operations.

Each Insured Depository may pay the StoneCastle Custodian and/or StoneCastle fees for its services related to your Deposits equal to a percentage of the average daily deposit balance in the Deposit Accounts at the Insured Depository. StoneCastle may share such fees with StoneCastle Custodian. The amount of any fees an Insured Depository pays could directly affect the interest rate paid by the Insured Depository on your Deposit. The fees paid to StoneCastle Custodian and/or StoneCastle by each Insured Depository may vary. The FICA Fee will be deducted from your FICA Account on the day interest from a Depository Account is credited to your FICA Account. See Section 8 “Account Fees and Charges.”

The rate you earn on your deposits at any Insured Depository through the FICA Program may be higher or lower than the rates available to depositors making non-FICA Program deposits with an Insured Depository, rates available through other types of accounts at U.S. Bank, or rates offered by other depository institutions in comparable accounts. Any fees imposed under the FICA Program could reduce earnings on your Deposits. You should compare the terms, interest rates, charges and other features of the FICA Program with other accounts and investment

alternatives. There is no minimum period that your money must remain in the FICA Program.

Interest will be accrued daily and posted monthly to the Depository Account. Interest will accrue on deposits from the Business Day (as defined below) your funds are received in investible form by the StoneCastle Custodian through the date you request those funds to be withdrawn. The “daily balance method” is used to calculate interest. This method applies a daily periodic interest rate to the principal in the account for the period. The daily rate is 1/365 of the applicable annual rate. Your withdrawal request should generally be fulfilled, with the withdrawal proceeds wired to an account that you designate, on the Business Day following the day your withdrawal request is processed. See Section 7 “Withdrawals.”

Funds must be posted to the StoneCastle Custody Account by 3:00 p.m. (Eastern Time) on any Business Day in order for the StoneCastle Custodian to initiate a transfer of your funds to the Insured Depositories on the same day. If funds are received at the StoneCastle Custody Account after 3:00 p.m. (Eastern Time) on any Business Day or funds are received on a non-Business Day, then the StoneCastle Custodian will generally initiate a transfer of your funds on the next Business Day, pursuant to instructions received from StoneCastle.

The transfers may not occur within the timeframes described above, and neither StoneCastle, the StoneCastle Custodian nor any Sub-Custodian will be responsible for delays in the processing of funds transfers to or from the StoneCastle Custody Account or to or from Depository Accounts, or between Insured Depositories.

There is no minimum initial deposit required to open a FICA Account (as provided in Section 5 below), and there is no minimum balance required to maintain your participation in the FICA Program. There also is no minimum period that your money must remain on deposit in the FICA Program. You may withdraw deposits from your FICA Account on any Business Day, and there is no limitation on the dollar amount of your withdrawals from, or deposits to, your FICA Account. There is no penalty or fees for withdrawal of your entire balance, or any part thereof, at any time.

5) Deposits

There is no minimum initial deposit required to open a FICA Account, and there is no minimum amount required for subsequent deposits. Funds must be posted to the StoneCastle Custody Account by 3:00 p.m. (Eastern Time) on a Business Day for transfers of such amounts to be initiated to the Insured Depositories on such date. See Section 4 “Transfers and Interest” above. You should call StoneCastle at (866) 343-5516, consult our website at www.FICAaccount.com or consult your Advisor

for wiring instructions for your FICA Account. All deposits must be in U.S. dollars.

6) Insured Depositories

Your monthly account statement will indicate the Insured Depositories in which your FICA Account funds have been deposited. Each Insured Depository is a separate federally insured depository institution. If you do not wish to have your FICA Account funds deposited into any specific Insured Depository, you must identify those institutions to StoneCastle using the Insured Depository Exclusion Form provided to you with the FICA Account opening documents. StoneCastle in turn will be responsible for giving instruction to the StoneCastle Custodian. StoneCastle will not direct any of your FICA Account funds into any such Insured Depository that you have elected to exclude unless you notify StoneCastle in writing that such exclusion request is no longer in effect. The StoneCastle Custodian will have no responsibility or liability with respect to the selection, investigation or evaluation of any Insured Depository, and shall have no liability for the actions or omissions of StoneCastle or any Insured Depository. The StoneCastle Custodian shall not be under any duty to investigate or reconcile (whether against your instruction to StoneCastle or otherwise) any instruction it receives from StoneCastle.

Amounts in your FICA Account along with funds from other FICA Depositors will be deposited at the direction of StoneCastle into one or more Depository Accounts at multiple Insured Depositories. The Depository Account(s) at each Insured Depository will be named as follows (or in a substantially similar manner): “U.S. Bank National Association [or name of Sub-Custodian] as custodian for persons or entities who are listed on its records, each acting for itself and on behalf of others.” Each Sub-Custodian will act as sub-custodian for the benefit of StoneCastle with respect to such funds held within the Deposit Network. In the event of the failure of an Insured Depository, where the deposits are not assumed by another Insured Depository, StoneCastle will promptly submit an insurance claim to the FDIC or NCUA on behalf of the FICA Depositors who have amounts on deposit through one or more Depository Accounts at the Insured Depository. During the time your insurance claim is being processed by the FDIC or NCUA, you will not have access to the funds that you had on deposit with such Insured Depository.

