

**CITY OF GONZALES, TEXAS  
CITY COUNCIL MEETING  
GONZALES MUNICIPAL BUILDING 820 ST. JOSEPH STREET  
AGENDA –APRIL 14, 2022 6:00 P.M.**

**CALL TO ORDER, INVOCATION, AND PLEDGES OF ALLEGIANCE**

**CITY EVENTS AND ANNOUNCEMENTS**

- Announcements of upcoming City Events
- Announcements and recognitions by the City Manager
- Announcements and recognitions by the Mayor
- Recognition of actions by City employees
- Recognition of actions by community volunteers

**HEARING OF RESIDENTS**

This time is set aside for any person who wishes to address the City Council. Each person should fill out the speaker's register prior to the meeting. Presentations should be limited to no more than 3 minutes.

**All remarks shall be addressed to the Council as a body, and not to any individual member thereof. Any person making personal, impertinent, or slanderous remarks while addressing the Council may be requested to leave the meeting.**

Discussion by the Council of any item not on the agenda shall be limited to statements of specific factual information given in response to any inquiry, a recitation of existing policy in response to an inquiry, and/or a proposal to place the item on a future agenda. The presiding officer, during the Hearing of Residents portion of the agenda, will call on those persons who have signed up to speak in the order they have registered.

**PROCLAMATIONS**

- 1.1 Fair Housing Month
- 1.2 National Sexual Assault Awareness and Prevention Month

**OTHER BUSINESS**

- 2.1 Discussion and possible action on recommendation to the City Council from the Gonzales Convention & Visitor's Bureau regarding amendments to the current job description and other aspects of the position of Tourism Director
- 2.2 Discuss, Consider & Possible Action Regarding the Disposition and Potential Sale of Surplus Real Property

**CONSENT AGENDA ITEMS**

The Consent Agenda is considered self-explanatory and will be enacted by the Council with one motion. There will be no separate discussion of these items unless they are removed from the consent Agenda upon the request of the Mayor or a Councilmember.

- 3.1 **Minutes** - Approval of the minutes for the March 10, 2022 Regular Meeting
- 3.2 Discuss, Consider & Possible Action on **Resolution #2022-31** Authorizing the City Manager to execute an amendment to the contract with Gonzales Crystal Theater, Inc. for the Operations and Restoration of the Crystal Theatre
- 3.3 Discuss, Consider & Possible Action on **Resolution #2022-32** Authorizing the purchase of a Phase 2-Shade Structure Building for the Police Department in the amount of \$12,329.60
- 3.4 Discuss, Consider & Possible Action on **Resolution #2022-33** Authorizing the City Manager to Execute a Service Agreement with Gonzales Main Street, Inc.
- 3.5 Discuss, Consider & Possible Action on **Resolution #2022-34** Approving a Performance agreement between the Gonzales Economic Development Corporation and the Gonzales Main Street
- 3.6 Discuss, Consider & Possible Action on **Resolution #2022-35** Authorizing an Expenditure in an amount not to exceed \$1,000.00 from the Restricted Use Municipal Court Security Fund for City Staff to attend a Court Security Conference
- 3.7 Discuss, Consider & Possible Action on **Resolution #2022-36** Approving the amendments to the Bylaws of the Gonzales Main Street, Inc.
- 3.8 Discuss, Consider & Possible Action on **Resolution #2022-37** Ratifying the Professional Services Agreement with between the City of Gonzales and SAFEbuilt Texas, LLC to perform Building Official and Inspection Services for the City of Gonzales

## **RESOLUTIONS**

- 4.1 Discuss, Consider & Possible Action on **Resolution #2022-38** Authorizing the City Manager to Execute Addendum One to the Agreement with Frontier Access, LLC (Frontier Waste Solutions) for Solid Waste Collection and Disposal Services providing for a Residential, Commercial and Industrial Unit Fuel Cost Adjustment increase in the amount of 1.5%
- 4.2 Discuss, Consider & Possible Action on **Resolution #2022-39** Designating Sage Capital Bank as the City's Depository and Authorizing the City Manager to Negotiate and Enter into a Depository Agreement
- 4.3 Discuss, Consider & Possible Action on **Resolution #2022-40** Accepting the Bids and Awarding the Contract for the 2021 Utility Projects to Qro Mex Construction Co., Inc. in the amount of \$1,073,204.00
- 4.4 Discuss, Consider & Possible Action on **Resolution #2022-41** Authorizing the City Manager to Enter into a Master Equity Lease Agreement, Amendment to Master Equity Lease Agreement, Maintenance Agreement, and Maintenance Management and Fleet Rental Agreement with Enterprise Fleet Management, Inc. to allow for the future lease of several budgeted departmental vehicles

## **ORDINANCES**

- 5.1 Discuss, Consider & Possible Action on **Ordinance #2022-6** Amending the Gonzales Code of Ordinances Chapter 8 Offenses and Nuisances; Article 8.200 Junked Vehicles
- 5.2 Discuss, Consider & Possible Action on **Ordinance #2022-7** Amending the City of Gonzales Master Rate and Fee Schedule for Garbage Rates due to Fuel Increase

## **STAFF/BOARD REPORTS**

- 6.1 Finance Director will provide feedback on any questions regarding:
- Financial Reports for funds as of March 31, 2022
  - Cash & Investment by Fund as of March 31, 2022
  - Annual Comprehensive Financial Report for the Fiscal Year ending September 30, 2021
- 6.2 City Manager, Tim Patek will update the City Council on the following:
- Request for Proposal JB Wells Park
  - Pressure Plane Analysis
  - Hydro-plant
  - Timeline on Capital Improvement Projects
    - Recently Completed Projects
    - Projects Currently in Process
    - Upcoming Projects

## **CLOSED SESSION**

- 7.1 (1) Pursuant to Section 551.087 of the Texas Government Code, the City of Gonzales will consult in closed session (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

A) Project A

- (2) Pursuant to Section 551.072 of the Texas Government Code, the City of Gonzales will consult in closed session to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person:

A) Oil and Gas Leases

- (3) Pursuant to Section 551.071 of the Texas Government Code, the City of Gonzales will consult in closed session with its attorney to receive legal advice regarding pending or contemplated litigation, a settlement offer, or matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter”, to include the following matters:

A) Delinquent Hotel Motel Tax Collection

- AR Guerra Holdings, LLC dba Sleep Inn and Suites

(4) Pursuant to Section 551.086 of the Texas Government Code, to deliberate, vote or take final action on a competitive matter related to certain public power utilities:

A) City of Gonzales Electric Utility System-Power Supply and Associated Competitive Matters

**RETURN TO OPEN SESSION**

8.1 Discuss, Consider & Possible Action authorizing to negotiate matters discussed in closed session, and/or other actions necessary or recommended related to such discussions in closed session.

**CITY COUNCIL REQUESTS AND ANNOUNCEMENTS**

- Requests by Mayor and Councilmembers for items on a future City Council agenda
- Announcements by Mayor and Councilmembers
- City and community events attended and to be attended
- Continuing education events attended and to be attended

**ADJOURN**

EXECUTIVE SESSION: The City Council reserves the right to discuss any of the above items in Executive Closed Session if they meet the qualifications in Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, of Chapter 551 of the Government Code of the State of Texas.

I certify that a copy of the April 14, 2022, agenda of items to be considered by the Gonzales City Council was posted on the City Municipal Building bulletin board on the 11<sup>th</sup> day of April, 2022 at 5:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting. I further certify that the above agenda was removed on \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ am/pm. I further certify that the following News Media were properly notified of the above stated meeting: Gonzales Inquirer.

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Kristina Vega, City Secretary

The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please Contact the City Secretary's office at (830)672-2815 for further information.



# FAIR HOUSING MONTH

## APRIL 2022

**WHEREAS**, Title VIII of the Civil rights Act of 1968, as amended, prohibits discrimination in housing and declares it a national policy to provide, within constitutional limits, for fair housing in the United States; and

**WHEREAS**, the principle of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and

**WHEREAS**, the anniversary of this national Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans

**NOW, THEREFORE**, I Connie L. Kacir, Mayor of the City of Gonzales, Texas, do hereby proclaim April as Fair Housing Month in Gonzales, Texas, and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing law.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Gonzales, Texas, to be affixed this 14<sup>th</sup> day of April, 2022.

# ***National Sexual Assault Awareness and Prevention Month P R O C L A M A T I O N***

WHEREAS, every 68 seconds another person in the United States is sexually assaulted, and in Texas 2 in 5 women and 1 in 5 men are victims of sexual assault; AND in fiscal year 2021, the Guadalupe Valley Family Violence Shelter rendered 1,135 services to 210 survivors of sexual violence and provided 61 hospital accompaniments for sexual assault exams;

WHEREAS, according to a study conducted by the Texas Association Against Sexual Assault and The University of Texas at Austin Institute on Domestic Violence and Sexual Assault approximately 6.3 million Texans have been sexually victimized;

WHEREAS, most victims are sexually assaulted by someone they know and 91 percent of victims did not report to police;

WHEREAS, it is appropriate to salute the more than 20 Million victims who have survived sexual assault in the United States and the efforts of victims, volunteers, and professionals who combat sexual assault;

WHEREAS, national and community organizations and private sector supporters should be recognized and applauded for their work in promoting awareness about sexual assault;

WHEREAS, police, forensic workers, and prosecutors should be recognized and commended for their hard work and innovative strategies to increase the percentage of sexual assault cases that resolve in the prosecution and incarceration of the offenders;

WHEREAS, sexual violence is a persistent and pervasive problem in our society, one that requires attention year-round and in order to foster healthy communities, all citizens must support the effort to end sexual violence every month of the year; and,

WHEREAS, national and community organizations, businesses in the private sector, and the media are urged, through *National Sexual Assault Awareness* of sexual violence and strategies to decrease the incidence of sexual assault.

NOW, THEREFORE, I, Connie L. Kacir, Mayor of the city of Gonzales, do hereby proclaim the month of April as “*National Sexual Assault Awareness and Prevention Month*” in Gonzales and urge all citizens to observe this month by supporting the goals and ideas of victims and those working toward awareness and prevention, and by participating in community efforts.

Presented this 14<sup>th</sup> day of April, 2022.

City Seal

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Connie L. Kacir, Mayor

Attest:

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Kristina Vega, City Secretary

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discussion and possible action on recommendation to the City Council from the Gonzales Convention & Visitor's Bureau regarding amendments to the current job description and other aspects of the position of Tourism Director

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Other Business

### **BACKGROUND:**

During the January 13, 2022 City Council meeting the Director of Tourism position was discussed and Council requested that the Gonzales Convention & Visitor's Bureau provide a recommendation regarding the position to City Council.

At the January 20, 2022 CVB meeting the board created a steering committee to discuss the position and what the position needed to entail. The committee met on several occasions regarding the position. The Chamber of Commerce Board of Directors also met during the timeframe to discuss their capacity to take on the additional responsibilities that the position currently encompasses.

On March 10, 2022 the City Manager relayed to the City Council after discussion with the Chamber Director that the Chamber of Commerce desired to wait until after the May election to make any decisions regarding them taking on any additional responsibilities. The CVB met on March 28, 2022 to discuss the details of the existing job description in order to provide a recommendation to City Council, as originally requested. The board made a few recommended changes which are included in the redlined version of the job description attached.

### **POLICY CONSIDERATIONS:**

The City Council will have an opportunity to discuss the proposed changes and will recommend any further action.

### **ATTACHMENTS:**

Proposed job description

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the council take the action they deem necessary.

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action  
Regarding the Disposition and Potential Sale  
of Surplus Real Property

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Discussion

### **BACKGROUND:**

In 2020, the Mayor requested a list of the properties that were owned by the City of Gonzales and that list was provided on November 5, 2020. In July of 2021 staff was asked to review all the properties to determine which have future value for the city and those remaining should be placed on the next council agenda to be listed for sale. Staff presented a compiled list of all real property owned by the City of Gonzales according to the Gonzales County Appraisal District along with pictures of each. The information that the Finance Director presented did not include unopened streets. After the presentation, staff was asked to review the list further and come up with a list of the parcels that they felt could be sold. After going through the list, staff feels that the following parcels could possibly be sold or disposed of:

Parcel 12259 – 0.9195 acres of vacant property located behind Victoria College on St. Paul.

Parcel 12272 – 0.264 acres of vacant property located behind Victoria College on St. Paul.

Parcel 12273 – 0.264 acres of vacant property located behind Victoria College on St. Paul.

Parcel 24521 – 0.1897 acres of land with building next to Edward Association on Fly Street.

Parcel 24628 – 0.2293 acres of vacant property where old water tower was located on corner of St. Paul and E. Cone Street.

### **POLICY CONSIDERATIONS:**

Per statute, the City must obtain fair market value for the property which can be done in several ways. Those being: 1) obtain an appraisal and sell the property for the appraised value; 2) sell by public auction or by sealed bid under Section [272.001](#) of the Local Government Code; or 3) contract with a broker to sell the real property under Section 253.014 of the Local Government Code. The governing body may sell a tract of real property under this section without complying with the public auction requirements prescribed by Section [253.008](#) or other law or the notice and bidding requirements prescribed by Section [272.001](#) or other law.

### **FISCAL IMPACT:**

There will be costs associated with the sale of the property; however, that is not known at this time. Once the property is sold there will be an increase in revenues which is also unknown at this time.

**ATTACHMENTS:**

Real Property List with Google Earth pictures.

**STAFF RECOMMENDATION:**

Staff is seeking City Council direction on this item.











PARCEL 12273 – 0.264 ACRES – Vacant Lot on St. Paul



Google Earth

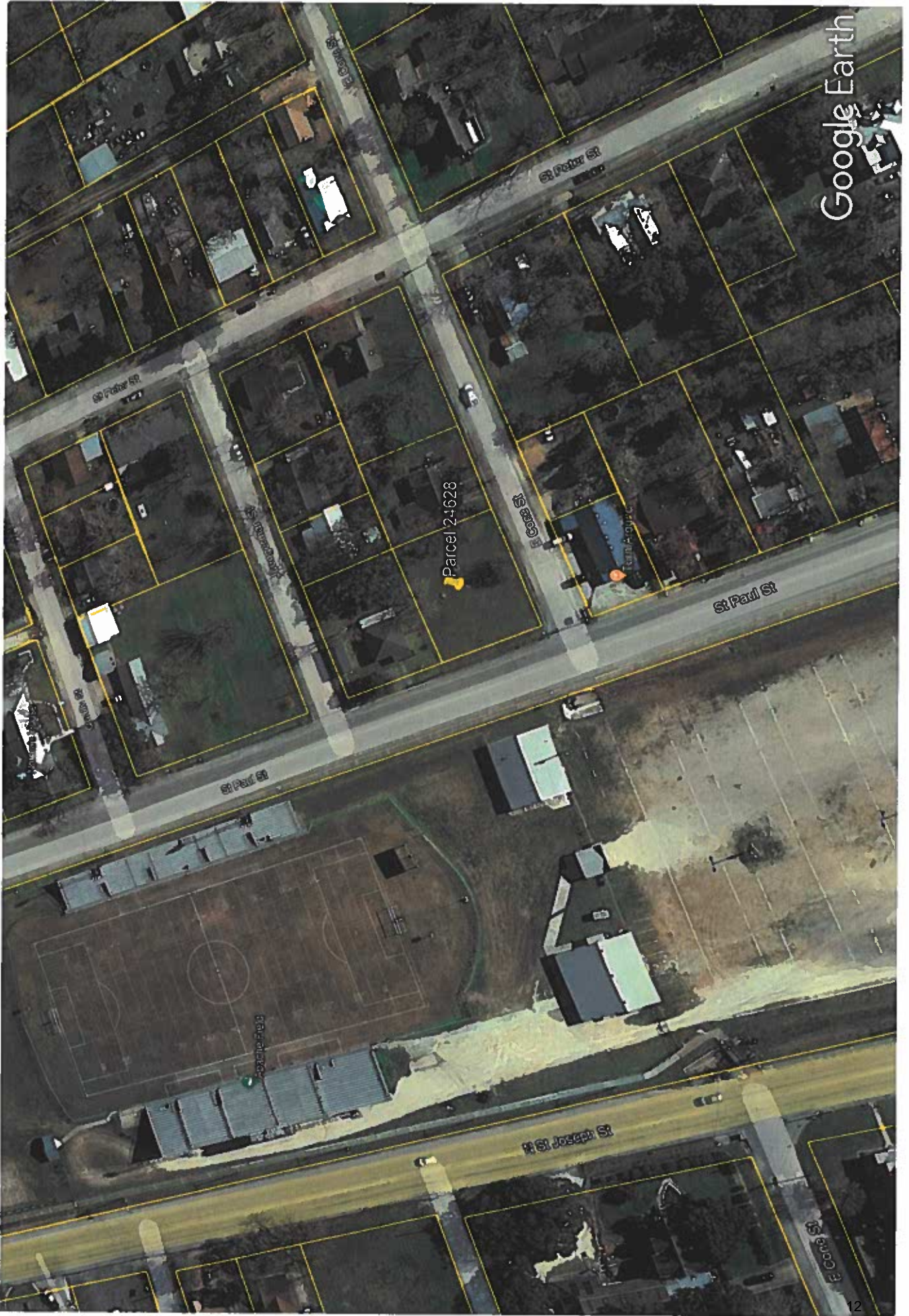


**PARCEL 24521 – 0.1897 ACRES – Building and property next to Edwards Association**





PARCEL 24628 – 0.2293 ACRES – vacant lot where water tower was previously located



Parcel ID	Account	Prop Street Number	Prop_Street	Owner Id	Acres	Legal1
12259	16200-80000-01050-000000	1814	ST PAUL	21982	0.9195	PT 10 RANGE II
12272	16201-41000-01050-000000	1814	ST PAUL	21982	0.264	PT 10 RANGE II
12273	16201-42000-01050-000000	1814	ST PAUL	21982	0.264	PT 10 RANGE II
24521	16550-20011-12500-000000		FLY STREET	21982	0.1897	PT 11-12 PECK & FLY
24628	16510-75002-78000-000000		CORNER ST PAUL/CONE ST	21982	0.2293	LOT 7-8 2 NEUMAN HEIGHTS

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider and Possible Action on Resolution #2022-31 Authorizing the City Manager to execute an amendment to the contract with Gonzales Crystal Theater, Inc. for the Operations and Restoration of the Crystal Theatre

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

The City is required as per statute to use the local hotel occupancy taxes for promoting tourism and the convention and hotel industry in the City of Gonzales. On December 9, 2021 the City Council approved an agreement to be executed with the Gonzales Crystal Theater, Inc. for annual budgeted funding, provided by hotel occupancy taxes, to be used to address the needs of the Crystal Theatre to maintain its functionality for the purpose of promoting heritage tourism to Gonzales. However, when the agreement was presented, it did not include the section of the Tax Code that pertains to the application of the arts. This item is being presented to add the additional verbiage from Section 351.101 (a)(4) to the agreement as it should have been included originally. The agreement is being presented for City Council consideration for the current fiscal year in the amount of \$10,000.00. The disbursement of the funds will be quarterly, beginning December 1, 2021.

### **POLICY CONSIDERATIONS:**

The agreement for the operation of the Crystal Theatre will result in an increase in both sales tax revenue and hotel occupancy tax revenue and is an approvable expense as per Chapter 351 of the Texas Tax Code.

### **FISCAL IMPACT:**

The funding for the Crystal Theatre will be funded from the following budgeted line item: 7-811.416 The disbursement of the funds will be quarterly, beginning December 1, 2021.

### **ATTACHMENTS:**

Proposed amended agreement with the Crystal Theatre.

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the City Council take the action they deem necessary.

## **RESOLUTION NO. 2022-31**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT WITH THE GONZALES CRYSTAL THEATER, INC FOR THE OPERATIONS AND RESTORATION OF THE CRYSTAL THEATRE; ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to state statutes and its home rule charter, the City has adopted a municipal hotel occupancy tax on occupants of hotels within the City; and,

**WHEREAS**, the City is required to use such local hotel occupancy taxes for promoting tourism and the convention and hotel industry in the manner set forth in Chapter 351 of the Texas Tax Code; and,

**WHEREAS**, the City Council, on behalf of the City, by contract, may delegate to the Gonzales Crystal Theater, Inc., the management or supervision of programs and activities funded with revenue from the hotel occupancy tax (HOT Funds); and,

**WHEREAS**, the Gonzales Crystal Theater, Inc. must maintain HOT Funds in a separate account established for that purpose and may not commingle that revenue with any other money; and,

**WHEREAS**, the City may not delegate the management or supervision of its convention and visitor programs and activities funded with HOT Funds other than by contract as provided by law; and,

**WHEREAS**, the City Council hereby finds that expending the funds contemplated in the manner required by the Texas Tax Code is in the best interest of the City and its citizens, and serves a public purpose.

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

Section 1. The City Council of the City of Gonzales hereby authorizes the City Manager to Execute an amendment to the contract with Gonzales Crystal Theater, Inc. for the operations of the Crystal Theatre in the amount of \$10,000.00 for restorative work, maintenance; and the encouragement, promotion, improvement, and application of the arts and other costs to be expended in conformance with Texas Tax Code Section 351.001.

Section 2. The City Council reserves the right to request all necessary receipts, invoices and other records the City Manager deems necessary to confirm that Hotel Occupancy Tax expended pursuant to this Resolution were expended for expenses authorized by this Resolution.

Section 3. The Gonzales Crystal Theater, Inc. shall refund the City of Gonzales any Hotel Occupancy Tax funds determined by the State Comptroller, the Secretary of State or other state agency to be an unauthorized expenditure under Texas Tax Code Section 351.001.

Section 4. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 5. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 7. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 8. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 9. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2021.**

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Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary



## AGREEMENT

This Agreement is entered into on the 31<sup>st</sup> day of December, 2021 between the City of Gonzales (hereinafter referred to as the "City" or the "City of Gonzales") and the Gonzales Crystal Theater, Inc.

WHEREAS, pursuant to state statutes and its home rule charter, the City has adopted hotel occupancy tax on occupants of hotels within the City; and

WHEREAS, the City is required to use such local hotel occupancy taxes for promoting tourism and the convention and hotel industry in the manner set forth in Chapter 351 of the Texas Tax Code; and

WHEREAS, the City Council finds that Gonzales Crystal Theater, Inc. is eligible for funding according to Chapter 351.101(a)(4) & (a)(5) of the Texas Tax Code that states (a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following: (4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and (5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums; and

WHEREAS, the City Council hereby finds that expending the funds contemplated in the manner required by the Texas Tax Code is in the best interest of the City and its citizens, and serves a public purpose; and

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements herein set forth, the parties agree as follows:

1. The City shall provide funding to the Gonzales Crystal Theater, Inc. in the amount of \$10,000.00 for the budget that runs from October 1, 2021 to September 30, 2022. The Gonzales Crystal Theater, Inc. shall use these funds to make improvements to the facilities and property at the Gonzales Crystal Theater, Inc. site, and the encouragement, promotion, improvement and application of the arts to promote tourism and the convention and hotel industries. City funds will be disbursed quarterly pending receipt of satisfactory quarterly information and is also subject to available funding. Invoices and cancelled checks/credit card receipts must be submitted by Gonzales Crystal Theater, Inc., allowing 10 business days for staff to review, confirm or seek further information. Once documentation is approved, staff will forward to the City Finance Department for immediate release of funds.
2. The Gonzales Crystal Theater, Inc. shall provide quarterly financial and program information regarding financial position, use of funds, services offered and number of people served at the end of each quarter. Quarters will end December 31st, March 31st, June 30<sup>th</sup> and September

30<sup>th</sup> of each year. **Financial reports along with invoices and/or proof of payment shall accompany the financial statements.**

3. **The Gonzales Crystal Theater, Inc. shall be responsible for the acts and omissions of its own officers, directors, employees, agents, assigns and contractors and will indemnify, hold harmless and defend the City of Gonzales regarding any claims, costs, or actions arising from the acts of the Gonzales Crystal Theater, Inc..**
4. This Agreement shall be governed by and construed under the laws of the State of Texas and venue for any cause of action shall be Gonzales County.
5. Gonzales Crystal Theater, Inc. shall refund the City of Gonzales any Hotel Occupancy Tax funds determined by the State Comptroller, the Secretary of State or other state agency to be an unauthorized expenditure under Texas Tax Code Section 351.001.
6. Should any term, covenant, or provision of this Agreement be deemed invalid, unlawful, or otherwise improper by any court of competent jurisdiction, then such term, covenant, or provision shall be reformed and modified to the minimum extent necessary to achieve conformity with applicable law. Said reformation shall be deemed effective as of the original date of this Agreement. Other provisions are not affected.
7. This Agreement shall be in effect for a period of one year, period beginning October 1, 2021 and ending September 30, 2022.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. Neither the City nor Gonzales Crystal Theater, Inc. shall assign any duty of this Agreement, excepting those already identified herein, without written consent of the other.
9. Should any provisions of this Agreement for any reasons be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.
10. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
11. The City reserves the right to request all necessary receipts, invoices, and other records the City Manager deems necessary to confirm that Hotel Occupancy Tax expended pursuant to this Agreement were expended for expenses authorized by this law.



~~Executed~~ Amended this ~~31<sup>st</sup>~~ day of ~~December, 2021~~ 14<sup>th</sup> day of April, 2022.

**Formatted:** Superscript

CITY OF GONZALES

By: \_\_\_\_\_  
City Manager, Tim Patek

Attest: \_\_\_\_\_  
Kristina Vega, City Secretary

GONZALES CRYSTAL THEATER, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-32 Authorizing the purchase of a Phase 2-Shade Structure Building for the Police Department

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

Due to increased cost, the project was broken into two phases. This phase would be to cover the remaining units of the police department in the parking lot. On March 10, 2022 the City Council approved Phase 1 of the Shade Structure project in the amount of \$33,6335.00 with the intent to bring Phase 2 back for final approval of the entire project. Phase 2 of the shade structure project will be the remaining balance of \$12,329.60 to complete the project in its entirety.

### **POLICY CONSIDERATIONS:**

As set forth in the City's Fiscal and Budgetary Policy Statements; All City purchases and contracts over \$50,000 shall conform to a Competitive bidding process as set forth in Chapter 252 of the local Government Code of Texas. Purchases made over \$10,000 but less than \$50,000 shall require three written quotes or pricing obtain through any interlocal purchasing authority or cooperative. The pricing for this purchase was obtained through a Buy Board Purchasing Program which assists local governments in reducing costs through this government-to government service available nationwide.

### **FISCAL IMPACT:**

At this time Account #100-7-501.603 has a remaining balance of \$2,865.00 after Phase 1 of the Shade Structure project was completed. The cost of Phase 2 of the project is \$12,329.60 leaving a balance of \$9,463.60 that is not budgeted. A budget amendment will have to be completed at a later date. The Buy Board Contract number is 592-19.

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution

**RESOLUTION NO. 2022-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS  
AUTHORIZING THE PURCHASE OF A PHASE 2-SHADE STRUCTURE BUILDING  
FOR THE POLICE DEPARTMENT; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Police Department is in need of shade structure to protect city assets from the elements; and,

**WHEREAS**, as set forth in the City's Fiscal and Budgetary Policy, all City purchases and contracts over \$50,000 shall conform to a competitive bidding process as set forth in Chapter 252 of the Local Government Code of Texas. Purchases made over \$10,000 but less than \$50,000 shall require three written quotes or pricing obtain through any interlocal purchasing authority or cooperative.; and,

**WHEREAS**, the pricing for the shade structure was obtained through Buy Board Purchasing Program (Buy Board Contract number 592-19) which assists local governments in reducing costs through a government-to-government procurement services; and,

**WHEREAS**, this project was budgeted in the amount of \$36,500.00 within the 2021-2022 Fiscal Year, and,

**WHEREAS**, Phase 2 of the project will be a total expenditure of \$12,329.60; and,

**WHEREAS**, at this time Account #100-7-501.603 has a remaining balance of \$2,865.00 after Phase 1 of the Shade Structure project was completed; and,

**WHEREAS**, a budget amendment in the amount of \$9,463.60 will have to be completed at a later date for City Council's consideration; and,

**WHEREAS**, the City Council hereby finds that the purchase Phase 2-Shade Structure Building for the Police Department is in the best interest of the health, safety and welfare of the citizens of the City of Gonzales.