StoneCastle selects the Insured Depositories for the FICA Program. StoneCastle may, in its discretion, include additional Insured Depositories in the FICA Program, remove Insured Depositories from the FICA Program, allocate balances between Insured Depositories and determine the amounts and order of deposits into Insured Depositories, in each case in its sole discretion. Deposits placed for your FICA Account with a federally insured credit union will not result in your becoming a member of the credit union.

A Depository Account under the FICA Program is not covered by SIPC. SIPC is a non-profit member corporation funded primarily by member securities brokerage firms registered with the SEC. SIPC provides protection against risks to clients of member brokerage firms in the event of the failure of that member firm, but SIPC does not guarantee bank deposits. For more information about SIPC, see www.sipc.org.

In the event that an Insured Depository rejects additional deposits, or decides to return funds to the applicable Sub-Custodian or the StoneCastle Custodian (or closes the Depository Accounts at the Insured Depository entirely), or StoneCastle decides to withdraw funds in whole or in part from an Insured Depository, StoneCastle will direct the transfer such funds to one or more other Insured Depositories. See Section 4 "Transfers and Interest" above.

IN THE EVENT OF A FINANCIAL FAILURE OF ANY INSURED DEPOSITORY, NEITHER STONECASTLE NOR THE STONECASTLE CUSTODIAN SHALL HAVE ANY LIABILITY FOR ANY LOSSES THAT MAY RESULT. THE STONECASTLE CUSTODIAN IS NOT UNDER ANY DUTY OR OBLIGATION TO SUBMIT OR PURSUE CLAIMS ON YOUR BEHALF AGAINST, OR TO UNDERTAKE LEGAL ACTION AGAINST, ANY INSURED DEPOSITORY (WHETHER IN THE EVENT OF ITS FINANCIAL FAILURE, INSOLVENCY, RECEIVERSHIP, CONSERVATORSHIP, OR OTHERWISE).

7) Withdrawals

Withdrawals from your FICA Account may be made on any Business Day, in any amount, not to exceed your total account balance in your FICA Account. Pursuant to federal regulations, Insured Depositories may exercise the right to require seven (7) days' notice before permitting a transfer of funds out of a Depository Account. You may request a withdrawal from your FICA Account by accessing our website at www.FICAaccount.com by following the directions under the section entitled "Account Withdrawals," or, where appropriate, by contacting your Advisor. Withdrawals from the FICA Program cannot be made directly by you from any of the Insured Depositories. If you satisfactorily complete your withdrawal request by 3:00 p.m. (Eastern Time) on any Business Day, the withdrawal request should, under normal conditions, be initiated and processed via transfer at the Insured Depositories on such day. Your withdrawal request will usually be fulfilled, with the withdrawal proceeds returned to the account designated by you, by the next Business Day. Please reference Section 11 for additional detail on the FICA Program's Days of Operation.

If your withdrawal request is completed after 3:00 p.m. (Eastern Time) on any Business Day, then it will be initiated and processed by 3:00 p.m. (Eastern Time) on the following Business Day and then your withdrawal request will be fulfilled on the day subsequent to the following Business Day.

If you decide to close your FICA Account or request a complete withdrawal, you may have to wait a period of time for all of the interest to be posted to your FICA Account since interest can only be credited to your FICA Account once interest is credited by the Insured Depositories to the Depository Accounts. Because the Insured Depositories do not generally post interest to a Depository Account on a same day basis, there may be a delay between the date of your withdrawal request and the date on which you receive all of the interest that accrued in the Depository Accounts to the effective date of your withdrawal.

StoneCastle reserves the right to take reasonable measures to verify a withdrawal request, and StoneCastle will not be held liable for any delays caused by such verification measures. In the case of partial withdrawals from your FICA Account, StoneCastle will determine from which Insured Depositories your withdrawal request will be processed.

StoneCastle and the StoneCastle Custodian will not be held liable for any delay, failure or error by any Insured Depository in making payment on any Depository Account.

8) Account Fees and Charges

The FICA Fee will be determined by StoneCastle and will be deducted from your FICA Account on the date on which interest from an Insured Depository is credited to your FICA Account. The FICA Fee charged may vary between Insured Depositories but will never exceed the gross interest earned by your FICA Account from the Insured Depositories at which the interest is earned. Neither the StoneCastle Custodian nor any Sub-Custodian will charge you a separate fee for their services provided within the FICA Program, and any such fee will be paid separately by StoneCastle.

In addition, with prior notice, StoneCastle may charge you for specific costs incurred in processing certain administrative fees and expenses for unusual transactions including, but not limited to, wire requests, copies of statements and special research services (including, without limitation, to the extent any such fees or expenses may be charged to StoneCastle by the StoneCastle Custodian or any applicable Sub-Custodian).

Such amounts may be deducted by from your FICA Account. StoneCastle reserves the right to charge additional fees with prior notice.

9) For Certain Clients Introduced by Third Parties / Disclosure Statement

Under an agreement with the entity that introduced you to the FICA Program (the "Introducing Agreement") as set forth in your FICA Account application (the "Third Party"), StoneCastle has agreed that the Third Party may introduce prospective clients to participate in the FICA Program. The Third Party is not employed by or affiliated in any way with StoneCastle. If you deposit money in the FICA Program as a result of a Third Party's introduction, StoneCastle may pay the Third Party a fee in an amount

determined by the Third Party and communicated to StoneCastle on a monthly basis (the "Referral Fee"). In such instances, StoneCastle may add the Third Party Fee to the amount that StoneCastle would otherwise charge you for participating in the FICA Program. Each prospective client introduced by the Third Party to StoneCastle and who deposits money in a FICA Account may receive the same or different monthly account yield; however, other persons who deposit money in the FICA Program, whether introduced to StoneCastle by another party or by depositing money directly with StoneCastle, may receive greater or lesser account yields. If applicable, the Third Party will disclose to you the Referral Fee with respect to each month upon request. The foregoing disclosure relates to certain conflicts of interest related to a Third Party's introduction of you to StoneCastle, and are provided to you in accordance with the provisions of Rule 206(4)-3 of the Investment Advisers Act of 1940, as amended. In addition, upon commencing any referral activity, you hereby acknowledge that you have received a current copy of the Form ADV Part 2A of StoneCastle, and reviewed this disclosure statement.

For as long as you have a FICA Account relationship with StoneCastle, StoneCastle may pay the Third Party a Referral Fee. This fee covers any expenses for introduction efforts, as well as, including but not limited to, the expenses of any ongoing, client consultations. In no event will the services include providing cash management services on behalf of StoneCastle in any manner.

10) Account Statements

You will receive a monthly account statement from StoneCastle via our website at www.FICAaccount.com. StoneCastle will send you and/or your Advisor an e-mail when your account statement is available for viewing. You will be required to use your online access ID and password in order for you to view, print or save e-statement account information.

By opening a FICA Account, you consent to electronic delivery of your periodic account statements and any other disclosures relating to your account(s), either by forwarding such statements and disclosures or by providing a notification of availability and links to such statements or disclosures, to the e-mail address provided to StoneCastle. You are responsible for notifying StoneCastle of changes in the e-mail address to be used for such purposes.

All activity with respect to your FICA Account, including your account balance through StoneCastle in one or more Depository Accounts at each Insured Depository, the net interest earned in your FICA Account and transaction history will appear on your account statement. The account statement will also include the aggregate of your opening and closing balances in your FICA Account. You will not receive a separate statement from the Insured Depositories.

You should download and retain all account statements. You must notify StoneCastle immediately of any discrepancies noted on your account statement. You agree that the absence of any

notice to us from you to the contrary within ninety (90) days of the statement date is the same as a written confirmation that you accept the statement, and all positions and transactions shown on it, as is.

11) Days of Operation

The FICA Program is open Monday through Friday, 8:30 a.m. until 5:30 p.m. (Eastern Time) except for New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day (each day the FICA Program is open is referred to herein as a "Business Day"). Deposits to, and transfers or withdrawals from your FICA Account may only be made on days that the StoneCastle Custodian and any related Sub-Custodian and Insured Depository are open for business.

12) FDIC and NCUA Deposit Insurance

The funds in your FICA Account will be deposited into Depository Accounts at the Insured Depositories through StoneCastle along with funds from other FICA Depositors.

StoneCastle as your agent keeps records of how much each FICA Depositor has on deposit in each Insured Depository. Your Deposits, plus interest earned thereon, are held in those Depository Accounts in a manner designed to currently provide you with FDIC and/or NCUA insurance at each Insured Depository. StoneCastle, as your agent, allocates your Deposits among the Depository Accounts to seek to maximize deposit insurance coverage available under the FICA Program. FDIC and NCUA deposit insurance coverage is normally available for your Deposits up to the SMDIA/SIFMIA, which is currently \$250,000 per legal category of account ownership at each participating Insured Depository when aggregated with all other deposits held by you in the same Insured Depository and in the same legal category of account ownership. Thus, the maximum amount of Deposits eligible for deposit insurance coverage would not exceed the SMDIA/SIFMIA per legal category of account ownership multiplied by the number of participating Insured Depositories that you have not excluded from receiving your Deposits under the FICA Program, less any funds that you may hold in an Insured Depository outside of the FICA Program in the same legal category of account ownership. **If you have funds at an Insured Depository outside the FICA Program, your deposit insurance coverage for all of your funds at the Insured Depository may be adversely affected.**

The Insured Depositories holding your money will be listed on your account statement along with the amount of funds that you have on deposit in such Insured Depositories through the FICA Program. Any amount by which the sum of your direct deposits at an Insured Depository outside the FICA Program plus the amounts that you have on deposit in such Insured Depository through the FICA Program exceeds the applicable insurance limits of the FDIC or NCUA, will not have deposit insurance. Therefore, if you do

not wish to have your FICA funds deposited into any Insured Depository, you must identify those institutions to StoneCastle using the Insured Depository Exclusion Form provided to you with the FICA Account opening documents. StoneCastle will not direct any of your FICA Account funds into any such Insured Depository that you have elected to exclude unless you notify StoneCastle in writing that such exclusion request is no longer in effect. There will be a delay between the time you make your exclusion request and the time that such Insured Depository is excluded. If you exclude any Insured Depository, the maximum level of deposit insurance available under the FICA Program may decrease.