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

Section 1. The City Council of the City of Gonzales, Texas hereby authorizes the purchase of a Phase 2-Shade Structure Building for the Police Department in the amount of \$12,329.60.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April 2022.**

---

Connie Kacir, Mayor

ATTEST:

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Kristina Vega, City Secretary

# ShadePro L.L.C

8690 FM 306  
New Braunfels TX 78132  
210-651-1041 Phone  
Cell 210.687.6764



## Proposal

Date: March 29, 2022  
**Quote good for 45 days.**

### Billing Address:

Company:	Gonzales Police Department
Contact:	Chief Tim Crow
Address:	718 St. Paul
City/State/Zip:	Gonzales, TX 78629
Phone:	830-672-8686
Mobile Phone:	
E-mail:	<a href="mailto:tcrow@gonzales.texas.gov">tcrow@gonzales.texas.gov</a>

### Installation Address:

Company:	Gonzales Police Department
Contact:	Chief Tim Crow
Address:	718 St. Paul
City/State/Zip:	Gonzales, TX 78629
Phone:	830-672-8686
Mobile Phone:	
E-mail:	<a href="mailto:tcrow@gonzales.texas.gov">tcrow@gonzales.texas.gov</a>

Qty	Size	Hgt	Structure Type	Style	Netting	P/C Color	Unit Price	Total
1	18' x 40'	12'-9'	Single Post Sloped Cantilever	Sail	Sky Blue	Tiger Beige		\$ 11,334.60

Includes Delivery & Installation

Texas Stamped Engineer Drawings \$995.00 ea.(Included)

\$	995.00

**Sub Total**

\$	12,329.60
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**Sales Tax**

Exempt
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**Total**

\$	12,329.60
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**Amount Due Now**

**Upon Completion**


**BuyBoard Contract #592-19**

### Method of Payment

☐ Check Number: \_\_\_\_\_ Amount Collected: \_\_\_\_\_

☐ Credit Card Number: \_\_\_\_\_ Exp Date: \_\_\_\_\_

Name on Card: \_\_\_\_\_ Security Code: \_\_\_\_\_

*When a check is provided as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. Privacy Act Statement required by 5 U.S.C. 552a(e)(3) as governed by the rules of the NACHA. If you wish to opt out of check conversion notify on this document and return with payment.*

**Dennis Maloney 210.687.6764**

ShadePro Representative

March 29, 2022

Date



Accepted By

Date

**ShadePro**

**Permanent Shade Structures**

ShadePro, L.L.C., 8690 FM 306 New Braunfels TX 78132 (the "company") hereby agrees as follows:

1. **Service.** The company will provide freight, labor, and materials to the property located at the installation address in accordance to the terms and conditions of this agreement.
2. **Warranty.** During the term of the warranty, the Company will provide service to the customer when deemed necessary, provided that the Customer's account with the Company is current and/or paid in full. The limited warranty stated in this section is given in lieu of any other guarantee or warranty, whether expressed or implied, including without limitation the warranties of merchantability and fitness for a particular purpose.
3. **Terms.** The parties agree that the initial term of this agreement will be a 75% deposit upon signing of the contract, with the remaining balance due upon completion of installation. Purchase orders must be approved by the ShadePro corporate office. Maximum terms on approved purchase orders shall not exceed 30 days. Invoices 30 days past due will be charged interest of 1.5 % per month. All sales are final. No refunds or returns.
4. **Access to property.** Customer hereby grants the Company's service technicians and installation crew's access to the property for the purpose of a complete installation. If the customer is unavailable to provide an installer access to the property at any certain time, the customer must notify the company upon signing of the contract.
5. **Disclaimers and Limitation of Liability.** The company will not be responsible for (1) any past, present, or future damage to the property not caused by a Company Representative (2) damage to underground wiring-unless the Company has been given by the customer plans locating all underground wiring and have been previously marked by the customer. It is the customer's responsibility to contact 811, call before you dig services 48 hours prior to installation.
6. **Manufacturer's Warranty.** Warranty will be validated upon final payment of the invoice. Failure to pay final balance due will result in the warranty being voided. Warranty covers Shade netting failure due to Ultraviolet deterioration, and faulty workmanship for a period of ten years. Not covered are rips and tears caused by means other than faulty workmanship. Shade netting is not warranted against contact with chemicals, caustic materials, open flames or any other heat source. ShadePro is not responsible for errors or damage in installation or modification by non ShadePro approved installers and the warranty will become void. The warranty will become void if installed on frames other than those manufactured by ShadePro. Steel frames and cables are covered for a period of twenty years against failure due to corrosion or faulty workmanship. ShadePro does not warranty against surface rust, however the frame is guaranteed not to fail due to corrosion or rust on the frame, fittings or cable. Powder coating is warranted for one year.
7. **Adverse weather conditions and natural disasters.** Shade Structures are warranted not to fail in winds up to 90 miles per hour. The warranty does not cover natural disasters such as earthquakes, blizzards, shifts of terrain, or tornados in general vicinity. The installation warranty will be considered void if a ShadePro product is installed within the boundaries of a flood plane or failure due to saturated terrain or floods. If the structure is installed in an area exposed to hurricanes, remove shade netting and roof structure when a hurricane warning is issued. The fixed posts will normally withstand hurricane force winds if installed by a ShadePro trained installer.
8. **Permits.** Quoted price does not include the cost of permits. It is the customer's responsibility to obtain and pay for all permits. Required drawings will be an additional expense.
9. **Product Liability.** The company is not responsible for injuries or accidents on, near, or around installed products during and after the installation. Be cautious around the construction site during the installation , keep children and pets away from area under construction at all times.

I have read, understood, and agree to all of the terms listed above.

SIGN X \_\_\_\_\_ Date \_\_\_\_\_

PRINT NAME & TITLE \_\_\_\_\_



## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-33 Authorizing the City Manager to Execute a Service Agreement with Gonzales Main Street, Inc.

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Action

### **BACKGROUND:**

The agreement between the City of Gonzales and Gonzales Main Street Inc. was last executed in March 2018. The document recently has been reviewed and updated with several minor adjustments that were recommended by the Gonzales Main Street Inc. advisory board and reviewed by legal counsel.

The following recommended updates to the original service agreement include:

City agrees to:

- prepare a budget for services for the forthcoming year review
  - City Manager and Main Street Program Director shall meet with Board on an as needed basis.
  - Provide monthly meeting space at Gonzales City Hall so long as there is no conflict with the use of the Council Chambers
  - Provide all necessary accounting services and recordkeeping
- Gonzales Main Street Inc. agrees to:
  - Develop budget priorities for City Council consideration
  - Oversee the administration of the Main Street Program
  - Provide three (3) annual events

### **POLICY CONSIDERATIONS:**

Based on the service agreement that is negotiated between the two parties it will provide program support, liability insurance and legal services to the Gonzales Main Street, Inc.

### **FISCAL IMPACT:**

N/A

### **ATTACHMENTS:**

Attachments:

Service Agreement

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution.



## **RESOLUTION NO. 2022-33**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT WITH GONZALES MAIN STREET, INC.; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, this agreement will establish guidelines and responsibilities for the Gonzales Main Street, Inc. and the City of Gonzales; and,

**WHEREAS**, the City Council approved a service agreement to be executed between the City of Gonzales and Gonzales Main Street, Inc. in March 2018; and,

**WHEREAS**, Gonzales Main Street, Inc. voted unanimously to make several minor amendments to the existing agreement at their meeting held on March 24, 2022; and,

**WHEREAS**, based on the service agreement that is negotiated between the two parties it will provide program support, liability insurance and legal services to the Gonzales Main Street, Inc; and,

**WHEREAS**, the City Council of the City of Gonzales hereby finds that Gonzales Main Street, Inc., supports and sponsors programs that represent and maintain the culture, heritage and spirit of the City of Gonzales and serves a vital public purpose in preserving our shared place in Texas History.

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

Section 1. The City Council of the City of Gonzales, Texas hereby authorizes the City Manager to enter into a service agreement with Gonzales Main Street, Inc., attached hereto as Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of

such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

---

Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary

THE STATE OF TEXAS                   X  
  X       KNOW ALL MEN BY THESE PRESENTS;  
COUNTY OF GONZALES               X

This agreement, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Gonzales, a municipal corporation, situated in Gonzales County, Texas, acting by and through its City Manager, (hereinafter referred to as the "City"), and the Gonzales Main Street, Inc. (hereinafter referred to as the "GMS") acting by and through its President:

**WITNESSETH:**

For and in consideration of the covenants, promises, and agreements set forth herein, it is mutually agreed as follows:

**I. PURPOSE**

That the City agrees to provide support for the Gonzales Main Street Program ("Program"), liability insurance, and legal services to the GMS as requested by the Board of Directors of the GMS (hereinafter referred to as the "Board")

**II. DUTIES**

A. The City Agrees to:

1. Provide liability insurance for all GMS events held on City property.
2. Provide information on local, state, and federal permit and licensing requirements and act as a liaison between the GMS and other City departments.
3. Prepare a budget for services provided for the forthcoming year for review. The budget shall be prepared in accordance with the procedures prescribed for all City departments and included with the proposed overall City budget for approval by the Gonzales City Council.
4. The City Manager and Main Street Program Director, or his/her designee, shall meet with the Board on an as needed basis, to receive the Board's input regarding services.

5. Act as the Employer of Record and provide salary and benefits for Main Street Program Director.
6. Provide monthly meeting space at Gonzales City Hall so long as there is no conflict with the use of the Council Chambers.
7. Provide all necessary accounting services and recordkeeping to GMS as requested.

B. The GMS agrees to:

1. Develop budget priorities and recommendations for City Council consideration.
2. Oversee the administration of the Main Street Program.
3. Provide three annual events, some examples include:
  - a. City Wide Yard Sale
  - b. Main Street Concert Series and Star Spangled Spectacular
  - c. Happy Fall Y'all
  - d. Main Street Lighted Christmas Parade and Santa's Market
  - e. Come and Taste It Beer, Wine, and Art Festival

### **III. LEGAL SERVICES**

The City Attorney shall be the legal advisor of, and attorney for, the GMS. Such legal services shall include representation of the entity in litigation and legal proceedings, so long as the interest of the entity is not adverse to that of the City, review documents, contracts and legal instruments as to form and legality, and attendance at meetings when requested.

The GMS retains the right to hire an attorney of its own choice at its own expense whenever it so chooses, or anytime the City Attorney determines that his/her office is unable to represent both the GMS and City.

### **IV. TERMINATION**

This Agreement may be terminated by the GMS or the City, in whole or in part, whenever such termination is determined by the Board or the City Council to be in the best interest of the GMS or the City. Termination will be effective sixty (60) days after delivery of Notice of Termination specifying to what extent performance or work under the Agreement has been terminated and that the Agreement has been terminated and that the Agreement shall be terminated sixty (60) days after receipt by the notified party.

If no notice of termination is received from either party prior to \_\_\_\_\_, 20\_\_\_\_\_, this Agreement expires without notification on \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_.

#### **V. OFFICIALS NOT TO BENEFIT**

No public official of the governing body of the City or the GMS who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the Agreement which affects any personal interest, nor shall the public official have any personal or pecuniary interest direct or indirect in this Agreement or proceeds thereof.

#### **VI. MINORITY AND SMALL BUSINESSES**

The City will encourage and utilize small businesses and minority suppliers and services to the extent possible under present law for use in completion of the Agreement.

#### **VII. EQUAL EMPLOYMENT OPPORTUNITIES**

During the performance of this Agreement, the City agrees as follows:

The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The City will take affirmative action to ensure that applicants and their employees are treated equally without regard to race, color, religion, sex, national origin, or disability. The City agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause. The City will, in all solicitations or advertisements for employees placed by or on behalf of the City; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

#### **VIII. AGREEMENT**

**This Agreement shall constitute the sole agreement between the City and the GMS relating to the object of this Agreement and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.**

**GONZALES MAIN STREET, INC.**

**CITY OF GONZALES**

\_\_\_\_\_  
President

\_\_\_\_\_  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-34 Approving a Performance agreement between the Gonzales Economic Development Corporation and the Gonzales Main Street

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

The Gonzales Economic Development Corporation (GEDC) has committed 4B sales tax funds for the Gonzales Main Street to administer. These funds support Main Street's mission to preserve and revitalize the Gonzales Main Street district in accordance with the National Main Street Four Point Approach of organization, economic vitality, design, and promotion. An agreement between the GEDC and the Gonzales Main Street documents of how these grants will be received and administered as a partnership between the GEDC and Gonzales Main Street to support the economic vitality of downtown.

The Main Street Advisory Board voted unanimously to approve the proposed agreement at their regular meeting on March 23, 2022.

At its April 4, 2022, meeting, the GEDC unanimously approved the Performance Agreement with Gonzales Main Street. The public hearing notice was published in the April 7, 2022, edition of the Gonzales Inquirer.

### **POLICY CONSIDERATIONS:**

GEDC is authorized to make grants of money towards permissible projects. This Performance agreement empowers Gonzales Main Street to administer grants within the Main Street District.

### **FISCAL IMPACT:**

GEDC has allocated \$150,000 in the Fiscal Year 2021-22 budget for approved Main Street grant projects.

### **ATTACHMENTS:**

Performance agreement between the GEDC and the Gonzales Main Street

### **STAFF RECOMMENDATION:**

The attached performance agreement was approved by the GEDC on April 4, 2022.

## **RESOLUTION NO. 2022-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE GONZALES ECONOMIC DEVELOPMENT CORPORATION AND GONZALES MAIN STREET, INC. RELATED TO FUNDING ECONOMIC DEVELOPMENT PROJECTS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Gonzales Economic Development Corporation (“GEDC”) and Gonzales Main Street, Inc. (“Main Street”) desire to enter into an agreement for funding of economic development projects (“Agreement”); and,

**WHEREAS**, the City of Gonzales supports the terms of the agreement identified in Exhibit “A” and authorizes the City Manager to execute any documents deemed necessary to enact the Agreement; and,

**WHEREAS**, the City Council finds that authorizing an agreement for the funding of economic development projects is in the best interest of the City and its citizens and will further promote the public health, safety, and general welfare of the City.

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

Section 1. The City Council of the City of Gonzales hereby supports the agreement attached as Exhibit “A” and authorizes the City Manager to execute any documents necessary to enact the agreement.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject



matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14th day of April, 2022**

---

Mayor, Connie L. Kacir

ATTEST:

---

Kristina Vega, City Secretary

## PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between the **GONZALES MAIN STREET, INC.**, a Texas non-profit corporation (hereinafter referred to as “Main Street”), and the **GONZALES ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “GEDC”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, GEDC is a Type B economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code, as amended (also referred to as the “Act”), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

**WHEREAS**, Chapters 501 to 505 of the Texas Local Government Code contains the authority for the use of Type B sales tax revenue for permissible “projects” as that term is defined in Chapters 501 to 505 of the Texas Local Government Code; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development;” and

**WHEREAS**, pursuant to this Agreement, Main Street agrees to undertake the distribution, intake, and approval of applications for the funding of projects consistent with Chapters 501 to 505 of the Texas Local Government Code, and in particular Sections 501.103 and 505.158 of the Texas Local Government Code; and

**WHEREAS**, Main Street agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Gonzales, Texas, to approve all programs and expenditures of GEDC, and accordingly this Agreement is not effective until City Council has approved this Agreement at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GEDC and Main Street agree as follows:

## SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

## SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until **September 30, 2022**, unless terminated sooner under the provisions hereof.

## SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **City.** The word “City” means the City of Gonzales, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 820 N. St. Joseph Street, Gonzales, Texas 78629.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between Main Street and GEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **GEDC.** The term “GEDC” means the Gonzales Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 820 N. St. Joseph Street, Gonzales, Texas 78629.
- (g) **Main Street.** The words “Main Street” mean the Gonzales Main Street, Inc., a Texas non-profit corporation, its successors and assigns, whose address for the purposes of this Agreement is 820 N. St. Joseph Street, Gonzales, Texas 78629.
- (h) **Main Street District.** The words “Main Street District” mean the area of the City of Gonzales, Texas, as depicted in **Exhibit A** of this Agreement which is attached hereto and is incorporated herein for all purposes.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of removal of slipcovers, false fronts or non-historical added facades, repainting of replaced mortar joints and brick, removing paint and restoring it to its natural condition, reconstruction or remodeling that achieves a historic look, restoring transom windows,

replacing/restoring awnings or canopies to their historic state. In addition, landscaping (if irrigated and maintained and warranted for one year) parking lot resurfacing, striping, fencing driveway improvement, lighting, electrical, plumbing, fencing, installation of sprinkler systems and compliance with ADA requirements, and infrastructure, and those expenses which otherwise meet the definition of “project” as that term is defined by Sections 501.103 and 5051.58 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act. All “Qualified Expenditures” must be made within the Main Street District, as depicted in *Exhibit A* of this Agreement which is attached hereto and is incorporated herein for all purposes.

- (j) **Related Documents.** The words “Related Documents” mean and include without limitation all other instruments and documents, whether now or hereafter existing, executed in connection with this Agreement.
- (k) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF MAIN STREET.**

Main Street covenants and agrees with the GEDC that while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Economic Development Projects.** Main Street covenants and agrees to provide to applicants requesting funding for properties within the Main Street District, the following:
  - (1) the form of the application attached hereto as *Exhibit B*; and
  - (2) the checklist in a form attached hereto as *Exhibit C*.

Main Street covenants and agrees to approve applications consistent with the Act. Main Street covenants and agrees all properties approved for funding pursuant to this Agreement shall be within the Main Street District. Further, Main Street covenants and agrees no approved applicant shall receive more than **Fifty-Two Thousand and No/100 Dollars (\$52,000.00)** in funding. In addition, Main Street covenants and agrees that approved applicants shall execute a performance agreement in a form substantially similar to the form attached hereto as *Exhibit D*, prior to the receipt of any funding.

- (b) **Quarterly Reports.** Main Street covenants and agrees on a quarterly basis during the Term of this Agreement to provide to the GEDC written quarterly reports on economic development activities related to this Agreement. In addition, Main Street covenants and agrees to provide quarterly reports in person at the regularly scheduled meetings of the GEDC during the Term of this Agreement.
- (c) **Performance.** Main Street covenants and agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Main Street and GEDC.

## SECTION 5. AFFIRMATIVE OBLIGATIONS OF GEDC.

GEDC covenants and agrees with Main Street that while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance by GEDC.** GEDC covenants and agrees to provide funding to Main Street in an amount not to exceed **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** by \_\_\_\_\_. Further, GEDC covenants and agrees to undertake any and all procedural requirements under the Act including the publication of notice, and conduct a public hearing concerning this Agreement and related project.
- (b) **Performance.** GEDC covenants and agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between GEDC and Main Street.

## SECTION 6. CESSATION OF ADVANCES.

If GEDC has made any commitment to make any advance of funding to Main Street whether under this Agreement or under any other agreement, GEDC shall have no obligation to advance or disburse any financial assistance if: (i) Main Street becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

## SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Affirmative Obligations of Main Street.** The failure of Main Street to comply with any of the affirmative obligations contained within Section 4 of this Agreement is an Event of Default.
- (b) **Affirmative Obligations of GEDC.** The failure of GEDC to comply with any of the affirmative obligations contained within Section 5 of this Agreement is an Event of Default.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished to GEDC by or on behalf of Main Street under this Agreement or the Related Documents that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (d) **Insolvency.** Main Street's insolvency, appointment of receiver for any part of Main Street's property, any assignment for the benefit of creditors of Main Street, any type of creditor workout for Main Street or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Main Street is an Event of Default.
- (e) **Other Defaults.** Failure of Main Street to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related

Documents, or failure of Main Street to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between GEDC and Main Street is an Event of Default.

## **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

## **SECTION 9. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gonzales County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Gonzales County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Main Street warrants and represents that the individual or individuals executing this Agreement on behalf of Main Street has full authority to execute this Agreement and bind Main Street to the same. GEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally

delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Main Street:                      Gonzales Main Street, Inc.  
820 N. St. Joseph Street  
Gonzales, Texas 78629  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_

if to GEDC:                                Gonzales Economic Development Corporation  
820 N. St. Joseph Street  
Gonzales, Texas 78629  
Attn: Jennifer Kolbe,  
Economic Development Director  
Telephone: (830) 672-2815, Ext. 1600

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **Termination without Default.** Either party may terminate this Agreement at any time with 60 days advance written notice to the other party. Within thirty (30) days of termination of the Agreement, Main Street shall return to GEDC any unexpended funds provided pursuant to this Agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**MAIN STREET ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND MAIN STREET AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.**

**MAIN STREET:**

***GONZALES MAIN STREET, INC.,***  
a Texas non-profit corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**GEDC:**

***GONZALES ECONOMIC  
DEVELOPMENT CORPORATION,***  
a Texas non-profit corporation

By: \_\_\_\_\_  
Andy Rodriguez, President  
Date Signed: \_\_\_\_\_



*Exhibit A*

[Depiction of the Main Street District]

## ***Gonzales Main Street District***



**Liz Reiley, Main Street Manager**

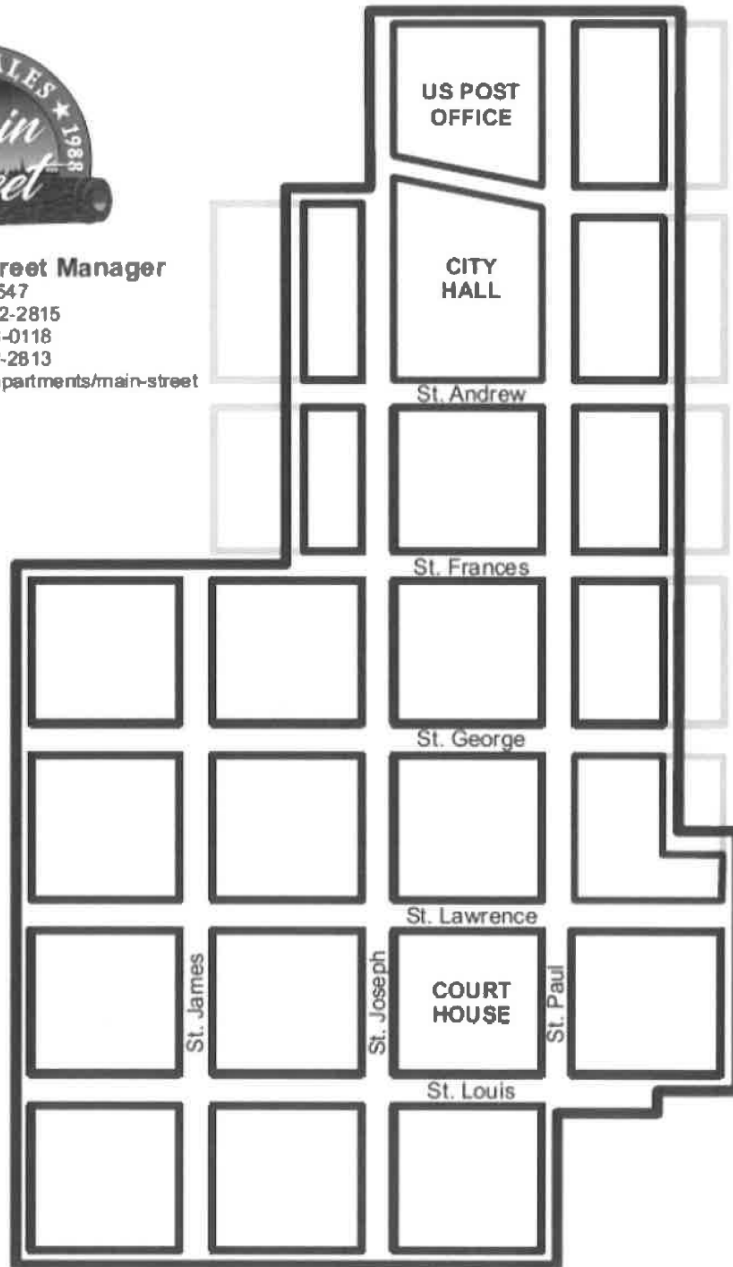
P. O. Box 547

Office: 830-672-2815

Cell: 830-263-0118

Fax: 830-672-2813

[www.gonzales.texas.gov/p/departments/main-street](http://www.gonzales.texas.gov/p/departments/main-street)



***Exhibit B***

[Form of GEDC Application]



## Gonzales Economic Development Corporation Small Business Incentive Grant Application

1. The Business Incentive Grant Guidelines have been reviewed. ☐ Yes ☐ No
2. One original application and one copy is attached. ☐ Yes ☐ No
3. All parties having an ownership in the business, property or facility have signed this application. ☐ Yes ☐ No
4. This application contains three (3) cost estimates from qualified contractors and/or suppliers. ☐ Yes ☐ No
5. Type of grant being requested:
  - ☐ **Property Improvement** - Storefronts, including, but not limited to, items such as painting, reconstruction, remodeling, landscaping (if irrigated and maintained or warranted for one year), parking lot resurfacing, striping, driveway improvement, lighting, electrical, plumbing, fencing and other infrastructure.
  - ☐ **Sign Improvement Grant** - New signs, and renovation or removal of existing signs.
  - ☐ **Vacant, Underutilized & Occupancy** - Available a business that rents or purchases a vacant or underutilized building and operate a business. GEDC will reimburse business owners up to 50% of their rent or mortgage payments, not to exceed \$6,000.00. The reimbursement requires that the business signs a two (2) year lease and remains open and operating for a minimum of six (6) months before any reimbursement payment will be made.
  - ☐ **Mega Grant** - Gonzales EDC will provide a matching grant of up to 50% of improvement costs to new or existing commercial or business property owners who make a minimum investment of at least \$65,000.00 to purchase and/or renovate the building. Improvements may include but not limited to the installation of sprinkler systems, compliance with ADA, demolition and framing and infrastructure.
  - ☐ **Main Street District** – Businesses must be located within the Gonzales Main Street District. Eligible improvements included, but not limited to, are removal of slipcovers, false fronts or non-historical added facades, repainting of replaced mortar joints and brick, removing paint and restoring it to its natural condition, reconstruction or remodeling that achieves a historic look, restoring transom windows, replacing/restoring awnings or canopies to their historic state. In addition, landscaping (if irrigated and maintained and warranted for one year) parking lot resurfacing, striping, fencing driveway improvement, lighting, electrical, plumbing, fencing, installation of sprinkler systems and compliance with ADA requirements, and infrastructure.
6. The business is a for-profit enterprise. ☐ Yes ☐ No
7. Is the business located in the Main Street District? ☐ Yes ☐ No

### Business Incentive Grant Application

1. Applicants name(s) \_\_\_\_\_
2. Business name \_\_\_\_\_
3. Applicants business phone \_\_\_\_\_ cell phone \_\_\_\_\_  
e-mail address \_\_\_\_\_ business website \_\_\_\_\_
4. Mailing address \_\_\_\_\_
5. Physical address of property for which grant is requested: \_\_\_\_\_
6. Estimated project start date \_\_\_\_\_
7. Estimated project completion date \_\_\_\_\_
8. Do you own any or all interest in the property or building? ☐ Yes ☐ No
9. Owner's business phone \_\_\_\_\_ Owner's cell phone \_\_\_\_\_  
Owner's E-mail address \_\_\_\_\_  
Owners mailing address \_\_\_\_\_
10. This business is a ☐ sole proprietorship ☐ Partnership ☐ S Corp ☐ Corporation  
☐ Other \_\_\_\_\_  
Describe the business activity. Attach additional sheets if necessary. Example: professional office – law firm, manufacturing – auto parts, retail – women's clothing, wholesale distribution – food products, restaurant – sit down for fast food.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. This business is a ☐ new business or start up or ☐ established
12. Year established \_\_\_\_\_
13. Has the applicant received a grant from the GEDC in the past? ☐ Yes ☐ No  
Amount awarded \_\_\_\_\_ Date \_\_\_\_\_  
Use of grant \_\_\_\_\_
14. Number of jobs retained \_\_\_\_\_
15. Number of employees projected over the next five (5) years \_\_\_\_\_
16. Average annual wage paid to employees \_\_\_\_\_
17. Provide a detailed description of the proposed project. Attach project drawings, specifications, and information about the project. Example: replacing roof, finishing out space for retail, add 2 offices, remodel 2 restrooms, upgrade electrical and plumbing to meet current city code.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
18. Total estimated cost of the capital investment in the project \_\_\_\_\_
19. Cost of land and or site acquisition \_\_\_\_\_
20. Cost of site improvements \_\_\_\_\_
21. Sales tax information for the past five (5) years is attached. ☐ Yes ☐ No

22. Sales tax projections for the next five (5) years are attached. ☐ Yes ☐ No
23. Estimated inventory located at property for the next 5 years \_\_\_\_\_
24. Estimated cost of new furniture, fixtures and equipment added. \_\_\_\_\_
25. Property tax information for real and personal property paid for the past 5 years is attached. ☐ Yes ☐ No
26. Proof of financing is attached ☐ Yes ☐ No
27. The project is being is self-funded. ☐ Yes ☐ No

Certifications and acknowledgements

I (we) the undersigned do hereby acknowledge and/or certify the following

- a. Prior to the submission of this application, a copy of the “Guidelines and Criteria” for the Business Improvement Grant program have been obtained, reviewed, and are clearly understood.  
\_\_\_\_ Initials of Applicant  
\_\_\_\_ Initials of Property Owner
- b. The submission of the Application does not create any property, contract or other legal rights in any person or entity to have the Grantor provide grant funding.  
\_\_\_\_ Initials of Applicant  
\_\_\_\_ Initials of Property Owner
- c. If the grant funds are approved, full compliance will be maintained with all of the provisions of the Grant Guidelines and/or special provisions attached as part of the grant. Failure to so may be grounds for ineligibility to receive previously approved grant funding.  
\_\_\_\_ Initials of Applicant  
\_\_\_\_ Initials of Property Owner
- d. If grant funding is approved, a designee of the GEDC or Main Street Director shall have the right to inspect the work in progress, as well as all completed improvements.  
\_\_\_\_ Initials of Applicant  
\_\_\_\_ Initials of Property Owner
- e. All grant funding is contingent upon the continued availability of grant funds. The GEDC reserves the right to decrease funding or cancel the grant program at its sole discretion.  
\_\_\_\_ Initials of Applicant  
\_\_\_\_ Initials of Property Owner
- f. The GEDC reserves unto itself its absolute right of discretion in deciding whether or not to approve a grant relative to this application. The Applicant accepts that all decisions relating to the award of grant funds involve subjective judgements, on

the part of the decision-making entity, related to the aesthetics of the of the proposed project and the granting of awarded funds for said project. The GEDC reserves the right to waive or add any of the requirements of a grant application as it deems necessary.