Neither StoneCastle, the StoneCastle Custodian nor any Sub-Custodian monitors or takes any responsibility for money you may have at an Insured Depository outside the FICA Program. You are solely responsible for monitoring your deposit insurance coverage at any Insured Depository to ensure that your funds at any Insured Depository do not exceed applicable deposit insurance limits. Therefore, you should review the Insured Depositories holding your money as listed on your account statement. It is your responsibility to check such list of Insured Depositories on a regular basis and notify StoneCastle whenever you have an existing or new deposit relationship with an Insured Depository. While the FICA Program was designed to limit the amounts that are on deposit from a single FICA Depositor in an Insured Depository in the FICA Program, please be aware that it is your responsibility to monitor the total amount of all deposits you have with any one Insured Depository.

In general, the FDIC- and NCUA-recognized categories of account ownership include single ownership accounts; accounts held by an agent, escrow agent, nominee, guardian, custodian, or conservator; annuity contract accounts; certain joint ownership accounts; certain revocable trust accounts; accounts of a corporation, partnership, or unincorporated association; accounts held by a depository institution as the trustee of an irrevocable trust; certain irrevocable trust accounts; certain retirement and other employee benefit plan accounts; and certain accounts held by government depositors.

The FDIC and NCUA impose special requirements for obtaining pass-through deposit insurance coverage for multiple levels of fiduciary relationships. In these situations, in order for deposit insurance coverage to pass through to the true beneficial owners of the funds, it is necessary (i) to expressly indicate, on the records of the insured depository institution that there are multiple levels of fiduciary relationships; (ii) to disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and (iii) to disclose, at each of the level(s), the name(s) and the interest(s) of the person(s) on whose behalf the party at the level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain. If your

Deposits are beneficially owned through multiple levels of fiduciary relationship, you must take steps to comply with these special requirements.

Until your funds are actually received in investible form and processed by the Insured Depository, your funds may be insured at StoneCastle Custodian up to \$250,000 in total and not at the Insured Depository.

If, for any reason, the amount deposited in any Insured Depository exceeds the applicable SMDIA/SIFMIA, the excess funds would not be insured by the FDIC and/or NCUA. Neither StoneCastle nor StoneCastle Custodian, shall have any liability for any insured or uninsured portion of your Deposits in any of the Insured Depositories.

In the event that deposit insurance payments become necessary, payments of principal plus unpaid and accrued interest up to the SMDIA/SIFMIA per legal category of account ownership multiplied by the number of Insured Depositories shall be made to you. However, there is no specific time period during which the FDIC and/or NCUA must make insurance payments available. Furthermore, you may be required to provide certain documentation to the FDIC and/or NCUA before insurance payments are made.

13) Tax Withholding and Reporting

StoneCastle may be required to withhold U.S. federal income tax at the prevailing rate on all interest payable to certain FICA Depositors who fail to provide their correct taxpayer identification number or to make required certifications or who have been notified by the Internal Revenue Service that they are subject to backup withholding. Interest earned on accounts held by entities (individuals or corporations) that are neither citizens nor residents of the United States, except for Canadian residents, generally are not subject to withholding tax. Where required by applicable law, each FICA Depositor will be issued a Form 1099-INT which will set forth the gross interest earned (i.e., interest before fees) by a FICA Depositor from the Insured Depositories. Consult your tax advisor.

14) Transferability; Assignment

The ownership of a FICA Account may not be transferred by you except with the express written consent of StoneCastle or otherwise by operation of law. Any purported transfer shall not be binding on StoneCastle, the StoneCastle Custodian, or the Insured Depositories unless and until sufficient, acceptable documentation has been received by such entities. StoneCastle may assign and transfer its rights and obligations under the FICA Program, including, without limitation, pursuant to these Terms and Conditions, to one or more of its affiliates or subsidiaries or to any person that acquires all or substantially all of the assets of StoneCastle, without prior notice to you and without obtaining your consent.

15) Termination; Closing of Account

StoneCastle may, at its sole discretion, and without any prior notice, terminate your participation in the FICA Program and cause the StoneCastle Custodian to return funds in your FICA Account to your bank/Advisor account of record.

16) Ordinary Care

The duties, responsibilities and standards of care of the StoneCastle Custodian and any Sub-Custodian with respect to the matters described in these Terms and Conditions are governed and determined exclusively by the separate written agreements between StoneCastle and each such party, respectively. The StoneCastle Custodian and each Sub-Custodian have no duties or responsibilities except as expressly set forth in such agreement to which they are a party, and they are each protected by the rights, protections and other terms and conditions contained therein. Any such duties or responsibilities that the StoneCastle Custodian or any Sub-Custodian may have under those agreements are owed only to StoneCastle. Without limiting the foregoing, any liability for any act or omission by StoneCastle, the StoneCastle Custodian, a Sub-Custodian or any Insured Depository or any delay by such party beyond time limits prescribed by law or permitted by these Terms and Conditions is excused if caused by your negligence, interruption of communication facilities, suspension of payments by another financial institution, war, emergency conditions or other circumstances beyond the control of such party, provided such party exercised such diligence as such circumstances would normally require. You agree that any act or omission by StoneCastle, the StoneCastle Custodian, a Sub-Custodian or any Insured Depository in reliance upon or in accordance with the rules and regulations of the Uniform Commercial Code, and NACHA or other clearinghouse rules, or any rule or regulation of any state or federal agency having jurisdiction over such party shall constitute ordinary care

17) Personal Information

You agree that StoneCastle, the StoneCastle Custodian, Insured Depositories, and their respective service providers will share information concerning you and your accounts in connection with providing the services contemplated by these Terms and Conditions, and may disclose information about your FICA Account to any affiliate in accordance with StoneCastle's Privacy Policy and otherwise as permitted by law. You agree that StoneCastle and its service providers may obtain such information as may be necessary for legitimate business needs in connection with the operation of the FICA Program. For information regarding the collection, processing and use of your personal information and your rights to limit the use and disclosure of such information, you should refer to the Privacy Policy included with your FICA Account opening documents and annually thereafter.

18) Legal Process

You agree that StoneCastle, the StoneCastle Custodian, any Sub-Custodian and the Insured Depositories may comply with any writ of attachment, execution, garnishment, tax levy, restraining order, subpoena, warrant or other legal process, which such party in good faith believes to be valid. StoneCastle may notify you of such process by telephone, electronically or in writing. If StoneCastle or the

StoneCastle Custodian or a Sub-Custodian is not fully reimbursed for its records research, photocopying and handling costs (including its internal counsel costs) by the party that served the process, StoneCastle may charge such costs to your FICA Account. You agree to indemnify, defend and hold StoneCastle, the StoneCastle Custodian, any Sub-Custodian and the Insured Depositories harmless from all actions, claims, liabilities, losses, costs, attorneys' fees, and damages associated with their respective compliance with any process that such party believes in good faith to be valid. You further agree that StoneCastle, the StoneCastle Custodian, any Sub-Custodian and the Insured Depositories may honor legal process that is served personally, by mail, or by facsimile transmission at any of their respective offices (including locations other than where the funds, records or property sought is held), even if the law requires personal delivery at the office where your FICA Account records are maintained.

19) Confidentiality and Ownership of the FICA Program

You agree (a) not to disclose the identity of any of the Insured Depositories in the FICA Program to any person or entity other than to your affiliates, officers, directors, employees and professional advisors who need access to such information, and (b) that you will not contact any of the Insured Depositories about StoneCastle, the StoneCastle Custodian, any Sub-Custodian or the FICA Program without StoneCastle's prior written consent. You also agree that StoneCastle does and will at all times own all intellectual property rights in and to any works of authorship, moral rights, copyrights, trademarks, service marks, patents, designs, trade secrets, computer programs and algorithms relating to the FICA Program, including without limitation, the FICA Program documents and the FICA website, and that you will not use any such information, documents or property rights for any purpose other than as a participant in the FICA Program.

20) Governing Law

These Terms and Conditions shall be governed by and subject to applicable federal laws and, to the extent not preempted by federal law, the laws of the State of New York without regard to its conflict of law provisions.

Unless otherwise provided herein, StoneCastle, the StoneCastle Custodian, any Sub-Custodian and the Insured Depositories may comply with applicable clearinghouse, federal and correspondent bank rules in processing transactions for your FICA Account or the StoneCastle Custody Account. You agree that neither

StoneCastle nor the StoneCastle Custodian or Sub-Custodian is required to notify you of a change in those rules, except to the extent required by law.

21) Changes to Terms and Conditions

StoneCastle may make a material change to these Terms and Conditions at any time upon 15 days prior notice to you or on such shorter notice as may be set forth herein or required by applicable law, at which time you will have the option of terminating your participation in the FICA Program. All questions concerning your FICA Account should be directed to StoneCastle or to your Advisor.

22) Limits on Certain Deposit Accounts:

Federal banking regulations impose certain limitations on transfers from money market deposit accounts. The FICA Program seeks to rely on certain exemptions and interpretive relief granted by the Federal Reserve Board in connection with these limitations. However, the transactional capabilities of the Depository Accounts are limited; StoneCastle may impose limitations on transfers without prior notice. Limitations on transfers will not limit the interest rate you earn or the amount of FDIC insurance coverage for which you are eligible.

23) Alternatives to the Program:

By your enrollment in the FICA Program, you agree to the terms provided herein. You understand that, at any time, you may withdraw your enrollment in the Program.

24) Limitation of Liability:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL STONECASTLE, THE STONECASTLE CUSTODIAN, A SUB-CUSTODIAN, ANY INSURED DEPOSITORY OR THEIR AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, GOODWILL OR BUSINESS INTERRUPTION, EVEN IF SUCH ENTITY WAS AWARE OF THE POTENTIAL FOR SUCH DAMAGES.