\_\_\_\_\_ Initials of Applicant  
\_\_\_\_\_ Initials of Property Owner

- g. The GEDC, its employees and its agents and the Main Street Director shall be held harmless for any damages, both personal and property, which may result directly or indirectly from any incident associated with subject project of this Application both during and after construction, and that the GEDC, its employees, and its agents shall not be liable for any debts incurred in association with the execution and completion of the subject property of this Application, and further that I (we) the Applicant/Applicants assume all responsibility for any all the aforementioned liabilities.

\_\_\_\_\_ Initials of Applicant  
\_\_\_\_\_ Initials of Property Owner

- h. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of the “Guidelines and Criteria,” and this Application, and that if any provision or provisions of these should be held invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected in thereby.

\_\_\_\_\_ Initials of Applicant  
\_\_\_\_\_ Initials of Property Owner

- i. The information provided in the Application has been provided voluntarily, and may be relied upon as being true and correct , and that the GEDC may rely on the signatures affixed hereto as if the same had been signed by Applicant(s) before a Notary Public or other authorized officer to administer oaths and take acknowledgements.

\_\_\_\_\_ Initials of Applicant  
\_\_\_\_\_ Initials of Property Owner

- j. State law requires that, by signing and submitting this application, you certify that the company, its branches, divisions, and departments do and will not knowingly employ and undocumented worker. An agreement with the company will require the company to repay the total amount of the public benefit received with interest at the rate and according to the terms of the agreement if the company is convicted of a violation under 8 U.S.C. Section 1324a(f). Repayment will be due not later than the 120<sup>th</sup> day after the date the City notifies the company of the violation as provided in the agreement.

An undocumented worker is an individual who, at the time of employment, is not:  
1. Lawfully admitted for permanent residence to the United States; or ii. authorized under law to be employed in that manner in the United States.

\_\_\_\_\_ Initials of Applicant  
\_\_\_\_\_ Initials of Property Owner

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_  
Applicant Name Printed

\_\_\_\_\_  
Applicants Signature

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_  
Facility Owner Name Printed

\_\_\_\_\_  
Facility Owners Signature

*Exhibit C*

[Documentation Checklist]





## **Business Improvement Grant Program DOCUMENTATION CHECKLIST**

### **Documentation to be provided by the applicant:**

- \_\_\_\_\_ Establishment of business entity name (copy of Articles of Incorporation, dba, etc.)
- \_\_\_\_\_ Sales Tax information for the past year
- \_\_\_\_\_ Sales Tax information for the past five (5) years
- \_\_\_\_\_ Copy of lease agreement (if facility is leased)
- \_\_\_\_\_ Legal description of subject property (Deed of Ownership)
- \_\_\_\_\_ History of the building: Original Photos, Newspaper Articles in a timeline.
- \_\_\_\_\_ Appraisal Information for: Property, Business, etc.
- \_\_\_\_\_ Vicinity map of subject property: Recent Survey, topical/street view
- \_\_\_\_\_ Estimates of proposed improvements
- \_\_\_\_\_ Pictures of building's exterior, roof, and foundation.
- \_\_\_\_\_ Scale drawing by Texas Main Street Architect or registered design professional.
- \_\_\_\_\_ Documentation of approved financing
- \_\_\_\_\_ State sales tax reporting form for most current (three month, 1 year , 5 year if applicable)
- \_\_\_\_\_ Consultation with City of Gonzales Building Official
- \_\_\_\_\_ Consultation with City of Fire Official
- \_\_\_\_\_ Copy of permits for project

***Exhibit D***

[Form of Performance Agreement]

## MAIN STREET DISTRICT PERFORMANCE AGREEMENT

This **MAIN STREET DISTRICT PERFORMANCE AGREEMENT** (hereinafter referred to as the “Agreement”) by and between \_\_\_\_\_ (hereinafter referred to as “Developer”), and the **GONZALES MAIN STREET, INC.**, a Texas non-profit corporation (hereinafter referred to as “Main Street”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, Main Street is a Texas non-profit corporation who has contracted with the Gonzales Economic Development Corporation, a Type B economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code, to oversee projects undertaken within the Main Street District, an area located within the City of Gonzales, Texas, as depicted in *Exhibit A* of this Agreement, which is attached hereto and is incorporated herein for all purposes; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development;” and

**WHEREAS**, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless Main Street enters into an agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by Main Street’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by Main Street to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

**WHEREAS**, Developer has applied to Main Street for financial assistance necessary for the renovation and improvements to be made to the Property, as defined herein, which is located within the Main Street District; and

**WHEREAS**, Main Street’s Board of Directors have determined the financial assistance provided to Developer through this Agreement is consistent with and meets the definition of “project” as that term is defined in Sections 501.103 and 505.158 of the Texas Local Government Code, and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Main Street and the Developer agree as follows:

## **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the parties.

## **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter for one year from the Effective Date of this Agreement, unless terminated sooner under the provisions hereof.

## **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Main Street District Performance Agreement, together with all exhibits and schedules attached to this Main Street District Performance Agreement from time to time, if any.
- (c) **City.** The word “City” means the City of Gonzales, Texas, a Texas municipality, whose address for the purposes of this Agreement is 820 N. St. Joseph Street, Gonzales, Texas 78629.
- (d) **Developer.** The word “Developer” means \_\_\_\_\_, whose address for the purposes of this Agreement is \_\_\_\_\_ Street, Gonzales, Texas 78629.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and Main Street.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Eight Hundred Twenty (1,820) hours of work averaged over a twelve (12) month period.
- (h) **Main Street.** The words “Main Street” mean the Gonzales Main Street, Inc., a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of

this Agreement is 820 N. St. Joseph Street, Gonzales, Texas 78629.

- (i) **Main Street District.** The words “Main Street District” mean the area of the City of Gonzales, Texas, as depicted in ***Exhibit A*** of this Agreement which is attached hereto and is incorporated herein for all purposes.
- (j) **Property.** The word “Property” means the property generally located at \_\_\_\_\_, City of Gonzales, Gonzales County, Texas, which is located within the Main Street District.
- (k) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of removal of slipcovers, false fronts or non-historical added facades, repainting of replaced mortar joints and brick, removing paint and restoring it to its natural condition, reconstruction or remodeling that achieves a historic look, restoring transom windows, replacing/restoring awnings or canopies to their historic state. In addition, landscaping (if irrigated and maintained and warranted for one year) parking lot resurfacing, striping, fencing driveway improvement, lighting, electrical, plumbing, fencing, installation of sprinkler systems and compliance with ADA requirements, and infrastructure, and those expenses which otherwise meet the definition of “project” as that term is defined by Sections 501.103 and 5051.58 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act. All “Qualified Expenditures” must be made within the Main Street District, as depicted in ***Exhibit A*** of this Agreement which is attached hereto and is incorporated herein for all purposes.
- (l) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

Developer covenants and agrees with Main Street that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to Main Street invoices, receipts, or other documentation in a form acceptable to Main Street for the Qualified Expenditures made to the Property in a minimum amount of \_\_\_\_\_ **Thousand and No/100 Dollars (\$xx,xxx.00)** within three (3) months of the Effective Date of this Agreement.
- (b) **Operate Business Located on Property.** Developer covenants and agrees during the Term of this Agreement to keep open to the general public the business located on the Property.
- (c) **Job Creation and Retention.** Developer covenants and agrees during the Term of this Agreement, the Developer shall employ or cause to be employed a minimum of \_\_\_\_\_ (\_\_\_\_\_) Full-Time Equivalent Employment Positions working at the Property.
- (d) **Performance Conditions.** Developer agrees to make, execute and deliver to Main Street

such other instruments, documents and other agreements as Main Street or its attorneys may reasonably request to evidence this Agreement.

- (e) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and Main Street.

## **SECTION 5. AFFIRMATIVE OBLIGATIONS OF MAIN STREET.**

Main Street covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Reimbursement for Qualified Expenditures.** Main Street covenants and agrees to submit reimbursement to Developer for Qualified Expenditures made by the Developer to the Property pursuant to Section 4(a) of this Agreement in the amount not to exceed \_\_\_\_\_ **Thousand and No/100 Dollars (\$XX,000.00)** within thirty (30) days of receipt of said documentation required by Section 4(a) of this Agreement.
- (b) **Performance.** Main Street agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and Main Street.

## **SECTION 6. CESSATION OF FINANCIAL ASSISTANCE.**

If Main Street has made any commitment to make any financial disbursement to Developer, whether under this Agreement or under any other agreement, Main Street shall have no obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or Main Street to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or Main Street to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and Main Street is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to Main Street by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor

workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from Main Street and/or Gonzales County Central Appraisal District is an Event of Default.

## **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by Main Street to Developer pursuant to Section 5(a) of this Agreement shall become immediately due and payable by Developer to Main Street.

## **SECTION 9. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gonzales County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Gonzales County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. Main Street warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Filed in Deed Records.** This Agreement shall be filed in the deed records of Gonzales County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of the Developer.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Developer:

\_\_\_\_\_  
\_\_\_\_\_  
Gonzales, Texas 78629  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_

if to Main Street:

Gonzales Main Street, Inc.  
820 N. St. Joseph Street  
Gonzales, Texas 78629  
Attn: \_\_\_\_\_, President  
Telephone: \_\_\_\_\_

- (i) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120<sup>th</sup> day after the date Main Street notifies Developer of the violation.



**[The Remainder of this Page Intentionally Left Blank]**

THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

**MAIN STREET:**

***GONZALES MAIN STREET, INC,***

a Texas non-profit corporation

By: \_\_\_\_\_

, President

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

**ATTEST:**

\_\_\_\_\_  
, Secretary

**STATE OF TEXAS**

§

§

**COUNTY OF GONZALES**

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, President of the Gonzales Main Street, Inc., a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

\_\_\_\_\_  
a Texas \_\_\_\_\_ ,

By: \_\_\_\_\_

Name

President

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

**STATE OF TEXAS**

§

§

**COUNTY OF GONZALES**

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2022, by \_\_\_\_\_ , \_\_\_\_\_ of the \_\_\_\_\_  
\_\_\_\_\_, a Texas \_\_\_\_\_ , on behalf of said \_\_\_\_\_ .

\_\_\_\_\_  
Notary Public, State of Texas

*Exhibit A*

[Depiction of the Main Street District]

## ***Gonzales Main Street District***



**Liz Reiley, Main Street Manager**

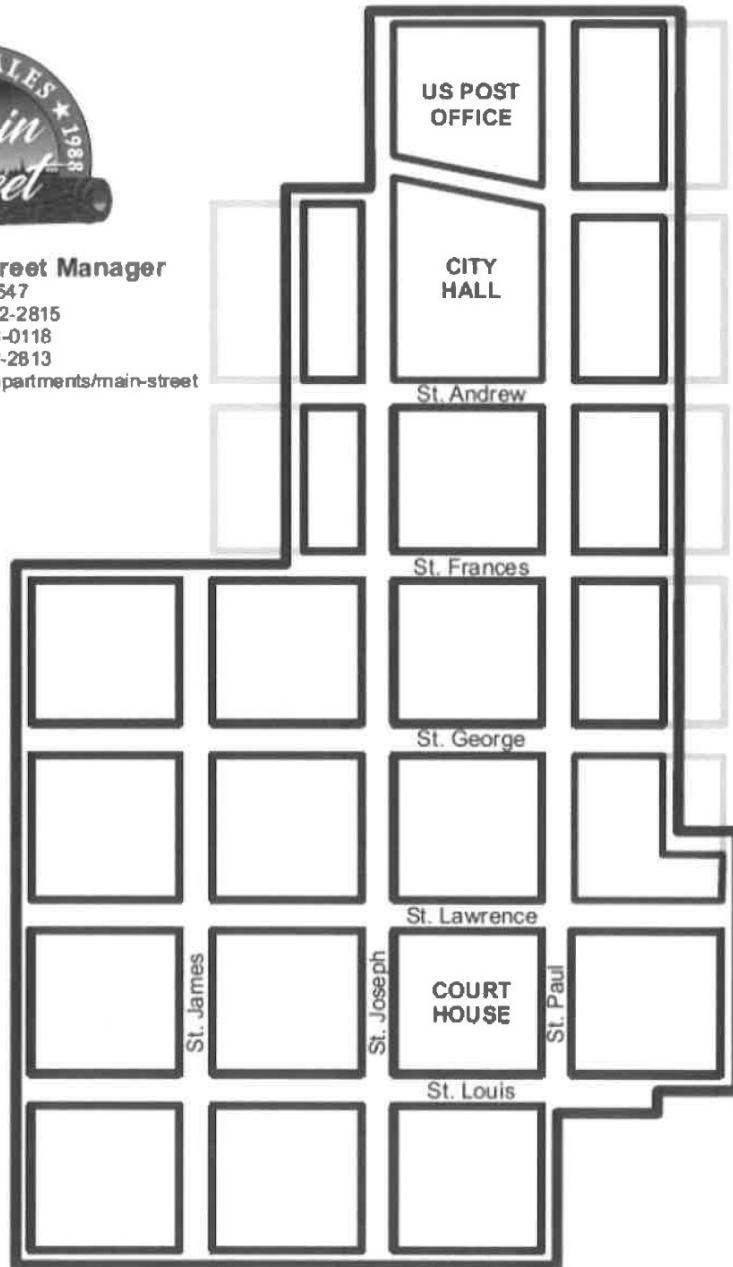
P. O. Box 547

Office: 830-672-2815

Cell: 830-263-0118

Fax: 830-672-2813

[www.gonzales.texas.gov/p/departments/main-street](http://www.gonzales.texas.gov/p/departments/main-street)



## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-35 Authorizing an Expenditure in an amount not to exceed \$1,000.00 from the Restricted Use Municipal Court Security Fund for City Staff to attend a Court Security Conference

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

Municipal Court has four restricted use funds that are managed by the municipal court and city secretary but under the direction of the governing body of the municipality. When fines and court costs are received a small percentage of the funds are allotted to those restricted use funds by state requirements. Two of the restricted use funds are the Municipal Court Technology Fund and Municipal Court Special Expense Fund.

As per the Code of Criminal Procedures Art. 102.017 COURTHOUSE SECURITY FUND; MUNICIPAL COURT BUILDING SECURITY FUND; JUSTICE COURT BUILDING SECURITY FUND. (b) Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts.

The two Police Officers and the Municipal Court Clerk would all like to attend a Court Security Conference and utilize the municipal court building security fund; justice court building security fund which are acceptable expenditures within the Code of Criminal Procedures.

### **POLICY CONSIDERATIONS:**

Code of Criminal Procedures states the municipal court building security fund shall be administered by or under the direction of the governing body of the municipality. This item is being presented to council for their approval and to ensure transparency for the use of these funds.

### **FISCAL IMPACT:**

The total amount for travel and the training expenses for all three individuals will be paid from the Municipal Court Security GL account 500-7-814.556 in an amount not to exceed \$1,000.00.

### **ATTACHMENTS:**

N/A

**STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution.

## **RESOLUTION NO. 2022-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS AUTHORIZING AN EXPENDITURE IN AN AMOUNT NOT TO EXCEED \$1,000.00 FROM THE RESTRICTED USE MUNICIPAL COURT SECURITY FUND FOR CITY STAFF TO ATTEND A COURT SECURITY CONFERENCE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Municipal Court has four restricted use funds that are managed by the municipal court and city secretary but under the direction of the governing body of the municipality; and,

**WHEREAS**, the Municipal Court Security Fund is a restricted fund governed by the Code of Criminal Procedures 102.017 wherein it states that the funds can be utilized for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts; and,

**WHEREAS**, Article 45.203 of the Code of Criminal Procedures governs the collection of the Special Expense Fee and further states that the money collected from the special expense shall be paid into the municipal treasury for the use and benefit of the municipality; and

**WHEREAS**, city staff would like attend a Court Security Conference and is seeking reimbursement from the Municipal Court Security Fund in a not to exceed amount of \$1,000.00; and,

**WHEREAS**, the City Council hereby finds that authorizing the use of funding from the Municipal Court Security Fund is an authorized use under the Code of Criminal Procedures and would be in the best interest of the City of Gonzales.

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

Section 1. The City Council of the City of Gonzales, Texas hereby authorizes an expenditure in an amount not to exceed \$1,000.00 from the Restricted Use Municipal Court Security Fund.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

---

Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary



## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-36 Approving the amendments to the bylaws of the Gonzales Main Street, Inc.

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Action

### **BACKGROUND:**

The Gonzales Main Street Inc. has existing Bylaws. that determine the guidelines to which the organization conducts business. The bylaws were reviewed and accepted at the March 24, 2022 Main Street Advisory Board meeting but will need to be approved by City Council.

The amendments to the bylaws were based on the standard template from Main Street USA and the Texas Non-Profit Corporation Act. The amendment is almost a complete rewrite from the previously approved bylaws.

### **POLICY CONSIDERATIONS:**

The approval of the amendments to the bylaws by City Council is consistent with previous action.

### **FISCAL IMPACT:**

N/A

### **ATTACHMENTS:**

Bylaws

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution.

## **RESOLUTION NO. 2022-36**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS APPROVING THE AMENDMENTS TO THE BYLAWS OF THE GONZALES MAIN STREET, INC.; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Gonzales Main Street, Inc. adopted the original bylaws in 1992 and minor amendments were adopted over the years; and,

**WHEREAS**, after thorough review of the existing bylaws there were several amendments that needed to be completed; and,

**WHEREAS**, Gonzales Main Street, Inc. voted unanimously to approve the amendments to the existing bylaws at their meeting held on March 24, 2022; and,

**WHEREAS**, the amendments to the bylaws were based on the standard template from Main Street USA and the Texas Non-Profit Corporation Act.; and,

**WHEREAS**, the City Council of the City of Gonzales hereby finds that the amendments to the Gonzales Main Street, Inc., bylaws is in the best interest of its citizens and will further promote and preserve the historical significance of the City of Gonzales.

### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS:**

Section 1. The City Council of the City of Gonzales, Texas hereby approves the amendments to the bylaws of the Gonzales Main Street, Inc., as attached hereto as Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject

matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

---

Mayor, Connie L. Kacir

ATTEST:

---

Kristina Vega, City Secretary

**BYLAWS  
of Gonzales Main Street, Inc.,  
a Texas nonprofit corporation**

**ARTICLE 1**

**Name and Principal Office of Corporation**

*Section 1.* The name of this corporation shall be the Gonzales Main Street, Inc. (hereinafter referred to as "The Program"). The corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The principal offices shall be determined from time to time by the Board of Directors of the Program.

**ARTICLE 2**

**Purpose**

*Section 1.* The purposes for which this corporation is organized are to assist in the maintenance and preservation of public buildings, historical buildings, the Confederate Square (a public city square), the City Museum and Amphitheater, the monuments, in the designated Mainstreet Area in downtown Gonzales, Texas, as outlined in the attached plat of the City of Gonzales, Texas, the historical fire bell tower and other areas in the City of Gonzales, Texas as the Board of Directors of the Program may from time to time decide and to provide design features to such public areas, buildings and monuments.

Additionally this corporation is organized to engage in activities to preserve and to educate the public with respect to the historical occurrences which took place or take place in Gonzales, Texas, such as the events in the Texas-Mexican War and its war artifacts, Peach Arbor, and contributions by individuals (such as Sam Houston) while in Gonzales to the Republic of Texas, and to receive, administer and distribute funds in connection with any activities related to the above purposes; provided, however, that the Program shall only engage in activities that are in the purview of Section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law. No part of the net earnings of the Program shall inure to the benefit of any of its members or any other individual; and the Program shall not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

*Section 2.* It is the intent of the Program to qualify as a nonprofit, tax-exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as now or hereafter amended. In order to effectuate such intent, no part of the net earnings of the Program shall inure to the benefit of any of its members or any other individual; and the Program shall not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

*Section 3.* Upon dissolution of the corporation, the residual assets of the corporation shall be distributed to a private, nonprofit corporation which is an exempt organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, selection of which corporation may be designated prior to dissolution.

### **ARTICLE 3**

#### **Program Area**

*Section 1.* The Program Area shall be that geographic area indicated on the attached map [Exhibit A].

### **ARTICLE 4**

#### **Board of Directors**

*Section 1.* The Program shall be managed by its Board of Directors. The Board shall consist of nine (9) Directors appointed by the City Council of the City of Gonzales, Texas. The term of office for each Director shall be two (2) years. The total number of Directors may be increased or decreased from time to time by amendment to these Bylaws by the Board of Directors, provided, however, the number of Directors shall not be less than three (3). No decrease in number shall have the effect of shortening the term of any incumbent Director.

Directors shall be appointed annually in the manner and schedule as established by the City. Each Director shall hold office for the term for which he or she is elected and until his or her successor shall have been elected and qualified.

*Section 2.* Any vacancy occurring in the Board of Directors (other than a vacancy resulting from the normal expiration of a term of office) may be filled by the affirmative vote of a majority of the City Council. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. Any Director may resign by submitting written notice of resignation to the Secretary. Any Director may be removed from office at any time with or without cause by the City Council. Any member of the Board of Directors who is absent from three (3) consecutive regular meetings without just cause for such absence may be removed as a member of the Board of Directors.

*Section 3.* The Program Director of the Program shall be a non-voting member of the Board of Directors and shall be present at all meetings of the Board of Directors.

*Section 4.* The Board of Directors of the Program may hold regular and special meetings. Regular meetings shall be held not less than six (6) times each year. Special meetings of the Board may be called by the President or by the Executive Committee or by two or more Directors.

*Section 5.* At all meetings of the Board, a majority of the voting members thereof shall constitute a quorum for the transaction of business.

*Section 6.* The Board of Directors shall conduct public meetings in accordance with the Texas Open Meetings Act, Tex. Loc. Gov't Code Chapter 552.

## **ARTICLE 5**

### **Committees**

*Section 1.* With concurrence of a majority of the Board, the president of the Board may appoint ad hoc committees for such work and terms as may be directed. Ad hoc committees of the Board shall consist of two (2) but not more than three (3) directors. It is provided, however, that all final actions of the Board may be exercised only by the Board. The designation and appointment of any such committees and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon them by law.

## **ARTICLE 6**

### **Officers**

*Section 1.* The officers of the Program shall be elected annually by the membership and shall consist of a President, a Vice President, a Secretary, a Treasurer and such other officers and assistant officers as may be deemed necessary.

*Section 2.* Officers shall be elected at the annual meeting of the membership. All officers shall be elected by a majority of the eligible voting members present in person.

*Section 3.* Vacancies. A vacancy in the office of president, vice-president or secretary which occurs by reason of death, resignation, disqualification, removal or otherwise, shall be filled by election by the Board from the remaining directors for the unexpired portion of the term of that office.

*Section 4.* Except as hereinafter provided, the officers of the Program shall each have such powers and duties as generally pertain to their respective offices, as well as those that from time to time may be conferred by the Board of Directors.

A. *President.* The President shall preside at all business meetings, but may at his or her discretion or at the suggestion of the Directors arrange for another officer to preside at other meetings. The President shall perform such duties as are usually incumbent upon that officer and such duties as may be directed by resolution of the Board of Directors.

B. *Vice President.* The Vice President shall have such duties and responsibilities as the President or Board of Directors may from time to time prescribe.

C. *Secretary.* The Secretary shall record and maintain in good order Minutes of all meetings and all records and correspondence of the Program, and shall mail copies of the Minutes of each membership meeting to all members within 60 days from the conclusion of each meeting. The Secretary shall also have such other duties as may be assigned by the membership or the Board of Directors.

D. *Treasurer.* The Treasurer shall maintain in good order all financial records of the Program. The Treasurer shall also have such other duties as may be assigned by the membership or the Board of Director

E. *Temporary Officers.* In case of the absence or disability of any officer of the Program and of any person authorized to act in his or her place during such periods of absence or disability, the President may from time to time delegate the powers and duties of such officer to any other officer or any other member.

## **ARTICLE 7**

### **Program Director**

*Section 1.* The Program Director of the Program shall manage the daily operations of the Program. The Program Director shall be responsible for coordinating the implementation of the Program's policies and projects and such other duties as the Board of Directors may require. The Program Director shall receive for his or her services such compensation as may be determined by the Board of Directors.

## **ARTICLE 8**

### **Finances**

*Section 1.* Except as the Board of Directors may generally or in particular cases authorize the execution thereof in some other manner, all checks, drafts and other instruments for the payment of money and all instruments of transfer of securities shall be signed in the name and on behalf of the Program by any two (2) of the following people: the Program Director, the Board President or Treasurer.

*Section 2.* All funds of the Program shall be deposited from time to time to the credit of the Program in such banks, trust companies or other depositories as the Board of Directors may select.

*Section 3.* The Board of Directors may accept on behalf of the Program any contribution, gift, bequest or device for the general purposes or for any special purpose of the Program.

*Section 4.* Within 30 days of the election of the Board of Directors each year, the Board shall approve a Program budget for the fiscal year. The approved budget may be reviewed and revised periodically as deemed necessary by the Board.

## **ARTICLE 9**

### **General Provisions**

*Section 1.* The fiscal year of the Program shall begin on the first day of January and end on the last day of December in each year.

*Section 2.* The corporate seal shall have inscribed thereon the name of the Program and the words "Corporate Seal" and "[state]". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise shown. In the event it is inconvenient to use such a seal at any time, the signature of the Program followed by the word "Seal" enclosed in parentheses shall be deemed the seal of the Program.

*Section 3.* Not later than three months after the close of each fiscal year, the Program shall prepare:

A. A balance sheet showing in reasonable detail the financial condition of the Program at the close of the fiscal year;

B. A statement of the source and application of funds showing the results of the operation of the Program during the fiscal year.

## **ARTICLE 10**

### **Amendments**

*Section 1.* The Board of Directors shall have the power to alter, amend or repeal the Bylaws or adopt new Bylaws by a two-thirds vote of the Directors present at any duly called meeting of the Board, provided that no such action shall be taken if it would in any way adversely affect the Program's qualifications under Section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law.

## **ARTICLE 11**

### **Indemnification**

*Section 1.* The Program shall indemnify any director or officer, former director or officer, employee, agent or representative of the Program and hold them harmless from any and all claims, actions, damages, suits proceedings, judgments, liabilities, costs and expenses



(including reasonable attorneys' fees and court costs) to the fullest extent permissible under the Act, the Texas Non-Profit Corporation Act, or other applicable rules, regulations or laws.

*Section 2.* The Program may purchase and maintain insurance on behalf of any director, officer, employee, agent or representative of the Program against any liability asserted against him and incurred by him in such capacity or arising out of his actions or status in such capacity to the fullest extent permissible under the Act, the Texas Non-Profit Corporation Act, or other applicable rules, regulations or laws.

*Section 3.* The liability of a director shall be limited to the fullest extent permitted by the Act, the Texas Non-Profit Corporation Act, or other applicable rules, regulations or laws. To the extent permitted by law, no director shall be personally liable to the Program for monetary damages for an act or omission in the director's capacity as director, except that these Bylaws do not eliminate or limit the liability of a director to the extent the director is found liable for:

- (1) A breach of the director's duty of loyalty to the Program.
- (2) An act or omission not in good faith that constitutes a breach of duty of the director to the Program or an act or omission that involves intentional misconduct or a knowing violation of the law.
- (3) A transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- (4) An act or omission for which the liability of the director is expressly provided for by statute.

## **ARTICLE 12**

### **Miscellaneous Provisions**

*Section 1. Legal Authority.* The Bylaws shall be construed in accordance with the laws of the State of Texas. All references in the bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

*Section 2. Legal Construction.* If any bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the bylaws.

*Section 3. Parliamentary Procedures.* Unless otherwise provided for in these bylaws, *Robert's Rules of Order* shall govern the conduct of any and all meetings of the Main Street Advisory Board and duly created committees.

*Certificate of Secretary*

I certify that I am the duly elected and acting secretary of Gonzales Main Street, Inc., and that the foregoing bylaws constitute the Bylaws of the Corporation. These Bylaws were duly adopted at a meeting of the Board of Directors held on \_\_\_\_\_, 2022.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Secretary of the Corporation

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-37 Ratifying the Professional Services Agreement with between the City of Gonzales and SAFEbuilt Texas, LLC to perform Building Official and Inspection Services for the City of Gonzales

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

The City has had the Building Official position posted since February 28<sup>th</sup> and has not had any interest in the position. There is a definite need to have a qualified individual to serve the City's needs in this capacity due to the ongoing inspections and plan reviews that need to be scheduled. City staff has been diligent in seeking proposals to serve the City until the position can be filled. City staff has reached out to several companies to obtain proposals in order to contract for Building Official services which include inspections, plan review and consultant services. SAFEbuilt has provided a proposal that best suites the City's needs at a reasonable rate for the services until the position can be filled. The term of the agreement is a month-to-month bases for hourly fees.

### **POLICY CONSIDERATIONS:**

The City Manager has authority to execute agreements for the day-to-day operations of the city in an amount not to exceed \$25,000.00. City staff feels that the attached agreement will not exceed the noted dollar amount; however, wanted to provide the agreement for City Council's consideration to ratify the agreement on behalf of the City. In the event that the City fills the position the agreement can be terminated with a 30 day notice to SAFEbuilt which allows a transition period for the new employee to get up to speed with the processes.

### **FISCAL IMPACT:**

The dollar amount will fluctuate monthly due to the amount of services needed, however, this agreement establishes the rates and terms of the agreement with SAFEbuilt Texas, LLC.

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution

**RESOLUTION NO. 2022-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, RATIFYING THE PROFESSIONAL SERVICES AGREEMENT WITH BETWEEN THE CITY OF GONZALES AND SAFEUILT TEXAS, LLC TO PERFORM BUILDING OFFICIAL AND INSPECTION SERVICES FOR THE CITY OF GONZALES; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gonzales (“City”) has a need for Building Official services which has a substantial and detrimental effect on the general health and welfare of the people of the community and the City; and,

**WHEREAS**, the City of Gonzales is seeking a consultant to perform the Building Official Services which includes but is not limited to inspections and plan review; and,

**WHEREAS**, Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality, state laws and regulations; and,

**WHEREAS**, the qualified professionals employed by SAFEuilt Texas, LLC will maintain current certifications, certificates, licenses as required for Building Official and inspections provided to the City; and,

**WHEREAS**, the agreement attached as Exhibit A, is the agreement that the City entered into with SAFEuilt Texas, LLC.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF GONZALES, GONZALES COUNTY TEXAS:**

Section 1. The City agrees and supports the agreement with SAFEuilt Texas, LLC. to detail the scope of consultant services and hereby approves and ratifies the executed Agreement attached as Exhibit A on behalf of the City with SAFEuilt Texas, LLC.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City

Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

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Connie Kacir, Mayor

ATTEST:

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Kristina Vega, City Secretary

# **PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF GONZALES, TEXAS AND SAFEbuilt TEXAS, LLC**

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

## **RECITALS**

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

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

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

### **1. SCOPE OF SERVICES**

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

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

### **2. CHANGES TO SCOPE OF SERVICES**

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

### **3. FEE STRUCTURE**

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

### **4. INVOICE & PAYMENT STRUCTURE**

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

5. TERM

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

6. TERMINATION

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

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

7. FISCAL NON-APPROPRIATION CLAUSE

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

8. MUNICIPALITY OBLIGATIONS

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

9. PERFORMANCE STANDARDS

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

10. INDEPENDENT CONTRACTOR

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

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

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

It is the intention of the Parties that, to the greatest extent permitted by applicable law, Consultant shall be entitled to protection under the doctrines of governmental immunity and governmental contractor immunity, including limitations of liability, to the same extent as Municipality would be in the event that the services provided by Consultant were being provided by Municipality. Nothing in this Agreement shall be deemed a waiver of such protections.

11. ASSIGNMENT AND SUBCONTRACT

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

12. INDEMNIFICATION

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

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



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

13. LIMITS OF LIABILITY

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

14. INSURANCE

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

15. THIRD PARTY RELIANCE

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

16. OWNERSHIP OF DOCUMENTS

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

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

17. CONSULTANT ACCESS TO RECORDS

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

18. CONFIDENTIALITY

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

19. CONSULTANT PERSONNEL

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

20. DISCRIMINATION & ADA COMPLIANCE

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation,

and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of Equal Opportunity laws. Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by Municipality at any time during the term of this Agreement.

**21. E-VERIFY/VERIFICATION OF EMPLOYMENT STATUS**

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

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

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

**23. NOTICES**

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

If to Municipality:	If to Consultant:
Kristina Vega, Administrative Services Director City of Gonzales 820 Saint Joseph Street Gonzales, Texas 78629 Email: <a href="mailto:citysecretary@gonzales.texas.gov">citysecretary@gonzales.texas.gov</a>	Joe DeRosa, CRO SAFEbuilt, LLC 444 N. Cleveland, Suite 444 Loveland, CO 80537 Email: <a href="mailto:jderosa@safebuilt.com">jderosa@safebuilt.com</a>

24. FORCE MAJEURE

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

25. DISPUTE RESOLUTION

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

26. ATTORNEY'S FEES

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

27. AUTHORITY TO EXECUTE

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

28. CONFLICT OF INTEREST

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

29. TEXAS GOVERNMENT CODE/PROHIBITION OF BOYCOTT ISRAEL

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

30. GOVERNING LAW AND VENUE

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

31. COUNTERPARTS

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

32. ELECTRONIC REPRESENTATIONS AND RECORDS

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

33. WAIVER

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

34. ENTIRE AGREEMENT

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

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

\_\_\_\_\_  
Avner Alkhas, Chief Financial Officer  
SAFEbuilt Texas, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
City of Gonzales, Texas

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title  
City of Gonzales, Texas

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## EXHIBIT A – LIST OF SERVICES

### 1. LIST OF SERVICES

#### Building, Electrical, Plumbing, Mechanical, Fire, OSSF Inspection Services

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

#### Remote Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Be a resource to applicants on submittal requirements and be available throughout the process
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide review of plan revisions and remain available to applicant after the review is complete

#### OSSF Plan Review and Inspection Services

- ✓ Perform OSSF plan review and inspection services, as Municipality's Designated Representative (DR)
- ✓ Meet or exceed agreed upon performance metrics
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance

#### Reporting Services

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

### 2. MUNICIPAL OBLIGATIONS

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

### 3. TIME OF PERFORMANCE

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

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

## EXHIBIT B – FEE SCHEDULE FOR SERVICES

### 1. FEE SCHEDULE

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

Building Consultation Services Fee Schedule	
\$125.00 per hour – one (1) hour minimum	
Supplemental Inspection Services Fee Schedule	
Single Family Residential Construction Inspection	\$70.00 per stop (address, building or unit)
Commercial/Multi-Family Construction Inspection	\$85.00 per stop (address, building or unit)
Above rates include inspection of all disciplines at address	
One & Two Family Residential Construction Plan Review and Inspection	
Square Footage	Fee
0 to 1500 square feet	\$810.00
1501 to 10,000 square feet	\$810.00 for the first 1500 square feet plus \$0.33 for each additional square foot up to and including 10,000 square feet
Over 10,000 square feet	\$3,700.00 for the first 10,000 square feet plus \$0.13 for each additional square foot over 10,000 square feet
One & Two Family Residential Construction Plan Review Only	
\$125.00 per residential dwelling for first comments plus one revision, \$80 per submittal after first revision	
One & Two Family Residential Additional Fees for Plan Review and Inspections	
Service Description	Fee
Remodels, Additions, and accessory structures that include electrical, plumbing, and mechanical will be billed at \$0.54 per SF	
Additions and accessory structures not including electrical, plumbing, and mechanical will be billed \$0.42 per SF	
Trade Permits and other permits for Residential	
Trade Permits	\$70.00 includes all inspections
Mechanical, Electrical, Plumbing	



Irrigation Permits	\$ 100.00 - All Inspections
Generators / Solar Panels	\$175 - Plan Review & All Inspections
Swimming Pools Plan Review & Inspections	\$475.00 - Plan Review & All Inspections
Certificate of Occupancy Inspection	\$85.00 flat rate
Fencing Inspections (Subdivision, Screening, etc)	\$1.50 per lineal foot
After Hours/Emergency Inspection Services	\$100.00 per hour – two (2) hour minimum

Commercial and Multi-Family Construction Plan Review (includes all commercial permitting)	
Project Valuation	Fee
\$1.00 to \$10,000	\$40.00
\$10,001 to \$25,000	\$61.63 for the first \$10,000 plus \$4.76 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$133.03 for the first \$25,000 plus \$3.43 for each additional \$1,000; or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$218.88 for the first \$50,000 plus \$2.38 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$337.88 for the first \$100,000 plus \$1.90 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,099.46 for the first \$500,000 plus \$1.62 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$1,906.98 for the first \$1,000,000 plus \$1.07 for each additional \$1,000; or fraction thereof
Commercial and Multi-Family Construction Inspection (includes all commercial permitting)	
Project Valuation	Fee
\$1.00 to \$10,000	\$70.00
\$10,001 to \$25,000	\$99.67 for the first \$10,000 plus \$7.70 for each additional \$1,000; or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$215.19 for the first \$25,000 plus \$5.56 for each additional \$1,000; or fraction thereof, to and including \$50,000

\$50,001 to \$100,000	\$354.06 for the first \$50,000 plus \$3.85 for each additional \$1,000; or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$546.56 for the first \$100,000 plus \$3.03 for each additional \$1,000; or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$1,778.56 for the first \$500,000 plus \$2.61 for each additional \$1,000; or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$3,084.81 for the first \$1,000,000 plus \$1.73 for each additional \$1,000; or fraction thereof
<b>Other Commercial Permits</b>	
Certificate of Occupancy Inspection	\$85.00 flat rate
<b>Fire Code Plan Review Services (fire alarm and fire sprinkler systems)</b>	
<b>Total Valuation</b>	<b>Fee</b>
\$1,000.00 and less	\$45.00
\$1,001.00 to \$25,000.00	\$189.00
\$25,001.00 to \$50,000.00	\$315.00
\$50,001.00 to \$100,000.00	\$515.00
\$100,001.00 to \$500,000.00	\$850.00
\$500,001.00 to \$1,000,000.00	\$1,100.00
\$1,000,001.00 to \$3,000,000.00	\$1,600.00
\$3,000,001.00 to \$6,000,000.00	\$2,400.00
\$6,000,001.00 and up	\$2,400.00 plus \$0.25 for each additional \$1,000.00
<b>Fire Code Inspection Services (fire alarm and fire sprinkler systems)</b>	
<b>Total Valuation</b>	<b>Fee</b>
\$1,000.00 and less	\$45.00
\$1,001.00 to \$25,000.00	\$250.00
\$25,001.00 to \$50,000.00	\$550.00
\$50,001.00 to \$100,000.00	\$850.00
\$100,001.00 to \$500,000.00	\$1050.00

\$500,001.00 to \$1,000,000.00	\$1,350.00
\$1,000,001.00 to \$3,000,000.00	\$1,900.00
\$3,000,001.00 to \$6,000,000.00	\$2,850.00
\$6,000,001.00 and up	\$2,850.00 plus \$0.25 for each additional \$1,000.00
<b>Fire Service Description</b>	<b>Fee</b>
Fire Sprinkler Pump	\$100.00
Water Tanks for fire prevention	\$100.00
Type I Hood with auto fire extinguishing system	\$100.00

## **EXHIBIT C – MUNICIPAL SPECIFIED OR SAFE BUILT PROVIDED SOFTWARE**

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

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## **COUNCIL AGENDA ITEM BRIEFING DATA**



**DATE: April 14, 2022**

## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-38 Authorizing the City Manager to Execute Addendum One to the Agreement with Frontier Access, LLC (Frontier Waste Solutions) for Solid Waste Collection and Disposal Services providing for a Residential, Commercial and Industrial Unit Fuel Cost Adjustment increase in the amount of 1.5%

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

The RFP was posted to the City of Gonzales Website on December 3, 2019, and published in the paper (Inquirer) and TML website on December 5, 2019 with proposals originally due on December 20, 2019 at 2:00 P.M., but an Addendum was done on December 12, 2019 which modified the new proposal deadline to December 31, 2019 at 2:00 P.M. The City of Gonzales received (5) five responses to the RFP. The (5) five proposals received were from Frontier Waste Solutions, Waste Connections, Texas Disposal Systems, Tiger Sanitation and Republic Services. On December 31, 2019, and January 2, 2020, City staff met, reviewed and evaluated proposals based on price, quality of service and previous performance.

City Staff was authorized to enter into an agreement for Solid Waste Collection and Disposal Services with Frontier Access, LLC (Frontier Waste Solutions) for four (4) years and seven (7) months, commencing on March 1, 2020 and concluding on September 30, 2024 with one (1) five (5) option that shall automatically be extended in the final year of the term, unless either party notifies the other party in writing not less than one hundred and twenty (120) days prior to the expiration of the then-current term.

City Staff received a Fuel Surcharge Request from Tim Henderson, Vice President, Frontier Access, LLC (Frontier Waste Solutions) on Friday, March 25, 2022, respectfully requesting a 1.5% increase as per the attached City of Gonzales Fuel Schedule (Exhibit A of the agreement) based on the average fuel price of diesel fuel during the preceding Contract Year exceeding \$3.04/gallon.

### **POLICY CONSIDERATIONS:**

This is the first time for this Fuel Surcharge Request.

### **FISCAL IMPACT:**

Frontier Access, LLC (Frontier Waste Solutions) is requesting a 1.5% increase as per the attached City of Gonzales Fuel Schedule (Exhibit A of the agreement) based on the average fuel price of diesel fuel during the preceding Contract year exceeding \$3.04/gallon. If this increase is approved, it would effective April 1, 2022, and would be for the remainder of this fiscal year,

which would end on September 30, 2022. The increase would affect the handload containers, dumpsters, recycle containers and roll-offs. Please see attachment for increases.

**ATTACHMENTS:**

Agreement from Frontier Access, LLC (Frontier Waste Solutions)

Fuel Surcharge Request Letter with attachments

**STAFF RECOMMENDATION:**

Staff respectfully recommends City Council take the action they deem appropriate.

## **RESOLUTION NO. 2022-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE ADDENDUM ONE TO THE AGREEMENT WITH FRONTIER ACCESS, LLC (FRONTIER WASTE SOLUTIONS) FOR SOLID WASTE COLLECTION AND DISPOSAL SERVICES PROVIDING FOR A RESIDENTIAL, COMMERCIAL AND INDUSTRIAL UNIT FUEL COST ADJUSTMENT INCREASE IN THE AMOUNT OF 1.5%; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gonzales (“City”) and Frontier Access, LLC (Frontier Waste Solutions) previously entered into a Solid Waste Collection and Disposal Services (“Agreement”) the terms of which require notification from the other party in writing not less than one hundred and twenty (120) days prior to the expiration of the then-current term.

**WHEREAS**, the Parties agree that it is in the best interest of the City to contract with Frontier Access, LLC (Frontier Waste Solutions) for Solid Waste Collection and Disposal Services; and

**WHEREAS**, the fuel surcharge request will increase by 1.5%; which will increase the handload containers, dumpsters, recycle containers and roll-offs; and

**WHEREAS**, the terms of the Agreement allow for amendments to be made upon written approval of the Parties.

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

Section 1. The City Council of the City of Gonzales hereby authorizes the City Manager to execute Addendum One to the agreement with Frontier Access, LLC, (Frontier Waste Solutions) for Solid Waste Collection and Disposal Services.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City

Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

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Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary



**EXCLUSIVE FRANCHISE AGREEMENT FOR THE  
COLLECTION, HAULING, RECYCLING AND  
DISPOSAL OF MUNICIPAL SOLID WASTE,  
CONSTRUCTION AND DEMOLITION WASTE  
AND RECYCLABLE MATERIALS AGREEMENT**

**ADDENDUM ONE**

**THIS EXCLUSIVE FRANCHISE AGREEMENT ADDENDUM ONE** (“Addendum”) is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 following all necessary approval by the governing bodies of the Parties (the “Execution Date”) to be effective as of April 1, 2022, the “Effective Date”) by and between the City of Gonzales, a Texas home rule municipal corporation (“Owner”), and Frontier Access, LLC (Frontier Waste Solutions), a Texas corporation (“Operator”) (each a “Party” and collectively the “Parties”).

**RECITALS**

WHEREAS, Owner provides Solid Waste Collection and Disposal Services to residents within the City of Gonzales; and,

WHEREAS, Operator provides Solid Waste Collection and Disposal Services and has agreed to provide those services for the terms and conditions set forth in this Agreement; and,

WHEREAS, the Parties have determined that it is in the best interest of the City to contract with Frontier Waste Solutions to the Scope of Services is in the best interest of both parties; and,

WHEREAS, the terms of the Agreement allow for amendments to made upon written approval of the Parties.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties, pursuant to Section 10 Rate Adjustment E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment of the Agreement, hereby agree as follows:

**I. Amendments Constituting Addendum One to the Exclusive Franchise Agreement and Section 10 Rate Adjustment E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment**

1. Amend Section 10 Rate Adjustment E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment.
2. E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment. Beginning October 1, 2020, the Service Provider shall adjust all of the rates contained in Section 9 (the “Base Rates”) for any Contract Year in which the average price of diesel fuel during the preceding Contract Year exceeded \$3.04 per gallon (the “Base Price”). The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration published price for diesel fuel – gulf coast region. The following website (or any successor website) will be the source for such information: <http://www.eia.gov/petroleum/gasdiesel/>. The average price of diesel fuel for each Contract Year (each, a “Average Yearly Price”) shall be the average of the weekly fuel prices published for each week during such Contract Year.
3. All other terms and conditions of the Exclusive Franchise Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

*(Remainder of page intentionally left blank)*

**Operator: Frontier Access, LLC (Frontier Waste Solutions)**

**By:**

---

**Tim Henderson**  
**Vice President**

**Owner: City of Gonzales, Texas**

**By:**

---

**Tim Patek**  
**City Manager**



P.O. Box 1283 • Hillsboro, TX 76645  
1-888-854-2905 • [www.frontierwaste.com](http://www.frontierwaste.com)

Tim Patek  
City Manager  
City of Gonzales  
820 St. Joseph Street  
Gonzales, Texas 78629

Date: March 25, 2022

Re: Fuel Surcharge request

Mr. Patek,

Per Section X.E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment -, of the service contract between Frontier Access, LLC. and the city of Gonzales, I respectfully request a one and 1/2 percent (1.5%) increase as per the attached City of Gonzales Fuel Schedule (Exhibit A of the agreement) based on the average fuel price of diesel fuel during the preceding Contract Year exceeding \$3.04/gallon. I also attached the 52-week average from the U.S. Energy Information Administration website referenced in this section. The 52-week average is \$3.33/gallon.

If this increase is approved, I would like to make it effective on April 1, 2022. I have also attached a revised rate sheet with effective rates.

If you have any questions or need additional information, please feel free to contact me at 940-453-8839.

Best Regards,

Tim Henderson  
Vice President  
Frontier Waste Solutions  
[thenderson@frontierwaste.com](mailto:thenderson@frontierwaste.com)

**City of Gonzales Trash Rate Increase**  
Effective Date: April 1, 2022

**Fuel Adjustment**      **1.50%**

**1.50%**

**Current Handload**

Residential Rate	\$ 13.34
Resi Extra Cart	\$ 5.92
Outside Resi Rate	\$ 15.45
Outside Rec Rate	\$ 25.75
Outside Extra Cart	\$ 5.92
Comm Hand Load	\$ 30.90
Comm Extra Cart	\$ 15.45

**Revised Handload**

Residential Rate	\$ 13.54
Resi Extra Cart	\$ 6.01
Outside Resi Rate	\$ 15.68
Outside Rec Rate	\$ 26.14
Outside Extra Cart	\$ 6.01
Comm Hand Load	\$ 31.36
Comm Extra Cart	\$ 15.68

**Current Dumpsters**

	1x	2x	3x	4x	5x	6x	Extra
2 Yard	\$ 73.38	\$ 136.99	\$ 195.70	\$ -	\$ -	\$ -	\$ 63.61
3 Yard	\$ 92.96	\$ 175.15	\$ 256.37	\$ -	\$ -	\$ -	\$ 82.19
4 Yard	\$ 123.29	\$ 223.10	\$ 322.91	\$ 422.71	\$ -	\$ -	\$ 99.81
6 Yard	\$ 145.80	\$ 251.47	\$ 356.17	\$ 461.44	\$ 565.57	\$ 738.77	\$ 105.67
8 Yard	\$ 191.79	\$ 333.67	\$ 474.57	\$ 616.46	\$ 756.38	\$ 961.87	\$ 141.88
Casters	\$ 22.66						
Lockbars	\$ 22.66						

**Revised Dumpsters**

	1x	2x	3x	4x	5x	6x	Extra
2 Yard	\$ 74.48	\$ 139.04	\$ 198.64	\$ -	\$ -	\$ -	\$ 64.56
3 Yard	\$ 94.35	\$ 177.78	\$ 260.22	\$ -	\$ -	\$ -	\$ 83.42
4 Yard	\$ 125.14	\$ 226.45	\$ 327.75	\$ 429.05	\$ -	\$ -	\$ 101.31
6 Yard	\$ 147.99	\$ 255.24	\$ 361.51	\$ 468.36	\$ 574.05	\$ 749.85	\$ 107.26
8 Yard	\$ 194.67	\$ 338.68	\$ 481.69	\$ 625.71	\$ 767.73	\$ 976.30	\$ 144.01
Casters	\$ 23.00						
Lockbars	\$ 23.00						

**Container Service - Recycle**

	EOW	1x/month	Extra
96 cart	\$ 10.30	\$ 20.60	\$ 10.30
4 Yard	\$ 78.28	\$ 156.56	\$ 78.28
6 Yard	\$ 92.70	\$ 185.40	\$ 92.70
8 Yard	\$ 111.24	\$ 222.48	\$ 111.24

**Revised Container Service - Recycle**

	EOW	1x/month	Extra
96 cart	\$ 10.45	\$ 20.91	\$ 10.45
4 Yard	\$ 79.45	\$ 158.91	\$ 79.45
6 Yard	\$ 94.09	\$ 188.18	\$ 94.09
8 Yard	\$ 112.91	\$ 225.82	\$ 112.91

**Current Roll-off**

	Delivery	Haul/Disp	Daily Rent	
20 yard	\$ 178.09	\$ 474.57	\$ 4.12	
30 yard	\$ 178.09	\$ 538.18	\$ 4.12	
40 yard	\$ 178.09	\$ 564.59	\$ 4.12	
Compactor	\$ -	\$ 618.00		

**Revised Roll-off**

	Delivery	Haul/Disp	Daily Rent	
20 yard	\$ 180.76	\$ 481.69	\$ 4.18	
30 yard	\$ 180.76	\$ 546.25	\$ 4.18	
40 yard	\$ 180.76	\$ 573.06	\$ 4.18	
Compactor	\$ -	\$ 627.27	\$ -	



increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right, in its sole discretion, to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, upon giving prior notice to the City, to request an increase to the Initial Rates, and (iii) The City shall place the requested adjustment before the City Council at the next regularly scheduled meeting of the City Council for their consideration.

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the City shall place any requested adjustment because of an increase in Fees before the City Council at the next regularly scheduled meeting of the City Council for their consideration. In the event the City fails or refuses to consent to any such requested increase in the Fees and the Service Provider can demonstrate that such increase in the Fees is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any other rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment. Beginning October 1, 2020, the Service Provider shall adjust all of the rates contained in Section 9 (the "Base Rates") for any Contract Year in which the average price of diesel fuel during the preceding Contract Year exceeded \$3.04 per gallon (the "Base Price"). The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration published price for diesel fuel – gulf coast region. The following website (or any successor website) will be the source for such information: <http://www.eia.gov/petroleum/gasdiesel/>. The average price of diesel fuel for each Contract Year (each, a "Average Yearly Price") shall be the average of the weekly fuel prices published for each week during such Contract Year.

The fuel cost adjustment for any Contract Year (each, a "Fuel Cost Adjustment") shall be calculated by referring to the fuel schedule attached hereto as Exhibit A. In the event the Average Yearly Price is greater than the Base Price, the Fuel Cost Adjustment shall be an upward adjustment to the Base Rates by increasing the Base Rates by the applicable Rate Increase Percentage (as shown on Exhibit A) based on the Average Yearly Price for the previous Contract Year. In the event the Average Yearly Price is less than the Base Price, there will be no Fuel Cost



Adjustment. Each Fuel Cost Adjustment shall be effective during the Contract Year immediately following the Contract Year for which such Fuel Cost Adjustment was determined.

#### **SECTION 11. EXCLUSIONS.**

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

#### **SECTION 12. TERM OF AGREEMENT.**

The initial term of this Agreement shall be for a period of four (4) years and seven (7) months, commencing on March 1, 2020 and concluding on September 30, 2024 (the "Initial Term"). At the expiration of the Initial Term of this Agreement, the Agreement may be extended for up to three successive terms of five (5) years. The Service Provider shall provide to the City with written notice of its intent to renew this Agreement for an additional five year term at least 120 days prior to the expiration date of the Initial Term or 120 days prior to any of the then applicable individual five-year extension periods. If the City does not provide such written approval to renew the Agreement within thirty (30) days of such request from the Service Provider, this Agreement will terminate at the end of either this Initial Term, or at the end of any subsequent five (5) year extension period, as applicable.