25) Tax Identification Information:

You acknowledge that the FICA Program uses your tax identification information in order to allocate your Deposits across Insured Depositories. If you do not provide, or if you do not have, a tax identification number, your funds may not be allocated across Insured Depositories to provide you with expanded FDIC insurance under the provisions of these Terms and Conditions.

26) Aggregation of Funds in Multiple Accounts:

If you have more than one account in the FICA Program with the same tax identification information, the funds in all such accounts are aggregated for the purpose of calculating the FDIC and/or NCUA insurance available under the FICA Program. Depending on the individual facts and the ownership rights and capacities in which funds are held, additional FDIC and/or NCUA insurance may not be available. Refer to Section 12 above for further information about deposit insurance.

27) Complaints:

Any complaints regarding the FICA Program should be addressed in writing to StoneCastle.

28) Power & Authority:

You represent and warrant that you have full power and authority to participate in the FICA Program and to agree to and perform these Terms and Conditions. In addition, if you are not an individual, you represent and warrant that (1) you are duly organized, validly existing and in good standing under the laws of your state or jurisdiction of organization; (2) you possess all requisite authority, power, licenses, permits, registrations and franchises and have made all governmental filings to conduct business wherever you conduct business and to execute, deliver and comply with your obligations hereunder; and (3) your agreement to these Terms and Conditions and performance hereunder shall not conflict with or violate your governing documents or any law, regulation, decree, demand, order or any other contract or agreement by which you are bound.

29) Waiver:

Any provision of these Terms and Conditions may be waived if, but only if, such waiver is in writing and is signed by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

30) Severability:

If any term, provision, covenant or restriction of these Terms and Conditions is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of these Terms and Conditions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

31) Entire Agreement:

These Terms and Conditions and any other documents provided to you by StoneCastle in connection with the FICA Program constitute the entire agreement with you regarding the FICA Program, and supersede all prior and contemporaneous

agreements and understandings, both oral and written, with respect to the subject matter hereof. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, NO REPRESENTATIONS OR WARRANTIES (ORAL OR WRITTEN, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) ARE MADE TO YOU REGARDING THE PROGRAM, INCLUDING, WITHOUT LIMITATION, AS TO MERCHANTABILITY, FITNESS FOR PURPOSE, CONFORMITY TO ANY DESCRIPTION OR REPRESENTATION, NON-INTERFERENCE OR NON-INFRINGEMENT. In the event of any inconsistency between a provision of these Terms and Conditions and a provision of any such other document provided to you in connection with the Program, the provision of these Terms and Conditions shall prevail.

32) Binding Effect:

These Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto, and the StoneCastle Custodian and each Sub-Custodian, and their respective permitted heirs, successors, legal representatives and assigns. Nothing in these Terms and Conditions, expressed or implied, is intended to confer on any person other than the parties hereto, StoneCastle, the StoneCastle Custodian and the Sub-Custodians, and their respective permitted heirs, successors, legal representatives and assigns, any rights, remedies, obligations or liabilities under or by reason of these Terms and Conditions.

33) Disputes:

Except to the extent otherwise provided by applicable law, any action at law or in equity arising out of or relating to these Terms and Conditions shall be filed only in the courts of the State of New York, or in the United States District Court for the Southern District of New York, and all parties hereto hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS.

STONECASTLE IS SOLELY RESPONSIBLE FOR THESE TERMS AND CONDITIONS.



City Council Agenda Item # 12

Title: Consideration and possible action regarding Resolution No. 2020-2658, adding a Computer Passwords Policy to Chapter 5 of the Personnel Policy Handbook.

Date: October 5, 2020

From: Brenda Ferguson, Director of Human Resources

Staff Recommendation:

Staff recommends approving this Resolution.

Item Summary:

This Resolution adopts an addition to the Freeport Personnel Policy Handbook regarding Computer Passwords.

Background Information:

Our existing Personnel Policy Handbook does not specifically address the use of Computer Passwords. Because the use of City computer systems is necessary for employees to perform required job functions in most City positions, and because misuse of passwords can compromise the City of Freeport's entire network, we believe it is important that the City establish clear guidelines for appropriate use of computer passwords.

We recommend the addition of this Computer Passwords Policy to Chapter 5, Standards of Conduct, as Section 5.25. Key aspects of the proposed Computer Passwords Policy are as follows:

- Each user must utilize a unique user account and/or password for access to systems provided by the City of Freeport.
- Shared or group user ID's are prohibited for user-level access.
- Employees are required to follow guidelines provided in the policy for password construction.
- All passwords are considered confidential information and employees are prohibited from sharing passwords with anyone.
- Only designated City IT System Administrators or specifically approved IT service vendors may reset an employee's password.
- The City requires approved third-party IT vendors to follow single-user, secure password protocols for authorized use of their systems by City employees.

- Employees found to be in violation of the Computer Passwords Policy may be subject to disciplinary action, up to and including termination of employment.

Special Consideration:

Recent incidents of employees sharing passwords have been discovered, and this behavior may be more prevalent with employees working alternate schedules and/or working from remote locations during emergencies, like the COVID pandemic.

Board or 3rd Party recommendation:

The content of this policy is based on recommendations from the national Society for Human Resources Management, as reviewed by their attorneys. The policy was also reviewed by the City's IT Systems Administrators, and has been reviewed by our City Attorney, Mr. Chris Duncan.

Financial Impact:

No financial impact.

Supporting Documentation:

Resolution and Exhibit

RESOLUTION NO. 2020-2658

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS ADDING A COMPUTER PASSWORDS POLICY AND APPROVING ITS ADDITION AS SECTION 5.25 TO THE PERSONNEL POLICY HANDBOOK.

WHEREAS, the City of Freeport has a Personnel Policy Handbook which formulates policies governing the relationship of the City with its employees; and

WHEREAS, the City Manager has the sole authority to change these policies and regulations, subject to the approval of and such exceptions as the City Council may deem necessary; and

WHEREAS, the City of Freeport provides access to several computer systems and software programs for use by city employees as tools to perform their job duties; and

WHEREAS, it is appropriate and necessary to limit the use of these systems to specific City employees for specific aspects of City business; and

WHEREAS, it is in the best interest of the City, as representative of the interests of all citizens, to prevent misuse of City computer systems which could compromise the City's entire network.

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

SECTION 1. COMPUTER PASSWORDS POLICY. That the City Council of the City hereby approves and adopts a Computer Passwords Policy attached hereto as Exhibit "A" and approves its addition to the Personnel Policy Handbook as section 5.25, a permanent personnel policy of the City, which shall take effect as of September 21, 2020.

SECTION 2. PROPER NOTICE AND MEETING. It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

Read, passed and adopted the _____ day of _____, 2020.

Brooks Bass, Mayor
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM ONLY:

Betty Wells, City Secretary
City of Freeport, Texas

Christopher Duncan, City Attorney
City of Freeport, Texas

CHAPTER FIVE

STANDARDS OF CONDUCT

5.25 Computer Passwords Policy:

Objective

Passwords are an important aspect of computer security. They are the front line of protection for user accounts. A poorly chosen password may result in the compromise of the City of Freeport's entire City network. As such, all City of Freeport employees (including contractors and vendors with access to City of Freeport systems) are responsible for taking the appropriate steps, as outlined below, to select and secure their passwords.

This policy establishes a standard for the creation of strong passwords, the protection of those passwords and the frequency of change. This policy may be updated as needed to comply with changing industry standards related to system security. IT System Administrators designated by the City may advise users on variations required for different systems and/or shared servers at City facilities.

Police and Fire Department systems may have more stringent standards based on Criminal Justice Information Systems (CJIC) requirements.

Scope

The scope of this policy includes all employees or approved third-party vendors who:

- Have access to, or are responsible for account access, on any system that resides at any City of Freeport facility;
- Who have access to the City of Freeport network;
- Who store any non-public City of Freeport information.

User Authentication

Every user must be assigned a unique user account (user ID) and a password for access to City of Freeport systems. Shared or group user IDs are prohibited for user-level access, unless a shared system is specifically designed and identified as such by the designated City IT System Administrator. Systems and applications must authenticate using a password or token entry. The use of non-authenticated user IDs (i.e., those without passwords) or user IDs not associated with a single identified user are prohibited. While third-party vendors' systems may have varying threshold definitions, the City requires that City accounts, and recommends that third party accounts, be established to lock a user out after a maximum of six invalid login attempts within a maximum of 30 minutes. Locked accounts should remain locked for at least 30 minutes or until

the Information Technology (IT) System Administrator unlocks the account. Users may contact the IT department to have their account unlocked. Multifactor authentication or virtual escorting are required for all users accessing City of Freeport systems remotely.

Password Management

Passwords must be created and managed in accordance with this section.

Password Requirements:

- All user-level City of Freeport network passwords will expire a maximum every 90 days and must be changed.
- New passwords cannot be the same as the previous four passwords.
- Passwords must be at least eight characters in length. Longer is better.
- Passwords must contain both uppercase and lowercase characters (e.g., a-z and A-Z).
- Passwords must contain at least one number (e.g., 0-9).
- Accounts shall be locked after six failed login attempts within 30 minutes and shall remain locked for at least 30 minutes or until the Information Technology (IT) System Administrator unlocks the account.

To unlock an account or change a password without logging in, some City of Freeport systems require the IT System Administrator to provide a new temporary password to the user. In such cases, passwords must be provided verbally and the user must immediately log in and change the account password.

Passwords should not be shared with anyone, including third party vendors' IT support personnel, unless approved by the City' IT System Administrator. Note that Freeport City Hall and the Freeport Police Department may have different IT System Administrators.

All passwords are to be treated as sensitive, confidential information. If someone requests your password(s), please inform him or her that you cannot provide that information per City of Freeport policy and contact the IT System Administrator about the request. If you suspect an account or password has been compromised, report the incident immediately and change all related passwords.

The IT System Administrator or authorized outside "penetration testers" may perform password cracking or guessing on a periodic or random basis to test the security of the City of Freeport network. If a password is guessed or cracked during one of these scans, the user will be required to change it. Password cracking and guessing are not to be performed by anyone outside of the City's IT Systems Administrators or an approved third-party auditor.