#### **SECTION 13. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

#### **SECTION 14. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the City agrees to place before the City Council for their consideration, any revisions to existing City Codes governing solid waste requested by Service Provider, provided that such request is consistent with state law. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to

## EXHIBIT A

### CITY OF GONZALES FUEL SCHEDULE

Average Fuel Price		Rate % Increase
\$ 3.00	\$ 3.04	0.0%
\$ 3.05	\$ 3.09	0.3%
\$ 3.10	\$ 3.14	0.5%
\$ 3.15	\$ 3.19	0.8%
\$ 3.20	\$ 3.24	1.0%
\$ 3.25	\$ 3.29	1.3%
\$ 3.30	\$ 3.34	1.5%
\$ 3.35	\$ 3.39	1.8%
\$ 3.40	\$ 3.44	2.1%
\$ 3.45	\$ 3.49	2.3%
\$ 3.50	\$ 3.54	2.6%
\$ 3.55	\$ 3.59	2.8%
\$ 3.60	\$ 3.64	3.1%
\$ 3.65	\$ 3.69	3.4%
\$ 3.70	\$ 3.74	3.6%
\$ 3.75	\$ 3.79	3.9%
\$ 3.80	\$ 3.84	4.1%
\$ 3.85	\$ 3.89	4.4%
\$ 3.90	\$ 3.94	4.6%
\$ 3.95	\$ 3.99	4.9%
\$ 4.00	\$ 4.04	5.2%
\$ 4.05	\$ 4.09	5.4%
\$ 4.10	\$ 4.14	5.7%
\$ 4.15	\$ 4.19	5.9%
\$ 4.20	\$ 4.24	6.2%
\$ 4.25	\$ 4.29	6.4%
\$ 4.30	\$ 4.34	6.7%
\$ 4.35	\$ 4.39	7.0%
\$ 4.40	\$ 4.44	7.2%
\$ 4.45	\$ 4.49	7.5%
\$ 4.50	\$ 4.54	7.7%
\$ 4.55	\$ 4.59	8.0%
\$ 4.60	\$ 4.64	8.3%
\$ 4.65	\$ 4.69	8.5%
\$ 4.70	\$ 4.74	8.8%
\$ 4.75	\$ 4.79	9.0%

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# Data 1: Weekly Gulf Coast No 2 Diesel Retail Prices (Dollars per Gallon)

EMD\_EPD2D\_PTE\_R30  
\_DPG

Sourcekey

Weekly Gulf Coast  
No 2 Diesel Retail  
Prices (Dollars per  
Gallon)

Date	
Mar 29, 2021	2.955
Apr 05, 2021	2.934
Apr 12, 2021	2.924
Apr 19, 2021	2.923
Apr 26, 2021	2.917
May 03, 2021	2.924
May 10, 2021	2.968
May 17, 2021	3.029
May 24, 2021	3.029
May 31, 2021	3.027
Jun 07, 2021	3.034
Jun 14, 2021	3.04
Jun 21, 2021	3.042
Jun 28, 2021	3.044
Jul 05, 2021	3.076
Jul 12, 2021	3.083
Jul 19, 2021	3.083
Jul 26, 2021	3.079
Aug 02, 2021	3.097
Aug 09, 2021	3.083
Aug 16, 2021	3.073
Aug 23, 2021	3.038
Aug 30, 2021	3.06
Sep 06, 2021	3.104
Sep 13, 2021	3.099
Sep 20, 2021	3.119
Sep 27, 2021	3.142
Oct 04, 2021	3.203
Oct 11, 2021	3.335
Oct 18, 2021	3.422
Oct 25, 2021	3.483
Nov 01, 2021	3.486
Nov 08, 2021	3.482
Nov 15, 2021	3.474
Nov 22, 2021	3.457
Nov 29, 2021	3.454
Dec 06, 2021	3.402
Dec 13, 2021	3.372
Dec 20, 2021	3.339
Dec 27, 2021	3.33
Jan 03, 2022	3.328
Jan 10, 2022	3.384
Jan 17, 2022	3.463
Jan 24, 2022	3.531
Jan 31, 2022	3.608
Feb 07, 2022	3.73
Feb 14, 2022	3.785
Feb 21, 2022	3.83
Feb 28, 2022	3.872
Mar 07, 2022	4.703
Mar 14, 2022	5.11
Mar 21, 2022	4.964

3.34 Average



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

**MARCH 1, 2020**

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

**STATE OF TEXAS**

**COUNTY OF GONZALES**

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of February 13, 2020, by and between Frontier Access, LLC, a Texas limited liability company (the "Service Provider"), and the City of Gonzales, Texas (the "City").

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

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

**SECTION 1. DEFINED TERMS.**

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

**Bag** - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total capacity of a Bag shall not exceed 33 gallons.

**Bulky Item** - Any item not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches, and other similar household items; provided, however, such items shall not include any brush, which is the sole responsibility of the City.

**Business Day** - Any day that is not a Saturday, a Sunday, or other day on which banks are required or authorized by law to be closed in the City.

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

**Commercial Hand Collect Unit** - Any Commercial Unit that does not require more than three (3) Roll-Outs for the collection of its Municipal Solid Waste each week.

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

**Container** - Any receptacle, including, but not limited to, dumpsters, Roll-Offs and Roll-Outs, provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Containers are designed to hold between ninety-five (95) gallons and forty (40) cubic yards of Solid Waste.

**Contract Year** - Any one-year period of time from October 1 to September 30 during the term of this Agreement; provided, however, the parties acknowledge that due to the length of the Initial Term, the first Contract Year of this Agreement shall actually be March 1, 2020 to September 30, 2020, except with regards to any calculation of the Fuel Cost Adjustment.

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

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

**Holidays** - The following days:

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

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

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

**Multi-Family Residential Unit** - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste and Recyclable Materials.

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

**Recyclable Materials** -

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);
- (c) Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

**Recycling Container** – A Container with at least eighteen (18) gallons of capacity and provided by the Service Provider to any Commercial, Industrial or Residential Unit for the collection of Recyclable Materials.

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

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

**Roll-Out** - A Container with ninety-five (95) gallons of capacity.

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

**Solid Waste** - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(34) whether such waste is mixed with or constitutes Recyclable Materials.

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

**Yard Waste** – Grass clippings and leaves that result from the general cleanup of the property of a Residential Unit.

## **SECTION 2. EXCLUSIVE FRANCHISE GRANT.**

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties, within the City's corporate limits. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the City fails to pursue appropriate action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein.

## **SECTION 3. OPERATIONS.**

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and recycle or dispose of all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials (as provided herein) (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits and extraterritorial jurisdiction, including any territories annexed by the City during the term of this Agreement (the "Services").

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

## **SECTION 4. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

A. **Single-Family Residential Units.** The Service Provider will collect Municipal Solid Waste once per week and Recyclable Materials every other week from Single-Family Residential Units; provided, that (i) such Municipal Solid Waste and Recyclable Materials are placed in Containers provided by the Service Provider, and (ii) such Containers are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day. The Service Provider will collect Yard Waste from Single-Family

Residential Units once per week; provided, that such Yard Waste is (i) placed in a maximum of six (6) Bags and (ii) such Bags are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day.

B. Commercial Hand Collect Units. The Service Provider will collect Municipal Solid Waste from Commercial Hand Collect Units one (1) time each week; provided, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider, and (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Commercial Hand Collect Units Unit no later than 7:00 a.m. on the scheduled collection day.

C. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider, with the exception of Yard Waste placed in Bags pursuant to Section 4.A. above. Municipal Solid Waste and Recyclable Materials in excess of the Containers' limits, or placed outside or adjacent to the Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste and/or Recyclable Materials continues, the City shall require the Single-Family Residential Unit or Commercial Hand Collect Unit to utilize an additional Container so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Sections 9.A. and 9.B. hereto.

D. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need. The City shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder to Single-Family Residential Units.

## **SECTION 5. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Commercial, Industrial and Multi-Family Residential Units once or twice per week, as provided for in Section 9.B. hereof. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.C. hereof.

## **SECTION 6. SPECIAL COLLECTIONS AND SERVICES.**

A. **Municipal Locations.** The Service Provider will provide, at no cost to the City, the following Containers to collect Municipal Solid Waste at certain municipal locations within the City once or twice per week, as needed. Specifically, the provisions of this Section 6.A. shall apply to the following locations:

LOCATION	ADDRESS	SERVICE TYPE	FREQUENCY	# AND SIZE OF CONTAINER(S)
Independence Park Clubhouse	S Hwy 183	Municipal Solid Waste	1x weekly	Two (2) 8- Yard
Police Department	716 St. Paul	Municipal Solid Waste	1x weekly	One (1) 6-Yard
City Hall	820 St. Joseph	Municipal Solid Waste	1x weekly	One (1) 2-Yard
		Recyclable Materials	1x weekly	One (1) Roll-Out
Fogas Cat Adoption Center	505 St. Frances	Municipal Solid Waste	1x weekly	One (1) 2-Yard
Water Treatment Plant	111 St. Michael	Municipal Solid Waste	1x weekly	One (1) 2-Yard
Fire Department	411 St. Lawrence	Municipal Solid Waste	1x weekly	Three (3) Roll-Outs
Library	301 N. St. Joseph	Municipal Solid Waste	2x weekly	One (1) 3-Yard w/Lockbar
Public Works	1920 St. Joseph	Municipal Solid Waste	2x weekly	Two (2) 6-Yard
		Recyclable Materials	1x weekly	One (1) Roll-Out
City Sewer Plant	300 N. Ponton	Municipal Solid Waste	1x weekly	Two (2) 2-Yard
Riverside Community Center	110 St. Lawrence	Municipal Solid Waste	1x weekly	One (1) Roll-Out
Gonzales Animal Shelter	820 CR 488	Municipal Solid Waste	1x weekly	One (1) 2-Yard
JB Wells Park Arena	2301 CR 197	Municipal Solid Waste	1x weekly	One (1) 6-Yard
		Municipal Solid Waste	1x weekly	One (1) 8-Yard w/Lockbar
		Municipal Solid Waste		Two (2) 40-Yard Roll-Offs

B. Special Events. In addition, the Service Provider will provide, at no cost to the City, the following number of Containers to collect Municipal Solid Waste at the following certain special events in the City; provided, that the City gives the Service Provider reasonable prior written notice of the date of such special event:

<u>Event</u>	<u>When</u>
Jim Price Cleanup	Spring – on Saturday, date will be agreed to by the City and Contractor and will be from 8AM to 12PM
	Equipment: Rear load trucks, 3 with drivers Open-tops, 3-40 CY
	Location: City will determine equipment location
	Note: City may substitute 2-40 CY open-tops for one of The rear load trucks
District Cleanups –	4 Fall – on Saturday, each district must be on a different Saturday (dates will agreed to by City and Contractor) and will be from 8AM to 12PM or until truck is full
	Equipment: Rear load truck, with driver
	Location: City will determine equipment location
	Notes: City may substitute 2-40 CY open-tops For the rear load truck
	If rear load truck is provided all materials must be able to be loaded in the truck. Materials that will not fit cannot be serviced.
Come and Take It	1 <sup>st</sup> Weekend in October
	Equipment: Front load, 4-8 CY containers
	Location: City will determine equipment location
	Notes: If the Contractor has front load route in Gonzales on Saturday, the City may schedule pickups on the front load containers, but the City must schedule this service with the Contractor before noon on Friday.
	The City will also notify the Contractor as to the equipment termination date.



## **SECTION 7. BULKY ITEMS.**

A. Pre-Arranged Collections. The Service Provider will collect Bulky Items from Single-Family Residential Units once per year, as designated by the Service Provider; provided, that (i) the Single-Family Residential Units requiring such collections notify City Hall no later than the end of the Business Day prior to the scheduled collection day, and (ii) the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed five (5) cubic yards in total volume or have any individual item exceeding fifty (50) pounds in weight. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Bulky Items from those Single-Family Residential Units that have complied with this Section 7.A. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 7.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste, White Goods or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off Services.

## **SECTION 8. TITLE TO EQUIPMENT.**

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

## **SECTION 9. RATES AND FEES.**

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

A. Single-Family Residential Unit Services. For the Services provided to Single-Family Residential Units under Section 4.A. and 7.A. hereof that are located within the City's corporate limits and billed by the City for water and sewer services, the Service Provider shall charge the following rates per month for each Single-Family Residential Unit utilizing one (1) Roll-Out for the collection of Municipal Solid Waste and one (1) Roll-Out for the collection of Recyclable Materials, plus the following additional amounts per month for each additional Roll-Out utilized by such Single-Family Residential Unit.

	Monthly Rate – One (1) Roll-Out for Municipal Solid Waste and one (1) Roll-Out for Recyclable Materials	Monthly Rate – Each Additional Roll-Out
Contract Year 1	\$12.95	\$5.75

Contract Year 2	\$12.95	\$5.75
Contract Year 3	\$13.34	\$5.92
Contract Year 4	\$13.74	\$6.10
Contract Year 5	\$14.15	\$6.28

For the Services provided to Single-Family Residential Units under Section 4.A. and 7.A. hereof that are located within the City's extraterritorial jurisdiction, but not within the City's corporate limits, the Service Provider shall charge the following rates per month for each Single-Family Residential Unit utilizing one Roll-Out, plus the following rates per month for each Single-Family Residential Unit utilizing one Roll-Out and receiving recycling services every other week, plus the following additional amounts per month for each additional Roll-Out utilized by such Single-Family Residential Unit.

	Monthly Rate – One (1) Roll-Out (No Recycle)	Monthly Rate – One (1) Roll-Out & EOW Recycle	Monthly Rate – Each Additional Roll-Out
Contract Year 1	\$15.00	\$25.00	\$5.75
Contract Year 2	\$15.00	\$25.00	\$5.75
Contract Year 3	\$15.45	\$25.75	\$5.92
Contract Year 4	\$15.91	\$26.52	\$6.10
Contract Year 5	\$16.39	\$27.32	\$6.28

Any Single-Family Residential Unit, whether located within the City's corporate limits or extraterritorial jurisdiction, that needs the replacement of any Roll-Out that is lost, stolen, damaged or destroyed by the Single-Family Residential Unit will be charged \$60.00 for the cost of such Roll-Out, plus a \$25.00 delivery fee.

B. Commercial Hand Collect Unit Services. For the Services provided to Commercial Hand Collect Units under Section 4.B. hereof, the Service Provider shall charge per month the following rates, and the following rate for each extra pickup:

	Monthly Rate For One (1) Roll-Out	Rate Per Extra Pickup or additional Roll-Out
Contract Year 1	\$30.00	\$15.00
Contract Year 2	\$30.00	\$15.00
Contract Year 3	\$30.90	\$15.45
Contract Year 4	\$31.83	\$15.91
Contract Year 5	\$32.79	\$16.39

Any Commercial Hand Collect Unit that needs the replacement of any Roll-Out that is lost, stolen, or damaged or destroyed by the Commercial Hand Collect Unit will be charged \$60.00 for the cost of such Roll-Out, plus a \$25.00 delivery fee.

These rates apply to all Commercial Hand Collect Units that are located within the City's corporate limits and/or extraterritorial jurisdiction.

C. Commercial, Industrial and Multi-Family Residential Unit Services. For the Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilized the rates located on Exhibit B.

D. Roll-Off Services. Subject to adjustment by the Service Provider in its sole discretion, for the Services provided under Sections 7 and 11 hereto, the Service Provider shall charge for each Roll-Off utilized by a Commercial, Industrial or Residential Unit the fees located on Exhibit B.

The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Units on an individual basis regarding the Roll-Off Services to be provided. The Roll-Off Services will be billed directly to such Commercial, Industrial or Residential Unit and will be collected by the Service Provider. The Roll-Offs provided pursuant to this Section 9.C. must be located within the City in accordance with City ordinances and policies.

E. City Roll-Off Services. For the Roll-Off services provided to the City in addition to or in excess of those provided for at no charge under Section 6.B. hereof, the Service Provider shall bill the City for each Roll-Off utilized the rates located on Exhibit B.

## **SECTION 10. RATE ADJUSTMENT.**

A. CPI-U Adjustment. Beginning on October 1, 2024, and on each subsequent anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the City, to increase the rates set forth in Section 9 hereof (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 10.A. The amount of the increase under this Section 10.A. shall be equal to the percentage that the CPI-U has increased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., at any time during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City shall place the requested adjustment before the City Council at the next regularly scheduled meeting of the City Council for their consideration. In the event the City fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's

increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right, in its sole discretion, to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, upon giving prior notice to the City, to request an increase to the Initial Rates, and (iii) The City shall place the requested adjustment before the City Council at the next regularly scheduled meeting of the City Council for their consideration.

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the City shall place any requested adjustment because of an increase in Fees before the City Council at the next regularly scheduled meeting of the City Council for their consideration. In the event the City fails or refuses to consent to any such requested increase in the Fees and the Service Provider can demonstrate that such increase in the Fees is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any other rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

E. Residential, Commercial and Industrial Unit Fuel Cost Adjustment. Beginning October 1, 2020, the Service Provider shall adjust all of the rates contained in Section 9 (the "Base Rates") for any Contract Year in which the average price of diesel fuel during the preceding Contract Year exceeded \$3.04 per gallon (the "Base Price"). The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration published price for diesel fuel – gulf coast region. The following website (or any successor website) will be the source for such information: <http://www.eia.gov/petroleum/gasdiesel/>. The average price of diesel fuel for each Contract Year (each, a "Average Yearly Price") shall be the average of the weekly fuel prices published for each week during such Contract Year.

The fuel cost adjustment for any Contract Year (each, a "Fuel Cost Adjustment") shall be calculated by referring to the fuel schedule attached hereto as Exhibit A. In the event the Average Yearly Price is greater than the Base Price, the Fuel Cost Adjustment shall be an upward adjustment to the Base Rates by increasing the Base Rates by the applicable Rate Increase Percentage (as shown on Exhibit A) based on the Average Yearly Price for the previous Contract Year. In the event the Average Yearly Price is less than the Base Price, there will be no Fuel Cost

Adjustment. Each Fuel Cost Adjustment shall be effective during the Contract Year immediately following the Contract Year for which such Fuel Cost Adjustment was determined.

#### **SECTION 11. EXCLUSIONS.**

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

#### **SECTION 12. TERM OF AGREEMENT.**

The initial term of this Agreement shall be for a period of four (4) years and seven (7) months, commencing on March 1, 2020 and concluding on September 30, 2024 (the "Initial Term"). At the expiration of the Initial Term of this Agreement, the Agreement may be extended for up to three successive terms of five (5) years. The Service Provider shall provide to the City with written notice of its intent to renew this Agreement for an additional five year term at least 120 days prior to the expiration date of the Initial Term or 120 days prior to any of the then applicable individual five-year extension periods. If the City does not provide such written approval to renew the Agreement within thirty (30) days of such request from the Service Provider, this Agreement will terminate at the end of either this Initial Term, or at the end of any subsequent five (5) year extension period, as applicable.

#### **SECTION 13. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

#### **SECTION 14. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the City agrees to place before the City Council for their consideration, any revisions to existing City Codes governing solid waste requested by Service Provider, provided that such request is consistent with state law. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to

replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers.

#### **SECTION 15. PROCESSING, BILLING AND FEES.**

A. **Residential Monthly Statement.** On a monthly basis, the City agrees to bill and collect the rates and fees charged under Sections 9.A. and 9.B. hereto from all Residential and Commercial Hand Collect Units possessing active water meters within the City's corporate limits and extraterritorial jurisdiction, as well as from all other Residential and Commercial Hand Collect Units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits and extraterritorial jurisdiction (the "Residential Monthly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to such Residential Monthly Statement. All invoices approved for payment by the proper City authorities shall be paid by the Finance Department (within thirty (30) calendar days or receipt) in accordance with the provisions of the Texas Government Code, Title 10, Chapter 2251. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential and Commercial Hand Collect Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. **Commercial Monthly Statement.** On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under Section 9.C. hereto from all Commercial and Industrial Units requiring the collection, hauling, and recycling and disposal of Municipal Solid Waste within the City's corporate limits and extraterritorial jurisdiction (the "Commercial Monthly Statement"). The Service Provider shall be entitled to keep all proceeds of the Commercial Monthly Statement. In addition to the sums in the Commercial Monthly Statement, the Service Provider shall add a commercial franchise fee in the amount of fifteen percent (15%), or such other percentage as directed by the City in writing (the "Commercial Franchise Fee"), which shall be remitted to the City on a quarterly basis.

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

C. **Bad Debt: Unpaid Rates/Fees.** The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to City for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Residential, Commercial, or Industrial Unit.

D. **Billings for Roll-Off Services.** Notwithstanding the above, the Service Provider will bill and collect from all Residential, Commercial and Industrial Units and the City for services performed with respect to Roll-Off Containers. The Service Provider shall be entitled to keep all proceeds from its billings with respect to Roll-Off Containers in the amounts indicated in Sections

9.D. and 9.E.; provided, however, the Service Provider shall also add a fifteen percent (15%) Roll-Off franchise fee to the rates in Section 9.D., or such other percentage as directed by the City in writing, (the "Roll-Off Franchise Fee"), which shall be remitted to the City on a quarterly basis.

#### **SECTION 16. SPILLAGE.**

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste, Construction and Demolition Waste, or Recyclable Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider may report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Should excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials continue to be placed outside of the Containers, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9 hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

#### **SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.**

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container as directed in Sections 4 and 5 hereof, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials has not been removed from such

Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time.

#### **SECTION 18. HOURS OF SERVICE.**

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

#### **SECTION 19. CUSTOMER SERVICE.**

The City agrees to field all inquiries and complaints for Single-Family Residential Units and Commercial Hand Collect Units relating to the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials. Service Provider shall field all inquiries and complaints for Commercial, Industrial and Multi-Family Residential Units relating to the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints.

#### **SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.**

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

#### **SECTION 21. VEHICLES AND EQUIPMENT.**

Vehicles used by the Service Provider for the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste,



Construction and Demolition Waste and Recyclable Materials onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week.

**SECTION 22. DUE CARE.**

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

**SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.**

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

**SECTION 24. INSURANCE COVERAGE.**

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

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000
(3) Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 in the aggregate, combined single limit for Bodily Injury and Property Damage Liability
(4) Automobile Liability	\$2,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability
(5) Pollution Legal Liability	\$2,000,000 each loss
(6) Excess or Umbrella	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. The Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 24 each year, or at any time coverage is renewed.

#### **SECTION 25. INDEMNITY.**

To the extent covered by applicable insurance, the Service Provider assumes all risks of loss or injury to property or persons caused by its performance of the Services. The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by the willful misconduct or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, attorneys' fees) caused by the willful misconduct or negligent act or omission of the City, its agents, directors, employees, officers and servants.

#### **SECTION 26. PERFORMANCE SECURITY.**

During the term of this Agreement and any extension thereof, the Service Provider agrees to procure and maintain a performance bond (i) payable to the City, (ii) issued by a surety reasonably acceptable to the City, and (iii) conditioned upon the Service Provider truly and timely performing all of its obligations under this Agreement, including, but not limited to, the provisions of Section 25 hereto. Such performance bond shall be in the amount of \$400,000.00.

#### **SECTION 27. SAVINGS PROVISION.**

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

#### **SECTION 28. TERMINATION.**

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

#### **SECTION 29. FORCE MAJEURE.**

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond

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

### **SECTION 30. GOVERNING LAW.**

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in Gonzales County, Texas.

### **SECTION 31. NOTICES.**

Any notices required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at the address set forth below:

If to the City:

City of Gonzales  
820 St. Joseph Street  
Gonzales, TX 78629  
Attn: City Manager

If to the Service Provider:

Frontier Waste Solutions  
P.O. Box 1283  
Hillsboro, TX 76645  
Attn: Vice President

or such other addresses as the parties may hereafter specify by written notice and delivered in accordance herewith.

### **SECTION 32. ATTORNEYS' FEES.**

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs for any cause of action arising out of this Agreement, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

### **SECTION 33. ACCEPTANCE.**

PASSED AND APPROVED BY THE CITY OF GONZALES CITY COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS

OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 13 DAY OF February, 2020.

FRONTIER ACCESS, LLC

By: 

Name: Tim Henderson

Title: Vice President

CITY OF GONZALES, TX

By: 

Name: Connie L. Kacik

Title: [Mayor]

ATTEST:

By: 

Name: Kristina Vega

Title: [City Secretary]

**EXHIBIT A**

**CITY OF GONZALES FUEL SCHEDULE**

Average Fuel Price		Rate % Increase
\$ 3.00	\$ 3.04	0.0%
\$ 3.05	\$ 3.09	0.3%
\$ 3.10	\$ 3.14	0.5%
\$ 3.15	\$ 3.19	0.8%
\$ 3.20	\$ 3.24	1.0%
\$ 3.25	\$ 3.29	1.3%
\$ 3.30	\$ 3.34	1.5%
\$ 3.35	\$ 3.39	1.8%
\$ 3.40	\$ 3.44	2.1%
\$ 3.45	\$ 3.49	2.3%
\$ 3.50	\$ 3.54	2.6%
\$ 3.55	\$ 3.59	2.8%
\$ 3.60	\$ 3.64	3.1%
\$ 3.65	\$ 3.69	3.4%
\$ 3.70	\$ 3.74	3.6%
\$ 3.75	\$ 3.79	3.9%
\$ 3.80	\$ 3.84	4.1%
\$ 3.85	\$ 3.89	4.4%
\$ 3.90	\$ 3.94	4.6%
\$ 3.95	\$ 3.99	4.9%
\$ 4.00	\$ 4.04	5.2%
\$ 4.05	\$ 4.09	5.4%
\$ 4.10	\$ 4.14	5.7%
\$ 4.15	\$ 4.19	5.9%
\$ 4.20	\$ 4.24	6.2%
\$ 4.25	\$ 4.29	6.4%
\$ 4.30	\$ 4.34	6.7%
\$ 4.35	\$ 4.39	7.0%
\$ 4.40	\$ 4.44	7.2%
\$ 4.45	\$ 4.49	7.5%
\$ 4.50	\$ 4.54	7.7%
\$ 4.55	\$ 4.59	8.0%
\$ 4.60	\$ 4.64	8.3%
\$ 4.65	\$ 4.69	8.5%
\$ 4.70	\$ 4.74	8.8%
\$ 4.75	\$ 4.79	9.0%

\$ 4.80	\$ 4.84	9.3%
\$ 4.85	\$ 4.89	9.5%
\$ 4.90	\$ 4.94	9.8%
\$ 4.95	\$ 4.99	10.1%
\$ 5.00	\$ 5.04	10.3%

## EXHIBIT B

### COMMERCIAL, INDUSTRIAL, AND MULTI-FAMILY RESIDENTIAL UNIT RATES UNDER SECTION 9.C.

#### CONTRACT YEARS 1 & 2

Container Size	Frequency – Monthly Rates						Rate per extra pickup
	1x	2x	3x	4x	5x	6x	
2 CY	\$71.25	133.00	\$190.00	\$0.00	\$0.00	\$0.00	\$35.63
3 CY	\$90.25	\$170.05	\$248.90	\$0.00	\$0.00	\$0.00	\$45.13
4 CY	\$119.70	\$216.60	\$313.50	\$410.40	\$0.00	\$0.00	\$59.85
6 CY	\$141.55	\$244.15	\$345.80	\$448.00	\$549.10	\$717.25	\$70.78
8CY	\$186.20	\$323.95	\$460.75	\$598.50	\$734.35	\$933.85	\$93.10
Casters	\$22.00	each container/month					
Lockbars	\$22.00	each container/month					

#### Container Service – Recycle

Size	EOW (Every other week) – Monthly Rate	1X – Monthly Rate	Rate per extra pickup
96 Cart	\$10.00	\$20.00	\$10.00
4 CY	\$76.00	\$152.00	\$76.00
6 CY	\$90.00	\$180.00	\$90.00
8 CY	\$108.00	\$216.00	\$108.00

#### CONTRACT YEAR 3

Container Size	Frequency – Monthly Rates						Rate per extra pickup
	1x	2x	3x	4x	5x	6x	
2 CY	\$73.38	136.99	\$195.70	\$0.00	\$0.00	\$0.00	\$63.61
3 CY	\$92.96	\$175.15	\$256.37	\$0.00	\$0.00	\$0.00	\$82.19
4 CY	\$123.29	\$223.10	\$322.91	\$422.71	\$0.00	\$0.00	\$99.81
6 CY	\$145.80	\$251.47	\$356.17	\$461.44	\$565.57	\$738.77	\$105.67
8CY	\$191.79	\$333.67	\$474.57	\$616.46	\$756.38	\$961.87	\$141.88
Casters	\$22.66	each container/month					
Lockbars	\$22.66	each container/month					

#### Container Service – Recycle

Container Size	EOW (Every other week) – Monthly Rate	1X – Monthly Rate	Rate per extra pickup
----------------	---------------------------------------	-------------------	-----------------------

96 Cart	\$10.30	\$20.60	\$10.30
4 CY	\$78.28	\$156.56	\$78.28
6 CY	\$92.70	\$185.40	\$92.70
8 CY	\$111.24	\$222.48	\$111.24

#### **CONTRACT YEAR 4**

Container Size	Frequency – Monthly Rates						Rate per extra pickup
	1x	2x	3x	4x	5x	6x	
2 CY	\$75.58	141.10	\$201.57	\$0.00	\$0.00	\$0.00	\$65.52
3 CY	\$95.75	\$180.40	\$264.06	\$0.00	\$0.00	\$0.00	\$84.65
4 CY	\$126.99	\$229.79	\$332.60	\$435.39	\$0.00	\$0.00	\$102.80
6 CY	\$150.17	\$259.01	\$366.86	\$475.28	\$582.54	\$760.93	\$108.84
8CY	\$197.54	\$343.68	\$488.81	\$634.95	\$779.07	\$990.73	\$146.14
Casters	\$23.34	each container/month					
Lockbars	\$23.34	each container/month					

#### **Container Service – Recycle**

Size	EOW (Every other week) – Monthly Rate	1X – Monthly Rate	Rate per extra pickup
96 Cart	\$10.61	\$21.22	\$10.61
4 CY	\$80.63	\$161.26	\$80.63
6 CY	\$95.48	\$190.96	\$95.48
8 CY	\$114.58	\$229.15	\$114.58

#### **CONTRACT YEAR 5**

Container Size	Frequency – Monthly Rate						Rate per extra pickup
	1x	2x	3x	4x	5x	6x	
2 CY	\$77.85	145.33	\$207.62	\$0.00	\$0.00	\$0.00	\$67.48
3 CY	\$98.62	\$185.81	\$271.98	\$0.00	\$0.00	\$0.00	\$87.19
4 CY	\$130.80	\$236.68	\$342.58	\$448.45	\$0.00	\$0.00	\$105.88
6 CY	\$154.68	\$266.78	\$377.87	\$489.54	\$600.02	\$783.76	\$112.10
8CY	\$203.47	\$353.99	\$503.47	\$654.00	\$802.44	\$1020.45	\$150.52
Casters	\$24.04	each container/month					
Lockbars	\$24.04	each container/month					



**Container Service – Recycle**

Size	EOW (Every other week) – Monthly Rate	1X – Monthly Rate	Rate per extra pickup
96 Cart	\$10.92	\$21.86	\$10.92
4 CY	\$83.05	\$166.10	\$83.05
6 CY	\$98.34	\$196.69	\$98.34
8 CY	\$118.02	\$236.02	\$118.02

**ROLL-OFF RATES UNDER SECTION 9.D.****CONTRACT YEARS 1 & 2**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$172.90	\$460.75	\$4.00
30 Cubic Yards	\$172.90	\$522.50	\$4.00
40 Cubic Yards	\$172.90	\$548.15	\$4.00
Compactor	negotiable	\$600.00	Negotiable

**CONTRACT YEAR 3**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$178.09	\$474.57	\$4.12
30 Cubic Yards	\$178.09	\$538.18	\$4.12
40 Cubic Yards	\$178.09	\$564.59	\$4.12
Compactor	negotiable	\$618.00	Negotiable

**CONTRACT YEAR 4**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$183.43	\$488.81	\$4.24
30 Cubic Yards	\$183.43	\$554.33	\$4.24
40 Cubic Yards	\$183.43	\$581.53	\$4.24
Compactor	negotiable	\$636.54	Negotiable

**CONTRACT YEAR 5**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$188.93	\$503.47	\$4.37
30 Cubic Yards	\$188.93	\$570.96	\$4.37
40 Cubic Yards	\$188.93	\$598.98	\$4.37
Compactor	negotiable	\$655.64	negotiable

**CITY ROLL-OFF RATES UNDER SECTION 9.E.**

**CONTRACT YEARS 1 & 2**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$0	\$295.45	\$0
30 Cubic Yards	\$0	\$462.65	\$0
40 Cubic Yards	\$0	\$492.10	\$0

**CONTRACT YEAR 3**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$0	\$304.31	\$0
30 Cubic Yards	\$0	\$476.53	\$0
40 Cubic Yards	\$0	\$506.86	\$0

**CONTRACT YEAR 4**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$0	\$313.44	\$0
30 Cubic Yards	\$0	\$490.83	\$0
40 Cubic Yards	\$0	\$522.07	\$0

**CONTRACT YEAR 5**

Container Size	Delivery Fee	Haul & Disposal Fee	Daily Rent
20 Cubic Yards	\$0	\$322.84	\$0
30 Cubic Yards	\$0	\$505.56	\$0
40 Cubic Yards	\$0	\$537.73	\$0

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution 2022-39 Designating Sage Capital Bank as the City's Depository and Authorizing the City Manager to Negotiate and Enter into a Depository Agreement

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

Pursuant to the Texas Local Government Code Section 105.016(a) the City Council shall designate, by an order recorded in its minutes, the bank, credit union, or saving association to serve as a depository for the municipality's funds; and

The Request for Proposals for the Bank Depository was posted on March 3, 2022 and advertised in the newspaper for two weeks with proposals to be due by March 25, 2022. The City of Gonzales received two responses to the RFP and were from Sage Capital Bank and Gonzales National Bank, branch of First National Bank of Shiner.