The IT department strongly encourages the use of a password manager program to help ensure that all passwords are strong, unique and easily changed. Users should request for more information on password managers allowed on the City of Freeport network and for assistance in getting the password manager installed and configured on their computer.

Guidelines for Password Construction

A strong password:

- Contains both uppercase and lowercase characters (e.g., a-z and A-Z).
- Contains digits and punctuation characters (e.g., 0-9 and !@#%&*).
- Is at least 6-15 alphanumeric characters long and is a passphrase (e.g., “Ohmy1sturbedmyt0e”).
- Is not a single word in any language, slang, dialect or jargon (e.g., “password” or “Fluffy”).
- Is not based on personal information, names of family members, etc.

Passwords should never be written down or stored online. Employees should try to create passwords that can be easily remembered. One way to do this is to create a password based on a song title, affirmation or other phrase. For example, the phrase might be “This may be one way to remember,” and the password could be “TmB1w2R!” or “Tmb1W>r~” or some other variation.

Enforcement

Any employee found to be in violation of, or to have violated, this policy may be subject to disciplinary action, up to and including termination of employment.



City Council Agenda Item # 13

Title: Approving an amendment to the FEDC Board By-Laws.

Date: October 5, 2020

From: Courtland Holman, Executive Director

Staff Recommendation:

FEDC Board recommends that City Council approve the amendments to the FEDC By-Laws.

Item Summary:

In formal action earlier this month The FEDC Board voted to recommend an amendment to the FEDC Board By-Laws previously approved by City Council. The proposed amendment excludes Ex-Officio Board members, including the City Council Liaison, from attending closed session of the board unless formally invited by a majority of the board.

Background Information:

Any change to EDC By-Laws must be approved by City Council prior to being effective. The current By-Laws were amended last year. They were discussed at length in an EDC workshop in November, 2019, and subsequently approved by City Council.

At that time the FEDC board recommended the amendments which changed the length of terms to reflect state statute, established rules regarding absenteeism and designating the City Council Liaison, City Manager, and Assistant City Manager as ex-officio board members, and authorized them to attend closed session of the board unless a motion made to exclude them was approved by a majority of the board.

This month the EDC had a new discussion and review of the By-laws. Board Member Ed Garcia requested that Ex-Officio board members be excluded from closed session of the board. Section 3.07 in the Bylaws Currently says "*Ex-Officio members shall not be included in the calculation of a quorum, and shall not have any rights of a board member, except the right to attend open board meetings. Such Ex-Officio members shall attend closed session of board meetings unless a majority of a quorum of the Board of Directors attending such closed session votes to exclude them*".

The EDC Board approved a motion to recommend that the by-laws be amended to remove the language: "*Such ex-officio members shall attend closed session of board meetings unless a majority of a quorum of the Board of Directors attending such closed session votes to exclude them*".

Special Considerations:

None

Financial Impact:

None

Supporting Documentation:

Attached By-Laws with Strikeout in section 3.07

terms of four (4) directors shall expire in odd years.

Section 3.03 Any director may be removed from office by the City Council at any time without cause.

Section 3.04 Vacancies in the Board, including vacancies to be filled by reason of an increase in the number of directors, shall be filled for the unexpired term by the appointment of successor directors by the governing body of the City.

Section 3.05 The property and business of the Corporation shall be managed by the Board which may exercise all powers of the Corporation and do all lawful acts

Section 3.06 Directors shall receive no compensation for services as rendered as directors but shall be reimbursed for all reasonable expenses incurred in performing their duties as directors.

Section 3.07 The City Council of the City of Freeport may name a City Council member to serve as the "Council Liaison" with the Freeport Economic Development Corporation. The Council Liaison, and the City Manager of the City of Freeport, or if designated by the City Manager, the Assistant City Manager, shall serve as "ex officio" members of the Board of Directors. Ex officio members shall not be included in the calculation of a quorum, and shall not have any rights of a board member, except the right to attend open board meetings. ~~Such Ex officio members shall attend closed sessions of board meetings unless a majority of a quorum of the Board of Directors attending such closed session votes to exclude them.~~

Meetings of Directors.

Section 3.08 For meetings of the Board, notice thereof shall be provided as set forth in accordance with the Texas Government Code 551.001. Any member of the Board, officers of the Corporation or Executive Director, may have an item placed on the agenda by delivering the same in writing to the Secretary of the Board or the Executive Director no less than three (3) calendar days prior to the date of the Board meeting. Each agenda of a Board meeting shall contain an item, entitled "Citizens Forum", to allow public comment to be made by the general public concerning Board related matters. However, no official or formal action or vote may be taken on any comment made by citizens during Citizens Forum.

Section 3.09 The board shall hold regular and special meetings, in the corporate limits of the City, at such place or places as the Board may from time to time determine, and in conformance with the Texas Open Meetings Act.

Section 3.10 The annual meeting of the board shall be held on the first regularly scheduled meeting date in June of each year, if not legal holiday and if a legal holiday, then at the next regular business day following, at 6:00 o'clock p.m., or at such time and place as shall be fixed by the consent in writing of all the directors.

Section 3.11 Attendance. Directors must be present in order to vote at any meeting. Regular