On March 25, 2022, City staff met and evaluated the proposals based on the criteria set forth in the RFP and ranked the proposals with a possible score of 100 points; Sage Capital Bank scored 91 and Gonzales National Bank, branch of First National Bank of Shiner scored 86.66.

### **POLICY CONSIDERATIONS:**

This is consistent with what has been done in the past.

### **FISCAL IMPACT:**

N/A.

### **ATTACHMENTS:**

Bid/Proposals Sage Capital Bank and Gonzales National Bank, branch of First National Bank of Shiner and Depository Agreement.

### **STAFF RECOMMENDATION:**

Staff respectfully recommends Council award the bid to Sage Capital Bank.

## **RESOLUTION NO. 2022-39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS DESIGNATING SAGE CAPITAL BANK AS THE CITY'S DEPOSITORY AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A DEPOSITORY AGREEMENT WITH SAGE CAPITAL BANK; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, on March 3, 2022 the Request for Proposals for the Bank Depository was posted and advertised in the newspaper for two weeks with proposals to be due by March 25, 2022.

**WHEREAS**, the City of Gonzales received two responses to the RFP and were from Sage Capital Bank and Gonzales National Bank, branch of First National Bank of Shiner; and

**WHEREAS**, on March 25, 2022, City staff met and evaluated the proposals based on criteria set forth in the RFP and ranked the proposals with a possible score of 100 points; Sage Capital Bank scored 91 and Gonzales National Bank, branch of First National Bank of Shiner scored 86.66; and

**WHEREAS**, the City finds that negotiating and entering into an Agreement with Sage Capital Bank for depository services would be in the best interest of the City and its citizens and will further promote the public health, safety, and general welfare of the City; and

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

Section 1. The City Council of the City of Gonzales, Texas hereby authorizes the City Manager to negotiate and enter into an Agreement for depository services to Sage Capital Bank.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

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Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution #2022-40 Accepting the Bids and Awarding the Contract for the 2021 Utility Projects to Qro Mex Construction Co., Inc. in the amount of \$1,073,204.00

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

### **BACKGROUND:**

The City has received bids for the 2021 Utility Improvement Projects. These plans include the replacement of the replacement of an existing waterline in St. Joseph Street from Cone Street to Carol Street, the replacement of an existing waterline along Sarah DeWitt Drive from Church Street to Robertson Street, the replacement of a wastewater line in Klein Street from St. Andrew to Dallas, and the replacement of wastewater lines in St. Peter, Hamilton and Benton Streets.

### **POLICY CONSIDERATIONS:**

As funds are available, the city should consider reconstructing and replacing old, deteriorated water and wastewater lines in order to provide safe water and sewer services for the public.

### **FISCAL IMPACT:**

The budget to perform all of the work described above is \$1,135,000. The low bid received was \$1,591,042. The Bid included Deducts to remove the wastewater portions of the project. The Deduct to remove Klein Street from the project was \$300,030 and the Deduct to remove St. Peter, Hamilton and Benton Streets from the project was \$217,808. With both Deducts for the wastewater portions of the project, the total construction cost will be \$1,073,204. In addition to the construction cost the project also has incurred previously approved fees for surveying, engineering, bidding and construction phase services in the amount of \$122,600, making the total fiscal impact of the project \$1,195,804. This project is being funded partially by the 2019 Certificate of Obligation and partially from the water and wastewater funds.

Of the wastewater projects listed, the ones in most need of replacement are the portion of Klein Street from St. Andrew to School Street, and the wastewater line in St. Peter Street. If council desires to approve funding for these wastewater projects the cost will be approximately an additional \$145,000.

### **ATTACHMENTS:**

Bid tabulation

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the contract be awarded to Qro Mex Construction Co., Inc. in the amount of \$1,073,204 for construction of the 2021 Utility Improvement Projects.

**RESOLUTION NO. 2022-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS ACCEPTING THE BIDS AND AWARDING THE CONTRACT FOR THE 2021 UTILITY IMPROVEMENT PROJECTS TO QRO MEX CONSTRUCTION CO., INC. IN THE AMOUNT OF \$1,073,204.00; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Capital Improvement Plan for Fiscal Year Budget 2021-2022 included the 2021 Utility improvement Projects to be competitively bid as per Chapter 252 of the Local Government Code; and,

**WHEREAS**, the advertisements for the Request for bids were published in the newspaper for three consecutive weeks beginning March 3, 2022; and,

**WHEREAS**, the bids were due to be received by the City of Gonzales on March 24, 2022 at 2:00 p.m.; and,

**WHEREAS**, bids were received from, Diamond X Construction, Inc., Inc., Qro Mex Construction Co., Inc., M&C Fonseca Construction Co., Inc., R-Construction Civil, LLC and J&R Contracting Services, Inc. by the due date published; and,

**WHEREAS**, Local Government Code Section 252.043(a) states that if the competitive bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods and services at the best value for the municipality; and,

**WHEREAS**, the City Engineer evaluated the proposals and recommends awarding the contract to Qro Mex Construction Co., Inc. who is the lowest responsible bidder with a base bid amount of \$1,073,204.00; and,

**WHEREAS**, the City Council finds that entering into an agreement for the 2021 Utility Improvement Projects is in the best interest of the City and its citizens and will further promote the public health, safety, and general welfare of the City.

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

Section 1. The City Council of the City of Gonzales hereby awards the contract for the 2021 Utility Improvement Projects to Qro Mex Construction Co., Inc. and authorizes the City Manager to execute the agreement.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

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Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary



# **BID TABULATION - Base Bid Sheet** **CITY OF GONZALES**

PROJECT NAME: 2021 Utility Improvement Projects

PROJECT MANAGER: Marland Mercer

PRE-BID CONFERENCE DATE &  
TIME: N/A

BID DATE & TIME: 2:00 PM  
Thursday, March 24, 2022

PROJECT CONSULTANT: J. KEITH SCHAUER, P.E.,  
DOUCET & ASSOCIATES, INC.

BID OPENING LOCATION: Gonzales City Hall, 820 Saint Joseph Street, Gonzales, Texas 78629

	BIDDER / FIRM NAME	2021 Street Improvement Projects Base Bid	Bid Alternate 1	Bid Alternate 2	Bid Bond
1	J & R Contracting	1,998,825. <sup>00</sup>	427,980. <sup>00</sup>	326,485. <sup>00</sup>	✓
2	Diamond X	1,964,294. <sup>40</sup>	368,155. <sup>00</sup>	300,416. <sup>40</sup>	✓
3	M & C Fonseca	1,755,456. <sup>50</sup>	296,065. <sup>00</sup>	231,874. <sup>00</sup>	✓
4	Qro Mex	1,591,042. <sup>00</sup>	300,030. <sup>00</sup>	217,808. <sup>00</sup>	✓
5	R - Construction	3,284,715. <sup>00</sup>	700,220. <sup>00</sup>	453,107. <sup>00</sup>	✓
6					
7					
8					
9					

## **COUNCIL AGENDA ITEM BRIEFING DATA**



**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Resolution

## **AGENDA ITEM**

Discuss, Consider & Possible Action on Resolution 2022-41 Authorizing the City Manager to Enter into a Master Equity Lease Agreement, Amendment to Master Equity Lease Agreement, Maintenance Agreement, and Maintenance Management and Fleet Rental Agreement with Enterprise Fleet Management, Inc. to allow for the future lease of several budgeted departmental vehicles

### **BACKGROUND:**

On September 9, 2021 the City Council adopted Resolution 2021-22 Adopting the 2021-2022 Budget. During the budget workshops this summer, Council directed staff to lease five vehicles instead of purchasing. Staff contacted Enterprise and received quotes to lease those vehicles and the pricing was included in the 2021-2022 budget. There is one vehicle for the Building Maintenance Department, two for the Police Department and two for the Water Department. In order to move forward with leasing any vehicles, the City of Gonzales would first need to execute the following agreements:

Master Equity Lease Agreement and Amendment with Enterprise FM Trust- sets up the framework for the City to acquire vehicles through Enterprise.

Maintenance Agreement with Enterprise Fleet Management, Inc. – allows for fixed maintenance on non-ERV lease vehicles.

Maintenance Management and Fleet Rental Agreement with Enterprise Fleet Management, Inc. – allows for billed back maintenance program on ERV leased vehicles.

### **POLICY CONSIDERATIONS:**

This is consistent with what has been done in the past.

### **FISCAL IMPACT:**

During the budget process, City Council expressed the desire to create the leasing of fleet vehicles that were needed. Monies were budgeted within building maintenance department (\$6,000 for 2022 half ton Silverado crew cab truck), police department (\$30,000 for 2 Tahoe's), Water department (\$12,000 for two ½ ton Chevrolet trucks). These items will be presented to Council for final approval at the next Council meeting.

### **ATTACHMENTS:**

Fleet Management Synopsis, Master Equity Lease Agreement, Amendment to Master Equity Lease Agreement, Maintenance Agreement, and Maintenance Management and Fleet Rental Agreement.

**STAFF RECOMMENDATION:**

Staff respectfully recommends the approval of this resolution.

## **RESOLUTION NO. 2022-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A MASTER EQUITY LEASE AGREEMENT, AMENDMENT TO MASTER EQUITY LEASE AGREEMENT, MAINTENANCE AGREEMENT AND MAINTENANCE MANAGEMENT AND FLEET RENTAL AGREEMENT WITH ENTERPRISE FLEET MANAGEMENT, INC. TO ALLOW FOR THE FUTURE LEASE OF SEVERAL BUDGETED DEPARTMENTAL VEHICLES; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, On September 9, 2021 the City Council adopted Resolution 2021-22 Adopting the 2021-2022 Budget; and,

**WHEREAS**, during budget workshops this summer, Council directed staff to lease five vehicles instead of purchasing; and,

**WHEREAS**, the City finds that entering into an agreement with Enterprise for leasing vehicles would be in the best interest of the City and its citizens and will further promote the public health, safety, and general welfare of the City; and

**WHEREAS**, during the budget process, City Council expressed the desire to create the leasing of fleet vehicles that were needed. Monies were budgeted within building maintenance department (\$6,000 for 2022 half ton Silverado crew cab truck), police department (\$30,000 for 2 Tahoe's), Water department (\$12,000 for two ½ ton Chevrolet trucks). These items will be presented to Council for final approval at the next Council meeting.

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

Section 1. The City Council of the City of Gonzales, Texas hereby authorizes the City Manager to enter into a Master Equity Lease Agreement, Amendment to Master Equity Lease Agreement, Maintenance Agreement and Maintenance Management and Fleet Rental Agreement with Enterprise.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

---

Mayor, Connie L. Kacir

ATTEST:

---

Kristina Vega, City Secretary

*Prepared For:*



**Simon Ortega**

SENIOR FLEET CONSULTANT

**210-852-4510**

PHONE

**[Simon.Ortega@efleets.com](mailto:Simon.Ortega@efleets.com)**

EMAIL



# FLEET SYNOPSIS | CITY OF GONZALES

## THE SITUATION

### Current fleet age is negatively impacting the overall budget and fleet operations

- 33% of the light and medium duty fleet is currently 10 years or older
- 8.6 years is the current average age of the fleet
- 13 years – time it would take to cycle the entire fleet at current acquisition rates
- Older vehicles have higher fuel/maintenance costs, have increased downtime, loss of productivity, and unreliable

## THE OBJECTIVES

### Identify an effective vehicle life cycle that maximizes potential equity at time of resale creating a conservative net savings of over \$248,998 over 10 years and \$22,430 in sustainable savings once fully implemented

- Shorten the current vehicle life cycle from 13 years to 3 years
- Provide a lower sustainable fleet cost that is predictable year over year
- Automate maintenance and data tracking to give better visibility for operating budgets
- Reduce the overall fuel spend through more fuel-efficient vehicles
- Leverage an open-ended lease to maximize cash flow opportunities and recognize equity.

### Increase employee safety with newer vehicles

- Currently:
  - 10 vehicles predate Anti-Lock Brake standardization (2007)
  - 17 vehicles predate Electronic Stability Control standardization (2012)
    - ESC is the most significant safety invention since the seatbelt
  - 42 vehicles predate standardization of back up camera (2018)

### Piggyback Current TIPS Cooperative Services awarded RFP #190402 that addresses the following:

- Access to all fleet management services as applicable to the needs of the city
- Supports the city's need for fleet evaluation on a quarterly basis assessing costs and reviewing best practices

## THE RESULTS

By partnering with Enterprise Fleet Management, it is estimated that the city will increase fuel efficiency by lowering the overall age of the fleet. The city will naturally reduce maintenance cost in the first year for light duty vehicles. Leveraging an open-end lease maximizes cash flow and recognizes equity from vehicles sold. Furthermore, the city will leverage Enterprises Fleet Management's ability to sell vehicles at an average of 115% above commercial value Index. By shifting from reactively replacing inoperable vehicles to planning vehicle purchases, the city will be able replace 30 of its oldest vehicles within a year, ultimately turning 58% of their vehicles into newer, safer, more efficient models.

# FLEET PLANNING ANALYSIS | CITY OF GONZALES

Fleet Profile				Fleet Replacement Schedule						Fleet Replacement Criteria
Vehicle Type	# of Type	Average Age (years)	Average Annual Mileage	2022	2023	2024	2025	2026	Under-Utilized	
Full Size SUV 4x2	14	5.1	15,000	5	4	3	0	2	0	* Fiscal Year 2022 = 8 years old and older, or odometer over 80,000
Compact Pickup Reg 4x2	1	18.4	2,000	1	0	0	0	0	0	* Fiscal Year 2023 = 6 years old and older, or odometer over 60,000
1/2 Ton Pickup Reg 4x2	4	15.1	7,600	3	0	0	1	0	0	* Fiscal Year 2024 = 3 years old and older, or odometer over 30,000
1/2 Ton Pickup Ext 4x2	1	7.3	7,700	1	0	0	0	0	0	* Fiscal Year 2025 = 2 years old and older, or odometer over 20,000
1/2 Ton Pickup Quad 4x2	11	8.6	8,000	9	2	0	0	0	0	* Fiscal Year 2026 = Remaining Vehicles
1/2 Ton Pickup Quad 4x4	1	4.3	17,100	0	1	0	0	0	0	* Underutilized = Annual Mileage less than 1,000
3/4 Ton Pickup Reg 4x2	5	15.8	8,500	5	0	0	0	0	0	
3/4 Ton Pickup Ext 4x2	4	9.6	6,300	3	0	0	1	0	0	
3/4 Ton Pickup Quad 4x2	4	6.8	11,700	1	2	0	1	0	0	
1 Ton Pickup Quad 4x4	2	4.8	9,100	0	1	1	0	0	0	
1 Ton Cab Chassis	2	10.8	7,500	1	0	0	0	1	0	
1 1/2 Ton Cab Chassis	3	5.3	4,500	1	1	0	1	0	0	
Totals/Averages	52	8.6	9,900	30	11	4	4	3	0	

The pie chart illustrates the composition of the fleet by type. The largest segment is HD TRUCK at 38%, followed by LD TRUCK at 35%, and SUV at 27%.

Vehicle Type	Percentage
HD TRUCK	38%
SUV	27%
LD TRUCK	35%

Current Fleet	52	Fleet Growth	0.00%	Proposed Fleet	52
Current Cycle	13.00	Annual Miles	9,900	Proposed Cycle	3.04
Current Maint.	\$89.00			Proposed Maint.	\$46.09
Maint. Cents Per Mile	\$0.11	Current MPG	10	Price/Gallon	\$2.75

## Fleet Costs Analysis

Fleet Mix							Fleet Cost				Annual		
Fiscal Year	Fleet Size	Annual Needs	Owned	Leased	Purchase	Lease*	Equity (Owned)	Equity (Leased)	Maintenance	Fuel	Fleet Budget	Net Cash	
Average	52	4.0	52	0	146,943	0			55,536	141,570	344,049	0	
'22	52	30	22	30	0	237,498	-30,000	-96,984	40,087	122,722	273,322	70,728	
'23	52	25	11	41	0	345,445	-22,000	-117,183	34,422	115,811	356,495	-12,445	
'24	52	21	7	45	0	387,441	-14,000	-245,626	32,362	113,298	273,475	70,574	
'25	52	30	3	49	0	413,917	-26,000	-166,395	30,302	110,785	362,609	-18,559	
'26	52	24	0	52	0	444,935	-25,500	-239,593	28,757	108,900	317,499	26,550	
'27	52	26	0	52	0	444,935		-351,116	28,757	108,900	231,476	112,573	
'28	52	34	0	52	0	444,935		-204,484	28,757	108,900	378,108	-34,059	
'29	52	24	0	52	0	444,935		-158,558	28,757	108,900	424,035	-79,986	
'30	52	20	0	52	0	444,935		-323,781	28,757	108,900	258,811	85,238	
'31	52	32	0	52	0	444,935		-266,927	28,757	108,900	315,665	28,384	
									10 Year Savings		\$248,998	Avg. Sustainable Savings	\$22,430

43% 41% 16%

Fuel Maintenance Purchase

## Current Fleet Equity Analysis

YEAR	2022	2023	2024	2025	2026	Under-Utilized
QTY	30	11	4	4	3	0
Est \$	\$1,000	\$2,000	\$3,500	\$6,500	\$8,500	\$0
TOTAL	\$30,000	\$22,000	\$14,000	\$26,000	\$25,500	\$0
Estimated Current Fleet Equity**					\$117,500	

\* Lease Rates are conservative estimates

**\*\*Estimated Current Fleet Equity is based on the current fleet "sight unseen"  
and can be adjusted after physical inspection**

Lease Maintenance costs are exclusive of tires unless noted on the lease rate quote.

## KEY OBJECTIVES

### Lower average age of the fleet

33% of the current light and medium duty fleet is over 10 years old

Resale of the aging fleet is significantly reduced

### Reduce operating costs

Newer vehicles have a significantly lower maintenance expense

Newer vehicles have increased fuel efficiency with new technology implementations

### Maintain a manageable vehicle budget

### Challenged by inconsistent yearly budgets

Currently vehicle budget is underfunded



# FLEET PLANNING ANALYSIS | CITY OF GONZALES



City of Gonzales - Year 1 Replacement - Estimated Equity Lease Menu Pricing for 2022-2023

Year	Make	Model	Trim Level	Quantity	Term	Estimated Annual Mileage	Monthly Cost (Lease Rate)*	Maintenance Management	Annual Cost Including Maintenance	Annual Cost Including Maintenance by Quantity	Aftermarket Cost Per Vehicle	Aftermarket Cost by Quantity
2023	Chevrolet	Colorado	WT 4x2 Extended Cab	1	48	10000	\$476.06	\$6.00	\$5,784.72	\$5,784.72	\$0.00	\$0.00
2023	Chevrolet	1500	WT 4x2 Double Cab	1	48	10000	\$621.59	\$6.00	\$7,531.08	\$7,531.08	\$0.00	\$0.00
2023	Chevrolet	1500	WT 4x2 Crew Cab	1	48	10000	\$649.43	\$6.00	\$7,865.16	\$7,865.16	\$0.00	\$0.00
2022/23	Chevrolet	Tahoe	Police Vehicle 4x2	2	48	15000	\$845.37	\$6.00	\$10,216.44	\$20,432.88	\$11,638.94	\$23,277.88

Annual Cost Including Maintenance Management

\$41,613.84

\*Lease rates are based upon factory order pricing and miles per year

\*\*Maintenance includes no brakes and no tires

\*\*\*Estimated Pricing does not include any applicable taxes

Pricing does not include expected return on equity at end of lease

One Time Upfront Cost for Aftermarket Equipment
Year 1 Cost including Aftermarket Equipment and Estimated Resale of Owned Vehicles

\$23,277.88  
\$64,891.72  
\$0.00

Estimated Total Year 1 Cost for 5 Vehicles minus Resale

\$64,891.72

# CASE STUDY | CITY OF GONZALES

## CASE STUDY | CITY OF FREDERICKSBURG, TX



### City lowers fleet maintenance costs by \$127K with Fleet Program.

#### BACKGROUND

Location: Fredericksburg, TX  
Industry: Government  
Total vehicles: 75 vehicles

#### THE CHALLENGE

Each year, the City of Fredericksburg was faced with high vehicle repair and maintenance costs for an aging fleet. The City's 75 vehicles had an average age of 12 years resulting in unexpected maintenance issues each year. The City was spending \$153,300 per year on fleet maintenance, averaging over \$2,000 per truck. Searching for solutions within their budget, the city needed to make managing their vehicles easier, from purchasing to maintenance and driver fueling options.

#### THE SOLUTION

Enterprise Fleet Management presented a proactive fleet replacement plan to the City of Fredericksburg that would reduce the average age of their fleet by 60% helping reduce operational and maintenance expenses. With integrating newer vehicles into the City's fleet, employees would drive safer, more reliable vehicles with minimal maintenance needs. Long-term, this plan has helped save an average of \$29,284 per year in fleet related expenses.

**"We have truly enjoyed the partnership with Enterprise Fleet Management. Things are much easier to manage now, and we are saving money on vehicle maintenance."**

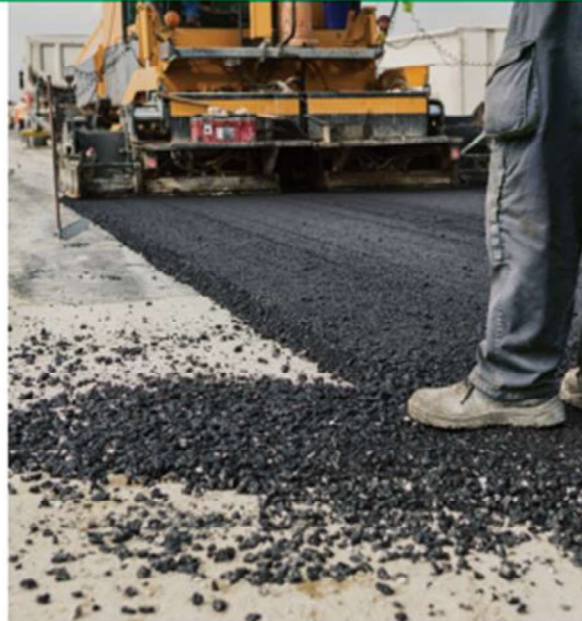
— Brian Peters, Programs Manager

Enterprise Fleet Management also recommended replacing all vehicles owned by the city within a 5-year time frame. This approach will help The City lower maintenance expense from \$153,300 per year to \$26,016 per year.

#### THE RESULTS

Since their partnership began 4 years ago, Enterprise Fleet Management has helped The City of Fredericksburg transition their fleet vehicles from an average age of 12 years to 4. The City has experienced a significant reduction in costs associated with their fleet program and a decrease in employee downtime. This is due to The City putting their trust in the local Enterprise Fleet Management team's expertise and the fleet planning analytics backing each recommendation. The partnership has given the City visibility into all vehicle costs and budget accordingly.

To learn more, visit [efleets.com](http://efleets.com) or call 877-23-FLEET.



#### Key Results

MAINTENANCE  
LOWERED BY  
**83%**



**SAVED  
\$62,052**  
OVER THE LAST 2  
REPLACEMENT YEARS

**5 YEAR**  
REPLACEMENT PLAN



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# RESOURCES | CITY OF GONZALES

## SAFETY

- **33%** of all vehicles are older than 10 years of age and do not contain the most up to date safety features, such as electronic stability control and airbag standardization and anti-lock brake control.

## ACCOUNT MANAGEMENT

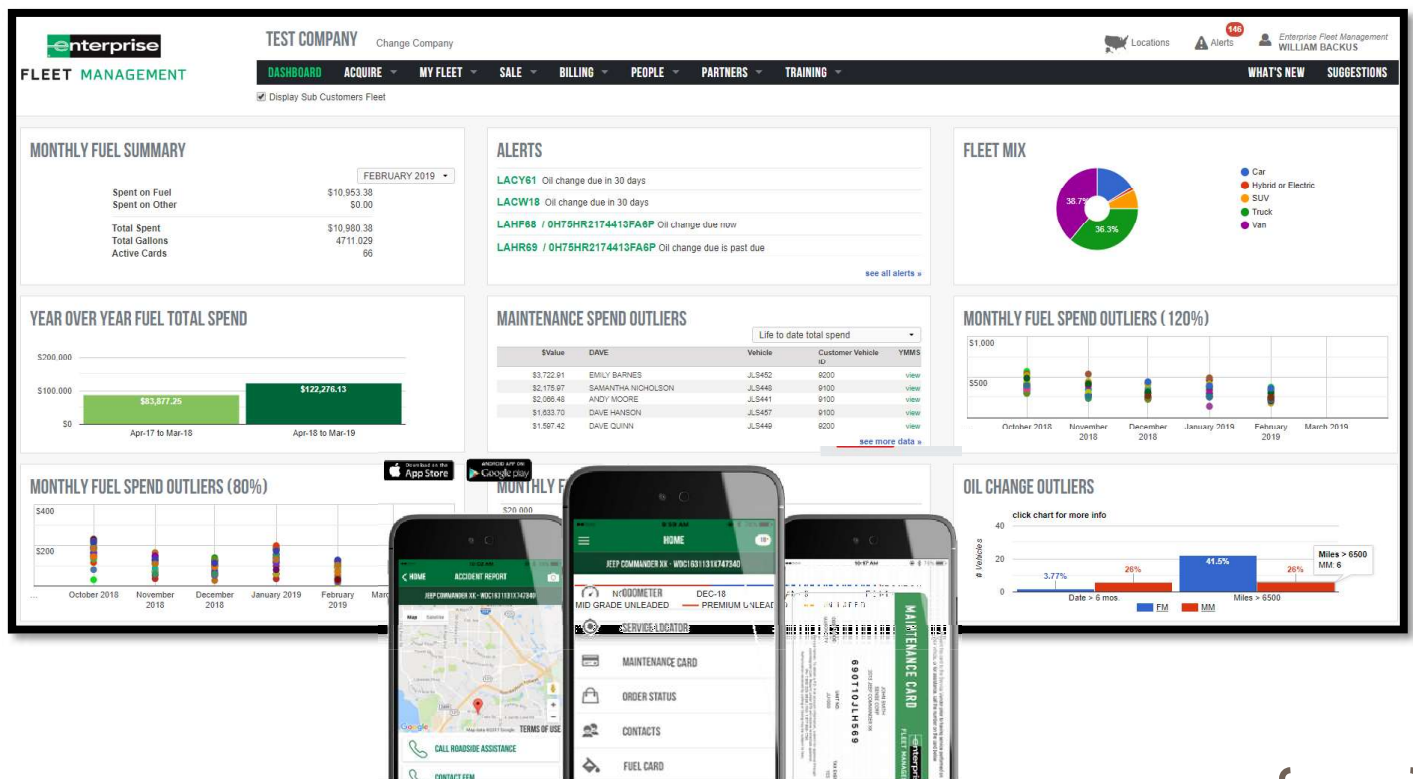
The city will have a dedicated, local account team to proactively manage and develop your fleet while delivering the highest level of customer service to facilitate your day-to-day needs.

- Your dedicated Client Strategy Manager meets with you 3-4 times a year for both financial and strategic planning.
- Your Client Strategy Manager will provide on-going analysis – this will include most cost-effective vehicle makes/models, cents per mile, total cost of ownership, and replacement analysis.

## TECHNOLOGY

Enterprise Fleet Management's website provides vehicle tracking, reporting, and metrics. Our website can be customized to view a wide range of data so that you may have a comprehensive and detailed look at all aspects of your fleet and the services provided. Our Mobile App gives drivers all of the convenience and functionality they need.

- **Consolidated Invoices** - Includes lease, maintenance, and any additional ancillaries
- **Maintenance Utilization** - Review the life-to-date maintenance per vehicle
- **Recall Information** - See which units have open recalls
- **License & Registration** - See which plate renewals are being processed by Enterprise and view status
- **Alerts** - Set customizable alerts for oil changes, lease renewals, license renewals, and billing data
- **Lifecycle Analysis** - See data regarding all transactions for the lifecycle of the entire fleet, with drill-down capability to any specific lease or transaction



# REFERENCES | CITY OF GONZALES

## CURRENT PARTNERS

- City of Houston
- City of Luling
- City of Seguin
- City of Victoria
- City of Fredericksburg
- City of Boerne
- City of Rowlett
- City of Waxahachie
- City of Alice
- City of Beaumont
- City of El Campo
- City of San Marcos
- City of Selma
- City of Kerrville
- City of Cibolo
- City of Pleasanton
- City of Longview
- City of Victoria
- City of Brownsville
- City of Uvalde
- City of Brownwood
- City of Ennis
- Hidalgo County
- Nueces County
- Burnet County
- Webb County
- Austin County
- Gillespie County
- Washington County
- Lampasas County
- Caldwell County
- Harris County
- Waller County

## REFERENCES:

Below is a list of client/customer references including client name, contact person, and telephone number.

Client Name: **City of Houston Fire Department**

Business Phone #: (281) 886-9974

Contact Person: Ruy Lozano – Assistant Fire Chief

Client Name: **City of Fredericksburg**

Business Phone #: (830) 990-2008

Contact Person: Brian Peters – Public Works Director

Client Name: **City of Pleasanton**

Business Phone #: (830) 569-3867

Contact Person: Johnny Huizar – City Manager



## MAINTENANCE MANAGEMENT AND FLEET RENTAL AGREEMENT

This Agreement is entered into as of the 14th day of April, by and between Enterprise Fleet Management, Inc., a Missouri corporation, doing business as "Enterprise Fleet Management" ("EFM"), and City of Gonzales, Texas (the "Company").

**1. ENTERPRISE CARDS:** EFM will provide the Company with an EFM Card for each vehicle, which EFM Card is an electronic card and is located on the Efleets mobile app and the efleets.com client website, for use in authorizing the payment of charges incurred in connection with the vehicle maintenance program (the "Program") for a vehicle. The Company agrees to be and shall be liable to EFM for all charges made by or for the account of the Company with the EFM Card (other than any charges which are the responsibility of EFM under the terms of this Agreement). EFM will invoice the Company for all such charges, and the Company agrees to and shall pay to EFM all invoiced amounts in accordance with the terms of this Maintenance Management and Fleet Rental Agreement (Agreement). EFM reserves the right, and the Company agrees and acknowledges that EFM shall have the right, to change the terms and conditions as set forth in this Agreement for the use of the EFM Card at any time. The EFM Card is and shall remain at all times the property of EFM, and EFM may revoke the Company's right to possess, access, or use the EFM Card at any time and for any reason. The EFM Card is non-transferable. EFM will provide a driver information packet (the "Packet") outlining the Maintenance Management Program. The Parties agree that the Maintenance Management Program is subject to the terms and conditions of the Packet.

**2. VEHICLE REPAIRS AND SERVICE:** EFM will provide purchase order control by telephone, electronic mail, or in writing authorizing charges for service, maintenance, or repairs exceeding \$125.00, which may change from time to time based on market conditions, or such other amount as may be established by EFM, in its sole discretion, from time to time under the Program. All charges for service, maintenance or repairs will be invoiced to EFM. Invoices will be reviewed by EFM for accuracy, proper application of any applicable manufacturer's warranty, application of potential discounts and unnecessary, unauthorized repairs.

Notwithstanding the above, in the event the repairs and service are the result of damage from an accident or other non-maintenance related cause (including glass claims), these matters will be referred to the Company's Fleet Manager. If the Company prefers that EFM handle the damage repair, the Company agrees to assign the administration of the matter to EFM. EFM will administer such claims in its discretion. The fees for this service will be up to \$125.00 per claim and the Company agrees to reimburse for repairs as outlined in this agreement. If the Company desires the assistance of EFM in recovering damage amounts from at fault third parties, a Vehicle Risk Management Agreement must be on file for the Company.

**3. BILLING AND PAYMENT:** All audited invoices paid by EFM on behalf of the Company will be consolidated and submitted to the Company on a single monthly invoice for the entire Company fleet covered under this Agreement. The Company is liable for, and will pay EFM within twenty (20) days after receipt of an invoice or statement for, all purchases invoiced to the Company by EFM, which were paid by EFM for or on behalf of the Company. EFM will be entitled to retain for its own account, and treat as being paid by EFM for purposes of this Agreement, any discounts it receives from a supplier with respect to such purchases which are based on the overall volume of business EFM provides to such supplier and not solely the Company's business.

**4. RENTAL VEHICLES:** The EFM Card allows the Company the option to arrange for a rental vehicle at a discounted rate with a subsidiary or affiliate of Enterprise Holdings, Inc. ("EHI") for a maximum of two (2) days without prior authorization from EFM. Extensions beyond two (2) days must be approved by EFM. The Company shall be fully responsible for all obligations under any rental agreement with a subsidiary or affiliate of EHI pursuant to this Agreement. All drivers of a rental vehicle must be at least twenty one (21) years of age unless otherwise required by law, hold a valid driver's license, be an employee of the Company and authorized by the Company through established reservation procedures and meet all other applicable requirements of the applicable subsidiary or affiliate of EHI. The Company will be provided a specific telephone number for use in arranging a rental vehicle described in this Section.

**5. NO WARRANTY:** The Company acknowledges that EFM does not perform maintenance or repair services on the Company's vehicles or any rental vehicles and any maintenance or repair services are to be performed by third parties. EFM MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER OF ANY KIND, EXPRESS OR IMPLIED, WHETHER ARISING BY COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE WITH RESPECT TO PRODUCTS, REPAIRS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, OPERATION, CONDITION, SUITABILITY, PERFORMANCE, QUALITY OR FITNESS FOR USE. Any defect in the performance of any product, repair or service will not relieve the Company from its obligations under this Agreement, including without limitation the payment to EFM of monthly invoices.

**6. CANCELLATION:** Either party may cancel any Card under this Agreement or this Agreement in its entirety at any time by giving thirty (30) days written notice to the other party. The cancellation of any Card or termination of this Agreement will not affect any rights or obligations under this Agreement, which shall have previously accrued or shall thereafter arise with respect to any occurrence prior to such cancellation or termination. Upon such cancellation or termination, the Company shall immediately cease using or accessing the EFM Card. Notice to EFM regarding the cancellation of any Card shall specify the Card number and identify the Company's representative. EFM will exercise due care to prevent additional charges from being incurred once the Company has notified EFM of its desire to cancel any outstanding Card under this Agreement.

**7. NOTICES:** Any notice or other communication under this Agreement shall be in writing and delivered in person, electronic mail or mailed postage prepaid by registered or certified mail or sent by express overnight delivery service with a nationally recognized carrier, to the applicable party at its address set forth on the signature page of this Agreement, or at such other address as any party hereto may designate as its address for communications under this Agreement by notice so given. Any such notice or communication sent by mail will be effective and deemed received three (3) days after deposit in the United States mail, duly addressed to the address for the Party set forth below, with registered or certified mail postage prepaid. Any such notice or communication sent by express overnight delivery service with a nationally recognized carrier will be effective and deemed received one (1) day after deposit with such delivery service, duly addressed, with delivery fees prepaid. The Company shall promptly notify EFM of any change in the Company's address.

**8. FEES:** EFM will charge the Company for the service under this Agreement \$ 6.00 per month per Card.

**9. MISCELLANEOUS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Company may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of EFM. This Agreement is governed by the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

IN WITNESS WHEREOF, EFM and the Company have executed this Maintenance Management and Fleet Rental Agreement as of the day and year first above written.

COMPANY: City of Gonzales, Texas

EFM: Enterprise Fleet Management, Inc.

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

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

By: \_\_\_\_\_

By: Paul Shurtleff

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

Title: Regional Manager

Address: 820 St Joseph St  
Gonzales, TX 78629  
\_\_\_\_\_

Address: 1505 Harry Wurzbach  
San Antonio, TX 78209  
\_\_\_\_\_

Date Signed: \_\_\_\_\_, \_\_\_\_\_

Date Signed: \_\_\_\_\_, \_\_\_\_\_

## MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this 14th day of April, 2022, by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

**1. LEASE OF VEHICLES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles (individually, a "Vehicle" and collectively, the "Vehicles") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms and conditions set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement and the various Schedules and addenda to this Master Equity Lease Agreement, each of which are incorporated herein as part of a single, unitary Agreement. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle, which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each such Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days after the date of delivery of the Vehicle covered by such Schedule. Lessor is the sole legal owner of each Vehicle. This Agreement is a lease only and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership of the Vehicles. It is understood and agreed that Enterprise Fleet Management, Inc. or an affiliate thereof (together with any subservicer, agent, successor or assign as servicer on behalf of Lessor, "Servicer") may administer this Agreement on behalf of Lessor and may perform the service functions herein provided to be performed by Lessor.

**2. TERM:** The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms of this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

### 3. RENT AND OTHER CHARGES:

(a) Lessee agrees to pay Lessor monthly rental and other payments according to the Schedules and this Agreement. The monthly payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule (with any portion of such amount identified as a charge for maintenance services under Section 4 of the applicable Schedule being payable to Lessor as agent for Enterprise Fleet Management, Inc.) and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first monthly rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule. Lessee agrees to pay Lessor the "Service Charge Due at Lease Termination" set forth in each Schedule at the end of the applicable Term (whether by reason of expiration, early termination or otherwise).

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of the Book Value of such Vehicle over the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule. If the Book Value of such Vehicle is less than the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule, Lessor agrees to pay such deficiency to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term, subject to Lessor's right to recoup any amounts Lessor would owe to Lessee under this Section 3(c) against any obligations of Lessee to Lessor under this Agreement. Notwithstanding the foregoing, if (i) the Term for a Vehicle is greater than forty-eight (48) months (including any extension of the Term for such Vehicle), (ii) the mileage on a Vehicle at the end of the Term is greater than 15,000 miles per year on average (prorated on a daily basis) (i.e., if the mileage on a Vehicle with a Term of thirty-six (36) months is greater than 45,000 miles) or (iii) in the sole judgment of Lessor, a Vehicle has been subject to damage or any abnormal or excessive wear and tear, the calculations described in the two immediately preceding sentences shall be made without giving effect to clause (ii) in each such sentence. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to and recouped against any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law (the "Default Rate").

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor, Servicer or any other agent of Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand together with interest thereon at the Default Rate.

(g) Lessee's obligations to make all payments of rent and other amounts under this Agreement are absolute and unconditional and such payments shall be made in immediately available funds without setoff, counterclaim or deduction of any kind. Lessee acknowledges and agrees that neither any Casualty Occurrence to any Vehicle nor any defect, unfitness or lack of governmental approval in, of, or with respect to, any Vehicle regardless of the cause or consequence nor any breach by Enterprise Fleet Management, Inc. of any maintenance agreement between Enterprise Fleet Management, Inc. and Lessee covering any Vehicle regardless of the cause or consequence will relieve Lessee from the performance of any of its obligations under this Agreement, including, without limitation, the payment of rent and other amounts under this Agreement.

**4. USE AND SURRENDER OF VEHICLES:** Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances (including without limitation such federal, state and local laws, statutes, rules, regulations and ordinances governing autonomous vehicles and automated driving systems and any parts, components and products related thereto) and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. In connection with autonomous vehicles and automated driving systems and the parts, components and products related thereto, Lessee agrees to comply with all applicable guidance and professional standards issued, released or published by governmental and quasi-governmental agencies, including without limitation the federal guidance for automated vehicles published by the Department of Transportation and the Federal Automated Vehicle Policy issued by the U.S. Department of Transportation and the National Highway Traffic Safety Administration. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees that no Vehicle is intended to be or will be utilized as a "school bus" as defined in the Code of Federal Regulations or any applicable state or municipal statute or regulation. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this Section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

**5. COSTS, EXPENSES, FEES AND CHARGES:** Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, licensing, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor, Servicer or any other agent of Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

**6. LICENSE AND CHARGES:** Each Vehicle will be titled, registered and licensed in the name designated by Lessor at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

**7. REGISTRATION PLATES, ETC.:** Lessee agrees, at its expense, to obtain in the name designated by Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation, which may be reasonably necessary for compliance with the provisions of this Section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling, licensing and/or registration laws of such other state.

**8. MAINTENANCE OF AND IMPROVEMENTS TO VEHICLES:**

(a) Lessee agrees, at its expense, to (i) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (ii) furnish all labor, materials, parts and other essentials required for the proper operation and maintenance of the Vehicles. Lessee will not make (or cause to be made) any alterations, upgrades, upfitting, additions or improvements (collectively, "Alterations") to any Vehicle which (i) could impact or impair the "motor vehicle safety" (as defined by the Motor Vehicle Safety Act) of the Vehicle, or (ii) could impact, impair, void or render unenforceable the manufacturer's warranty. Without the prior written consent of Lessor, Lessee will not make (or cause to be made) any Alterations to any Vehicle which (i) detracts, impairs, damages or alters the Vehicle's nature, purpose, economic value, remaining useful life, functionality, utility, software or controls, or (ii) subjects the Vehicle or any part or component of such Vehicle to any lien, charge or encumbrance. Any Alterations of any nature to a Vehicle are made at Lessee's sole cost, risk and liability, including without limitation, any such Alterations approved by, or made with the assistance or at the direction of Lessor. Any replacement parts added to any Vehicle shall be in at least as good an operating condition as the prior part before the replacement (assuming such part was, at the time of the replacement, in the condition required by the terms of this Agreement). Any Alterations to a Vehicle will become and remain the property of Lessor and will be returned with such Vehicle upon such Vehicle's return pursuant to Section 4 and shall be free of any liens, charges or encumbrances; provided, however, Lessor shall have the right at any time to require Lessee to remove any such Alteration at Lessee's sole cost, expense and liability. In no event or instance shall the value of any Alterations be regarded as rent. Lessee and Lessor acknowledges and agrees that Lessor will not be required to make any repairs, replacements or Alterations of any nature or description with respect to any Vehicle, to maintain or repair any Vehicle or to make any expenditure whatsoever in connection with any such Vehicle(s) or this Agreement.



(b) Lessor and Lessee acknowledge and agree that if Section 4 of a Schedule includes a charge for maintenance, (i) the Vehicle(s) covered by such Schedule are subject to a separate maintenance agreement between Enterprise Fleet Management, Inc. and Lessee and (ii) Lessor shall have no liability or responsibility for any failure of Enterprise Fleet Management, Inc. to perform any of its obligations thereunder or to pay or reimburse Lessee for its payment of any costs and expenses incurred in connection with the maintenance or repair of any such Vehicle(s).

9. SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer of a Vehicle are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicle.

(c) None of Lessor, Servicer or any other agent of Lessor will be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, none of Lessor, Servicer or any other agent of Lessor will have any liability to Lessee under this Agreement or under any order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

(d) In no event shall Lessor, Servicer or any other agent of Lessor or their respective affiliates be liable for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to this Agreement, including, without limitation, any breach or performance of this Agreement, regardless of (i) whether such damages were foreseeable, (ii) whether or not Lessor, Servicer or any other agent of Lessor or their respective affiliates were advised of the possibility of such damages and/or (iii) the legal or equitable theory (contract, tort or otherwise) upon which a claim, action, cause of action, demand, lawsuit, arbitration, inquiry, proceeding or litigation is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

10. RISK OF LOSS: Lessee assumes and agrees to bear the entire risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). In the event of a Casualty Occurrence to a Vehicle, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. INSURANCE:

(a) Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company or companies satisfactory to Lessor, insuring Lessee, Lessor and any other person or entity designated by Lessor against any damage, claim, suit, action or liability, and that Lessor will suffer immediate and irreparable harm if Lessee fails to comply with such obligations:

(i) Commercial Automobile Liability Insurance (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection where required by law) for the limits listed below (Note - \$2,000,000 Combined Single Limit Bodily Injury and Property Damage per accident with No Deductible is required for each Vehicle capable of transporting more than 8 passengers):

State of Vehicle Registration	Coverage
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage per accident - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage per accident or \$100,000 Bodily Injury Per Person Per Accident, \$300,000 Per Accident and \$50,000 Property Damage per accident (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage per accident or \$100,000 Bodily Injury Per Person Per Accident, \$300,000 Per Accident and \$50,000 Property Damage per accident (100/300/50) - No Deductible

(ii) Physical Damage Insurance (Collision & Comprehensive): Actual cash value of the applicable Vehicle. Maximum deductible of \$1,000 per accident - Collision and \$1,000 per accident - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher insurance requirements. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor and any other person or entity designated by Lessor as additional insureds and loss payees, as their respective interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor, Servicer and any other person or entity designated by Lessor at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person or entity shall affect the right of Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee, Lessor, Servicer, any other agent of Lessor and their respective successors and assigns notwithstanding any other coverage carried by Lessee, Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Lessor, Servicer, any other agent of Lessor and any other person or entity designated by Lessor as additional insureds and loss payees shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor, Servicer and any other agent of Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor, Servicer or any other agent of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor, Servicer, any other agent of Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

(b) Notwithstanding the provisions of Section 11(a) above: (i) if Section 4 of a Schedule includes a charge for physical damage waiver, Lessor agrees that (A) Lessee will not be required to obtain or maintain the minimum physical damage insurance (collision and comprehensive) required under Section 11(a) for the Vehicle(s) covered by such Schedule and (B) Lessor will assume the risk of physical damage (collision and comprehensive) to the Vehicle(s) covered by such Schedule; provided, however, that such physical damage waiver shall not apply to, and Lessee shall be and remain liable and responsible for, damage to a covered Vehicle caused by wear and tear or mechanical breakdown or failure, damage to or loss of any parts, accessories or components added to a covered Vehicle by Lessee without the prior written consent of Lessor and/or damage to or loss of any property and/or personal effects contained in a covered Vehicle. In the event of a Casualty Occurrence to a covered Vehicle, Lessor may, at its option, replace, rather than repair, the damaged Vehicle with an equivalent vehicle, which replacement vehicle will then constitute the "Vehicle" for purposes of this Agreement; and (ii) if Section 4 of a Schedule includes a charge for commercial automobile liability enrollment, Lessor agrees that it will, at its expense, obtain for and on behalf of Lessee, by adding Lessee as an additional insured under a commercial automobile liability insurance policy issued by an insurance company selected by Lessor, commercial automobile liability insurance satisfying the minimum commercial automobile liability insurance required under Section 11(a) for the Vehicle(s) covered by such Schedule. Lessor may at any time during the applicable Term terminate said obligation to provide physical damage waiver and/or commercial automobile liability enrollment and cancel such physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least ten (10) days prior written notice. Upon such cancellation, insurance in the minimum amounts as set forth in 11(a) shall be obtained and maintained by Lessee at Lessee's expense. An adjustment will be made in monthly rental charges payable by Lessee to reflect any such change and Lessee agrees to furnish Lessor with satisfactory proof of insurance coverage within ten (10) days after mailing of the notice. In addition, Lessor may change the rates charged by Lessor under this Section 11(b) for physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least thirty (30) days prior written notice.

**12. INDEMNITY:** To the extent permitted by state law, Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Lessee and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to Lessee pursuant to the law.

**13. INSPECTION OF VEHICLES; ODOMETER DISCLOSURE; FINANCIAL STATEMENTS:** Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor, Servicer, any other agent of Lessor and any of their respective successors or assigns will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment. Lessee hereby agrees to promptly deliver to Lessor such financial statements and other financial information regarding Lessee as Lessor may from time to time reasonably request.

**14. DEFAULT; REMEDIES:** The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement and any such failure shall remain unremedied for ten (10) days; (b) if Lessee fails to perform, keep or observe any term, provision or covenant contained in Section 11 of this Agreement; (c) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof is given by Lessor, Servicer or any other agent of Lessor to Lessee; (d) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (e) if any present or future guaranty in favor of Lessor of all or any portion of the obligations of Lessee under

this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability of any such guaranty shall be contested or denied by any guarantor, or if any guarantor shall deny that it, he or she has any further liability or obligation under any such guaranty or if any guarantor shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty; (f) the occurrence of a material adverse change in the financial condition, a going concern audit comment of Lessee or any guarantor (g) if Lessee or any guarantor is in default under or fails to comply with any other present or future agreement with or in favor of Lessor, The Crawford Group, Inc. or any direct or indirect subsidiary of The Crawford Group, Inc.. For purposes of this Section 14, the term "guarantor" shall mean any present or future guarantor of all or any portion of the obligations of Lessee under this Agreement.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor, Servicer, any other agent of Lessor and any of Lessor's independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee of its obligations under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns in attempting or effecting enforcement of Lessor's rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession of a Vehicle, (i) the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00 and (ii) the calculations described in the first two sentences of Section 3(c) shall be made without giving effect to clause (ii) in each such sentence); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or in equity are cumulative.

**15. ASSIGNMENTS:** Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee's rights and interest in and to the Vehicles are and will continue at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

**16. MISCELLANEOUS:** This Agreement contains the entire understanding of the parties. This Agreement may only be amended or modified by an instrument in writing executed by both parties. Lessor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Agreement and no waiver whatsoever shall be valid unless in writing and signed by Lessor and then only to the extent therein set forth. A waiver by Lessor of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy, which Lessor would otherwise have on any future occasion. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This Agreement may be executed in multiple counterparts (including facsimile and pdf counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

**17. SUCCESSORS AND ASSIGNS; GOVERNING LAW:** Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

**18. NON-PETITION:** Each party hereto hereby covenants and agrees that, prior to the date which is one year and one day after payment in full of all indebtedness of Lessor, it shall not institute against, or join any other person in instituting against, Lessor any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The provisions of this Section 18 shall survive termination of this Master Equity Lease Agreement.

**19. NON-APPROPRIATION:** Lessee's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. Lessor acknowledges that Lessee is a municipal corporation, is precluded by the County or State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the County or State to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the lease terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds. The parties further agree that should the County or State fail to appropriate such funds, the Lessor shall be paid all rentals due and owing hereunder up until the actual day of termination. In addition, Lessor reserves the right to be paid for any reasonable damages. These reasonable damages will be limited to the losses incurred by the Lessor for having to sell the vehicles on the open used car market prior to the end of the scheduled term (as determined in Section 3 and Section 14 of this Agreement).

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

LESSOR:	Enterprise FM Trust
By:	Enterprise Fleet Management, Inc. its attorney in fact
LESSEE: <u>City of Gonzales, Texas</u>	
Signature: _____	Signature: _____
By: _____	By: <u>Paul Shurtleff</u>
Title: _____	Title: <u>Regional Manager</u>
Address: <u>820 St Joseph St</u>	Address: <u>1505 Harry Wurzbach Rd</u>
<u>Gonzales, TX 78629</u>	<u>San Antonio, TX 78209</u>
_____	_____
Date Signed: _____, _____	Date Signed: _____, _____



AMENDMENT TO MAINTENANCE MANAGEMENT AND FLEET RENTAL AGREEMENT

THIS AMENDMENT ("Amendment") dated this \_\_\_\_ day of February, 2022 is attached to, and made a part of, the MAINTENANCE MANAGEMENT AND FLEET RENTAL AGREEMENT entered into on the \_\_\_\_ day of February, 2022 ("Agreement") by and between Enterprise Fleet Management Inc., a Missouri corporation ("EFM") and City of Gonzales, Texas ("Company"). This Amendment is made for good and valuable consideration, the receipt of which is hereby acknowledged by the parties.

Section 3 of the Maintenance Management and Fleet Rental Agreement is amended to read as follows:

All audited invoices paid by EFM on behalf of the Company will be consolidated and submitted to the Company on a single monthly invoice for the entire Company fleet covered under this Agreement. The Company is liable for, and will pay EFM within thirty (30) days after receipt of an invoice or statement for, all purchases invoiced to the Company by EFM, which were paid by EFM for or on behalf of the Company. EFM will be entitled to retain for its own account, and treat as being paid by EFM for purposes of this Agreement, any discounts it receives from a supplier with respect to such purchases which are based on the overall volume of business EFM provides to such supplier and not solely the Company's business. EFM will exercise due care to prevent additional charges from being incurred once the Company has notified EFM of its desire to cancel any outstanding Card under this Agreement. The Company will use its best efforts to obtain and return any such cancelled Card.

Section 9 of the Maintenance Management and Fleet Rental Agreement is amended to read as follows:

This Agreement may be amended only by an agreement in writing signed by EFM and the Company. This Agreement is governed by the substantive laws of the State of Texas (determined without reference to conflict of law principles).

All references in the Agreement and in the various Schedules and addenda to the Agreement and any other references of similar import shall henceforth mean the Agreement as amended by this Amendment. Except to the extent specifically amended by this Amendment, all of the terms, provisions, conditions, covenants, representations and warranties contained in the Agreement shall be and remain in full force and effect and the same are hereby ratified and confirmed.

IN WITNESS WHEREOF, Company and EFM have executed this Amendment to Maintenance Management and Fleet Rental Agreement as of the day and year first above written.

\_\_\_\_\_  
City of Gonzales, Texas (Company)

By \_\_\_\_\_

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

Date Signed: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
ENTERPRISE FLEET MANAGEMENT, INC.

By \_\_\_\_\_

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

Date Signed: \_\_\_\_\_, \_\_\_\_\_

#### AMENDMENT TO MASTER EQUITY LEASE AGREEMENT

THIS AMENDMENT ("Amendment") dated this \_\_\_\_ day of February, 2022 is attached to, and made a part of, the MASTER EQUITY LEASE AGREEMENT entered into on the \_\_\_\_ day of February, 2022 ("Agreement") by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor") and City of Gonzales, Texas ("Lessee"). This Amendment is made for good and valuable consideration, the receipt of which is hereby acknowledged by the parties.

Section 3(e) of the Master Equity Lease Agreement is amended to read as follows:

Any rental payment or other amount owed by Lessee to Lessor which is not paid within thirty (30) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by Section 2251.25 of the Texas Government Code.

Section 12 of the Master Equity Lease Agreement is amended to read as follows:

**INDEMNITY:** As Lessee is a unit of local government of the State of Texas and is subject to, and must comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by breach of this Agreement. To the extent permitted by Texas law, Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Lessee and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to Lessee pursuant to Texas law.

Section 17 of the Master Equity Lease Agreement is amended to read as follows:

Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Texas (determined without reference to conflict of law principles).

Section 19 of the Master Equity Lease Agreement is amended to read as follows:

**NON-APPROPRIATION:** Lessee's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. Lessor acknowledges that Lessee is a municipal Corporation, and being a unit of government, is precluded by the Texas State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City, County, or State to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the lease terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds by the City, County, or State. The parties further agree that should the County or State fail to appropriate such funds, the Lessor shall be paid all rentals due and owing hereunder up until the actual day of termination. In addition, the parties agree that Lessor may recover the losses incurred by the Lessor for having to sell the vehicles on the open used car market prior to the end of the scheduled term (as determined in Section 3 and Section 14 of this Agreement).

Additional Section 20 is added to the Master Equity Lease Agreement and reads as follows:

**No Boycotting Israel.** As required by Chapter 2271, Texas Government Code, Lessor hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

All references in the Agreement and in the various Schedules and addenda to the Agreement and any other references of similar import shall henceforth mean the Agreement as amended by this Amendment. Except to the extent specifically amended by this Amendment, all of the terms, provisions, conditions, covenants, representations and warranties contained in the Agreement shall be and remain in full force and effect and the same are hereby ratified and confirmed.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment to Master Equity Lease Agreement as of the day and year first above written.

\_\_\_\_\_  
City of Gonzales, Texas (Lessee)

By \_\_\_\_\_

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

\_\_\_\_\_  
Enterprise FM Trust (Lessor)  
By: Enterprise Fleet Management, Inc., its attorney in fact

By \_\_\_\_\_

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

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider & Possible Action  
Approving Ordinance #2022-6 Amending the  
Code of Ordinances of the City of Gonzales,  
Texas, Chapter 8, Offenses and Nuisances,  
Article 8.200; Section 8.204 Exceptions

**DATE: April 11, 2022**

### **TYPE AGENDA ITEM:**

Ordinance

### **BACKGROUND:**

The City of Gonzales, Code of Ordinances is in need of an amendment to the Junked Vehicle Ordinance in order to aid in the enforcement and abatement of the “junked vehicles” within the corporate limits of the City of Gonzales.

During the review of the processes for junked vehicles that were being presented to Municipal Court, it was determined that a majority of the complaints from code officers were for property owners who were habitual offenders. Although, many of those have been resolved, the court was still receiving referrals for property owners who were elderly and/or disabled. The purpose of the proposed revisions is to give the City an additional tool for dealing with junked vehicles for cases that might not be good candidates for a municipal court case. After further discussion with City Staff the addition of the administrative remedy was in the hopes that it will gain more buy in from the community as there is a lot of resistance to the court processes and provide the City with a tool to take action to abate this type of nuisance.

A breakdown of the revisions:

- Added additional definitions
- Revised the definition of junked vehicle for consistency with state law and to focus on the portion of the definition that is “true junk vehicle”. This is related to recent cases submitted to municipal court that were filed on the basis of expired registration/license plate but were not otherwise a junk vehicle.
- Revised for consistency with state law and deleted the section that was overly broad and included language that was not consistent with the definition of a junked vehicle.
- Added provisions for a Junked Vehicle Board of Appeals and the processes for a hearing before the board.

### **POLICY CONSIDERATIONS:**

This will clarify the ordinance in the best interest of the citizens.

### **FISCAL IMPACT:**

N/A



**ATTACHMENTS:**

N/A

**STAFF RECOMMENDATION:**

Staff respectfully recommends the Council take the action they deem necessary.

## **ORDINANCE NO. 2022-6**

**AN ORDINANCE OF THE CITY OF GONZALES, TEXAS, AMENDING THE GONZALES CODE OF ORDINANCES CHAPTER 8 OFFENSES AND NUISANCES; ARTICLE 8.200 JUNKED VEHICLES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; ESTABLISHING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gonzales (City), a home rule municipality, in accordance with the authorization of Texas statutes, including but not limited to Texas Transportation Code Chapter 683, Subchapter E is authorized to regulate junked vehicles; and

**WHEREAS**, the City Council may from time to time choose to amend, supplement, change or modify the City's nuisance regulations; and

**WHEREAS**, the City Council finds that proposed amendments of the City's regulations relating to the storing of junked vehicles within the City's corporate limits are in the best interest of the health, safety, and general welfare of the City.

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

Section 1. The City Council of the City of Gonzales, Texas hereby amends the City of Gonzales Code of Ordinances Chapter 8 Offenses and Nuisances, Article 8.200 Junked Vehicles as set forth in the attached "Exhibit A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall become in force and effect from and after its final passage and it is so resolved.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

---

Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary

**Note:** Additions are noted as underlined and deletions as ~~striketroughs~~.

## EXHIBIT A

### ARTICLE 8.200 JUNKED VEHICLES

#### **Sec. 8.201 Definitions**

*Antique Vehicle.* A passenger car or truck that is at least 25 years old.

*Enforcement Authority.* Any peace officer or code enforcement officer employed by the City of Gonzales.

*Inoperable Vehicle.* A vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

*Junked Vehicle.* A vehicle that:

- (1) Is self-propelled; and
  - (A) ~~Does not have lawfully attached to it an unexpired license plate; or~~
  - (B) ~~Does have lawfully attached to it an unexpired license plate but does not have lawfully attached to it a valid motor vehicle insignia (registration sticker); and~~
- (2) Is:
  - (A) Wrecked, dismantled or partially dismantled, or discarded;
  - (B) ~~Substantially disfigured, damaged, or disintegrated;~~
  - (C) ~~Ruined, destroyed or demolished; or~~
  - (D) Inoperable and has remained inoperable for more than:
    - (i) Seventy-two (72) consecutive hours, if the vehicle is on public property;
    - (ii) Thirty (30) consecutive days if the vehicle is on private property.
- (3) For purposes of this Article, "junked vehicle" includes a motor vehicle, aircraft, or watercraft. This subchapter applies only to:
  - (1) a motor vehicle that does not have lawfully attached to it:
    - (i) an unexpired license plate; and
    - (ii) a valid motor vehicle inspection certificate;
  - (2) an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or
  - (3) a watercraft that:
    - (i) does not have lawfully on board an unexpired certificate of number;  
and
    - (ii) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

*Junked Vehicle Board of Appeals (Board)* means the Board appointed by the City Council to conduct hearings as authorized by this Article and the Texas Transportation Code Sec. 683.076.

**Commented [CT1]:** Added additional definitions for consistency with state law provisions and guidance for future enforcement.

**Commented [CT2]:** Revised definition for consistency with Transportation Code section 683.071 and to change the focus of the definition to the true junked vehicles.

*Motor Vehicle.* Any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

*Motor Vehicle Collector.* A person who owns one or more antique or special interest vehicles and who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

*Motor Vehicle Demolisher.* Any person in the business of converting motor vehicles into processed scrap or scrap metal, or to otherwise wreck or dismantle motor vehicles.

*Occupant.* A person that is lawfully occupying the property on which the nuisance is located.

*Ordinary public view.* Means a vehicle or any part thereof or the tarp or cover thereon that is visible at any time of the year from any public right-of-way, or adjacent land or the first-floor level of a building thereon, which is owned or occupied by a person other than the property owner or occupant of the property on which the vehicle is located or parked.

*Owner.* The owner of any premises, as listed in the real property tax records of the City.

*Special Interest Vehicle.* A motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

*Storage Facility.* A garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

#### **Sec. 8.202 Junked Vehicles Declared a Public Nuisance**

A junked vehicle, including a part of a junked vehicle that is visible at any time of the year from a public place or public right-of-way is hereby declared a public nuisance because it:

- (1) Is detrimental to the safety and welfare of the public;
- (2) Tends to reduce the value of private property;
- (3) Invites vandalism;
- (4) Creates a fire hazard;
- (5) Is an attractive nuisance creating a hazard to the health and safety of minors;
- and
- (6) Produces urban blight adverse to the maintenance and continuing development of the city.

#### **Sec. 8.203 Offense**

- (a) A person commits an offense if the person maintains a public nuisance described by Section 8.202 of this article.
- (b) An offense under this section is a misdemeanor punishable by a fine not to exceed two hundred and no/100 dollars (\$200.00).
- (c) The court shall order abatement and removal of the nuisance on conviction.

#### **Sec. 8.204 Exceptions**

~~The following vehicles or parts thereof are excepted from the provisions of this article.~~ The procedures and penalties authorized by this article shall not apply to a vehicle or vehicle part that is:

- (1) ~~A vehicle or vehicle part which is~~ Completely enclosed within a building in a lawful manner ~~and where it is not visible from the street or other public or private property; or~~
- (2) ~~A vehicle or vehicle part which is~~ Stored or parked in a lawful manner on private property ~~in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle or part thereof stored by a motor vehicle collector on the collector's property, provided that if the vehicle or part and the outdoor storage area, if any, are:~~
  - (A) Maintained in an orderly manner;
  - (B) ~~Do not constitute~~ Not a health hazard; and
  - (C) Screened from ordinary public view by means of a fence. Fences shall be consistent with building regulations and zoning requirements applicable to the property.

- (3) ~~An unlicensed, operable or inoperable antique or special interest vehicle or part thereof stored by a motor vehicle collector on the collector's property, provided that the vehicle or part and the outdoor storage area, if any, are:~~
  - (A) ~~Maintained in an orderly manner;~~
  - (B) ~~Do not constitute a health hazard; and~~
  - (C) ~~Screened from ordinary public view by means of a fence. Fences shall be consistent with building regulations and zoning requirements applicable to the property.~~

#### **Sec. 8.205 Enforcement**

- (a) Any peace officer, code enforcement officer or other regularly salaried, full-time city employee authorized to enforce this article, may enter the public areas of any building or premises, not a private residence or dwelling, structure or completely enclosed structure on private property, at all reasonable times whenever necessary in the performance of his duties to inspect and investigate for violations of ~~any law, or to enforce any law of this Article.~~
- (b) The authority to inspect shall include but not be limited to the authority to examine vehicles or parts thereof, obtain information as to identity of vehicles and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance.
- (c) If such building or premises be occupied and involved in conducting business, he shall first present proper credentials and demand entry, unless otherwise permitted by law. If such entry is refused, or, if no owner or other person having charge or control of the building or premises can be located, he shall have recourse to every remedy provided by law to secure entry.

#### **Sec. 8.206 ~~Notice~~ Procedures for abating nuisance.**

~~The procedure for the abatement and removal of a junked vehicle or part thereof, as a public nuisance, from private property, public property, or public right of way shall be as follows:~~

- (1) ~~Once a determination has been made that a public nuisance under this article exists, the~~

**Commented [CT3]:** Revised for consistency with Transportation Code section 683.077.

**Commented [CT4]:** Revised to include the general procedures and set up for the following sections which establish the Junked Vehicle Board of Appeals.

~~enforcement authority shall give not less than ten (10) days written notice to:~~

~~(A) The last known registered owner of the public nuisance;~~

~~(B) Each lienholder of record; and~~

~~(C) The owner or occupant of:~~

~~(i) The property on which the public nuisance is located; or~~

~~(ii) If the public nuisance is located on the public right-of-way, the property adjacent to the right-of-way.~~

~~(2) The notice must be personally delivered or sent by certified mail with a five-day return requested. If the address of the last known registered owner is unknown, notice may be placed on the public nuisance. If the notice is returned undelivered, action to abate the public nuisance shall not be taken until the 11th day after the date of return;~~

~~(3) The notice must state that: The public nuisance must be removed not later than the 10th day after the date on which the notice was personally delivered, mailed, or placed on the public nuisance; and~~

~~(4) A request for a hearing must be made not later than the 10th day after the notice was personally delivered, mailed, or placed on the public nuisance.~~

(a) *Generally.* The city's procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private property, public property or public rights-of-way are set out in this Article.

- (1) Procedures for abatement and removal of a public nuisance must be administered by the Code Officer, or another regularly salaried, full-time employee of the City designated by the Mayor to enforce this Article, except that any authorized person may remove the nuisance.
- (2) Pursuant to the procedures established by this section, the person authorized to administer these procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.
- (3) The municipal court may issue necessary orders to enforce an action taken by the Code Officer, the Junked Vehicle Board of Appeal, or both, under this section, pursuant to Tex. Transp. Code Ann. § 683.074.
- (4) Once a proceeding for the abatement and removal of the public nuisance has commenced under this section, the relocation of a junked vehicle that is a public nuisance to another location within the City has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
- (5) In the event that the City removes a junked vehicle from private or public property pursuant to this section, the Code Officer shall provide notice to the Texas Department of Transportation, identifying the vehicle or part of the vehicle being removed, not later than the fifth day after the date of removal.

- (6) A junked vehicle removed pursuant to the provisions of this section may not be reconstructed or made operable after removal

#### **Sec. 8.207 Notice**

The Enforcement Authority shall provide written notice stating the nature of the public nuisance. The notice shall be provided not less than 10 days before any abatement action is taken. The requirements for the notice are listed below:

- (a) A written notice personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to:

- (1) The last known registered owner of the junked vehicle;
- (2) Each lienholder of record of the junked vehicle; and
- (3) The owner or occupant of:
  - (i) the property on which the nuisance is located; or
  - (ii) if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (4) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered.
- (5) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

- (b) The notice must state:

- (1) A reasonable description of the junked vehicle;
- (2) That the City intends to declare the junked vehicle a nuisance;
- (3) That the junked vehicle must be abated and removed no later than the tenth day after the date on which the notice was personally delivered or mailed;
- (4) The owner or lienholder of the junked vehicle has the right to request a hearing before the Junked Vehicle Board of Appeals;
- (5) Any request for a hearing must be made in writing and before that ten day period expires;
- (6) Such notice should be delivered to the office of the city secretary, such as by mail or personal delivery;
- (7) Should the property owner or occupant fail to abate or remove the junked vehicle, and not request a hearing, the City shall declare the junked vehicle to be a nuisance, and abate and remove the nuisance.

#### **Sec. 8.208 ~~Hearing~~ Junked Vehicle Board of Appeals**

- ~~(a) The city manager or authorized designee shall conduct a public hearing if timely requested by a person who received notice under [Section 8.206](#).~~
- ~~(b) The hearing shall be held not earlier than the 11th day after the service of notice in [Section 8.206](#).~~
- ~~(c) At the hearing, the junked vehicle is presumed to be inoperable, unless demonstrated otherwise.~~

**Commented [CT5]:** Revised section for consistency with Transportation code section 683.075 & 683.076.

**Commented [CT6]:** New section establishing the Junked Vehicle Board of Appeals pursuant to Transportation Code section 683.076.



~~(d) An order requiring the removal of the public nuisance must contain a description, license plate number, and identification number of the public nuisance, if available at the location of the nuisance.~~

~~(e) A judge of the municipal court of the city may issue necessary orders to enforce the procedures for the abatement and removal of a public nuisance under this article.~~

(a) Junked Vehicle Board of Appeals. A Junked Vehicle Board of Appeals shall be established by City Council and designated to conduct hearings under the procedures established in this Article. The appointment of board members shall be consistent with the City's applicant processing requirements. All board members shall serve at the will of the Council.

Commented [CT7]: Needs to be an odd number and recommend not more than 5 members. City Council may also sit as the Board of Appeals. Police decision for the City.

(1) Rules of Procedure. The Board shall establish rules of procedure for the conduct of hearings in a manner that is consistent with this Article and that provide due process to all parties to the Appeal.

(b) Hearing. A hearing may be requested by the registered owner of the nuisance, by any lienholder of record, or by any owner or lawful occupant of the property on which the nuisance is located by written request submitted to the City Secretary. Upon receipt of the request, the City Secretary shall notify the Board, who shall conduct a public hearing pursuant to the procedures that follow:

(1) The Board shall convene to conduct a hearing as soon as practical, but not earlier than the eleventh (11<sup>th</sup>) day following service of notice to remove the vehicle.

(2) The decision of the Enforcement Officer shall not be overturned unless a majority of the Board determine that a preponderance of the presented evidence proves that the Enforcement Officer's decision was in error.

(3) If the Board upholds the Enforcement Officer's determination that the junked motor vehicle is a nuisance, the Board shall issue an order requiring removal of the nuisance, which, if such information is available, must include:

(A) for a motor vehicle, the vehicle's:

- (i) description;
- (ii) vehicle identification number; and
- (iii) license plate number;

(B) for an aircraft, the aircraft's:

- (i) description; and
- (ii) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

- (C) for a watercraft, the watercraft's:
  - (i) description; and
  - (ii) identification number as set forth in the watercraft's certificate of number.
- (4) An order shall become final:
  - (A) after the 10th day after the date on which the notice was personally delivered, or mailed, if request for a hearing before the Junked Vehicle Board of Appeals is not made; or
  - (B) after the 11th day after the date of the return if notice is returned undelivered; or
  - (C) after a decision of the Board is rendered.
- (5) Any party aggrieved by the decision of the Board shall have 30 days after the date of issuance of the order to appeal the decision to a court of competent jurisdiction.
- (6) The City shall take no action to remove or destroy a junk vehicle that is the subject of the Order until the thirty-first (31<sup>st</sup>) day following the date the Order was issued.
- (7) An appeal of the Board's Order shall stay all City action regarding said vehicle until such time as the court has rendered its final decision regarding the matter and all appeals have been exhausted or an appeal of the court's decision was not filed and the date for filing such appeals has passed.

#### **Sec. 8.208 Abatement**

- (a) Once abatement proceedings have been commenced, the relocation of the public nuisance to another location in the city has no effect on the proceedings.
- (b) Once the public nuisance is removed, it may not be reconstructed or made operable.
- (c) If the public nuisance is not removed by the 10th day after proper notice, the enforcement authority may remove it or cause it to be removed consistent with the provisions of this Article.
- (d) No later than the 5th day after removal, the enforcement authority shall give notice to the Texas Department of Motor Vehicles of the removal.
- (e) A citation may be issued and a complaint may be filed in the municipal court of the city for the violation of maintaining a public nuisance., ~~if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided in [Section 8.207.](#)~~

#### **Sec. 8.209 Disposal of Junked Vehicles**

A junked vehicle or part thereof may be disposed of by removal to a scrapyard, a motor vehicle demolisher, or any suitable site operated by the city, for processing as scrap or

salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

**Sec. 8.210 Effect of Article on Other laws**

Nothing in this article shall affect laws that permit immediate removal of a vehicle left on public property that is obstructing traffic or laws that establish procedures for taking possession of abandoned vehicles.

## **COUNCIL AGENDA ITEM BRIEFING DATA**



## **AGENDA ITEM**

Discuss, Consider and Possible Action on Ordinance #2022-7 Amending the City of Gonzales Master Rate and Fee Schedule for Garbage Rates due to Fuel Increase

**DATE: April 14, 2022**

### **TYPE AGENDA ITEM:**

Ordinance

### **BACKGROUND:**

On September 9, 2021 the City Council of the City of Gonzales adopted Ordinance 2021-24 which was the City of Gonzales Master Rate and Fee Schedule for various city services. Each year staff will propose a Master Rate and Fee Schedule to be adopted along with the budget. Each year City Council shall review the Master Rate and Fee Schedule and make necessary changes. Frontier Access, LLC handles the collection, hauling, recycling and disposal of municipal solid waste, construction and demolition waste and recyclable materials for the City of Gonzales. They have requested a Residential, Commercial and Industrial Unit Fuel Cost Adjustment which is in Section X.E. of the Contract. Due to these fuel cost adjustments, the Master Rate and Fee Schedule for the City of Gonzales needs to be updated to reflect those changes. Exhibit "A" is attached with those changes.

### **POLICY CONSIDERATIONS:**

This is consistent with what has been done in the past.

### **FISCAL IMPACT:**

The fiscal impact will be passed through to the customers.

### **ATTACHMENTS:**

Please see Exhibit "A" for the Master Rate and Fee Schedule that is redlined.

### **STAFF RECOMMENDATION:**

Staff respectfully recommends the Council to take action they deem necessary.

## **ORDINANCE NO. 2022-7**

**AN ORDINANCE OF THE CITY OF GONZALES, TEXAS, AMENDING THE CITY OF GONZALES MASTER RATE AND FEE SCHEDULE FOR GARBAGE RATES DUE TO FUEL INCREASE; ESTABLISHING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council held a Public Hearing requesting citizen input regarding the proposed rate and fee schedule for Fiscal Year 2021-2022 on September 2, 2021; and

**WHEREAS**, on September 9, 2021, the City Council of the City of Gonzales adopted the annual operating budget for the fiscal year October 1, 2021 through September 30, 2022 that incorporates the fees and charges specified; and

**WHEREAS**, the City determined that it would be convenient to consolidate all rates and fees in one ordinance and thus adopted Ordinance 2021-24 which was the City of Gonzales Master Rate and Fee Schedule for various city services on September 9, 2021; and

**WHEREAS**, said Master Rate and Fee Schedule is found by the City Council to be in the best interest and welfare of the public and should take effect October 1, 2021; and

**WHEREAS**, Frontier Access, LLC. handles the collection, hauling, recycling and disposal of municipal solid waste, construction and demolition waste and recyclable materials for the City of Gonzales; and

**WHEREAS**, Frontier Access has requested a Residential, Commercial and Industrial Unit Fuel Cost Adjustment which is in Section X.E. of the Contract; and

**WHEREAS**, the Master Rate and Fee Schedule needs to be updated to reflect those changes; and

**WHEREAS**, said Master Rate and Fee Schedule is found by the City Council to be in the best interest and welfare of the public and should take effect April 1, 2022.

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

Section 1. The City Council of the City of Gonzales, Texas hereby adopts and approves the amended Master Rate and Fee Schedule as set forth in the attached "Exhibit A" which is redlined.

Section 2. That this Ordinance shall be cumulative of all provisions of the City of Gonzales, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the more restrictive shall apply.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 4. All ordinances or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 8. This Ordinance shall be in force and effect from and after its final passage and any notice and publication required by law.

**PASSED AND APPROVED this 14<sup>th</sup> day of April, 2022.**

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Mayor, Connie L. Kacir

ATTEST:

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Kristina Vega, City Secretary

**EXHIBIT “A”**

**WASTE DISPOSAL AT SEWER PLANT FEE**

Deposit for Waste Disposal	\$300.00
Per load for 1 to 500 gallons during working hours	\$45.00
Per load for 1 to 500 gallons after hours	\$105.00
Per load for 501 to 1,000 gallons during working hours	\$87.00
Per load for 501 to 1,000 gallons after hours	\$130.00

**GARBAGE RATES****Residential Urban- Monthly Fee for 96 gallon cart**

Curbside Service once per week, includes one bulky a year	<del>\$14.67</del>	\$14.89
Extra Trash Cart	<del>\$6.51</del>	\$6.61

**Residential Rural- Monthly Fee for 96 gallon cart**

Curbside Service once per week	<del>\$17.00</del>	\$17.25
Extra Trash Cart	<del>\$6.51</del>	\$6.61
Recycle every other week	<del>\$11.33</del>	\$11.50

**Commercial Hand Pickup- Monthly Fee for 96 gallon cart**

Curbside Service once per week	<del>\$34.61</del>	\$35.12
Extra Trash Cart	<del>\$34.61</del>	\$17.56
Recycle every other week	<del>\$11.54</del>	\$11.70
Recycle every week	<del>\$23.07</del>	\$23.42

**BRUSH COLLECTION RATES**

Monthly Fee	\$5.00
Fee for each additional 15 minute period when the loading time exceeds 15 minutes per pickup	\$20.00

**WASTE DROP-OFF (Bulky Waste, Refuse)**

Truck Load fee	\$25.00
Trailer Load, up to 16 foot	\$200.00



**REPORTS FOR PERIOD ENDING 3/31/2022**

FINANCIAL REPORTS FOR FUNDS

CASH & INVESTMENT BY FUNDS

There are still journal entries that need to be completed for March. The auditors are still working on the audit and when that is completed, they will present the end of the year journal entries. The audit will be completed by the end of April and will be presented at the next City Council Meeting.

CITY OF GONZALES  
FINANCIAL STATEMENT  
AS OF: MARCH 31ST, 2022

## 100-GENERAL FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
REVENUE SUMMARY						
401-TAX REVENUE	2,692,465.00	2,693.79	1,695,532.42	62.97	0.00	996,932.58
402-FRANCHISE REVENUE	1,874,687.00	12,522.42	782,041.49	41.72	0.00	1,092,645.51
403-LICENSE/FEE/PERMITS	81,850.00	13,028.77	43,059.47	52.61	0.00	38,790.53
404-PARKS FEES REVENUE	301,485.00	40,128.08	117,575.43	39.00	0.00	183,909.57
405-MUNICIPAL COURT REVEN	46,115.00	12,057.42	33,958.06	73.64	0.00	12,156.94
406-MISCELLANEOUS REVENUE	2,588,050.00	17,436.87	1,960,283.68	75.74	0.00	627,766.32
407-STREET ASSESSMENT INC	0.00	0.00	0.00	0.00	0.00	0.00
408-INTEREST REVENUES	12,000.00	0.00	5,147.34	42.89	0.00	6,852.66
409-OTHER FINANCING REVEN	1,004,328.96	1,410.65	10,030.50	1.00	0.00	994,298.46
410-TRANSFERS	2,857,618.00	0.00	1,185,032.49	41.47	0.00	1,672,585.51
*** TOTAL REVENUES ***	11,458,598.96	99,278.00	5,832,660.88	50.90	0.00	5,625,938.08
EXPENDITURE SUMMARY						
101-CITY COUNCIL DEPARTME	91,616.00	5,478.29	40,929.39	44.67	0.00	50,686.61
102-CITY MANAGER DEPART	175,509.00	12,492.72	83,403.86	47.52	0.00	92,105.14
103-COMMUNITY DEVELOPMENT	277,201.00	20,252.58	122,705.63	44.27	0.00	154,495.37
104-NON-DEPARTMENTAL	2,266,809.00	21,385.58	2,043,784.99	90.16	0.00	223,024.01
105-MAIN STREET DEPARTMEN	74,531.00	1,948.82	17,820.54	23.91	0.00	56,710.46
106-ECONOMIC DEVELOPMENT	0.00	0.00	0.00	0.00	0.00	0.00
107-BUILDING MAINTENANCE	273,228.00	15,470.28	115,913.28	42.42	0.00	157,314.72
108-CITY SECRETARY DEP	138,211.00	8,336.95	55,918.75	40.46	0.00	82,292.25
109-FINANCE DEPARTMENT	287,040.00	18,719.51	146,383.07	51.00	0.00	140,656.93
110-HOTEL/MOTEL	0.00	0.00	0.00	0.00	0.00	0.00
201-PARKS DEPARTMENT	652,403.00	36,069.93	280,853.52	43.05	0.01	371,549.47
202-SWIMMING POOL DEPARTM	29,849.00	0.00	1,224.65	4.10	0.00	28,624.35
204-RECREATION DEPARTMENT	0.00	0.00	0.00	0.00	0.00	0.00
206-INDEPENDENCE GOLF CO	306,194.00	20,787.80	128,116.54	41.84	0.00	178,077.46
301-FIRE DEPARTMENT	1,506,743.00	108,449.55	725,847.32	49.19	15,345.94	765,549.74
501-POLICE DEPARTMENT	2,802,551.96	176,636.10	1,243,204.20	47.42	85,653.96	1,473,693.80
504-ANIMAL CONTROL DEPART	163,090.00	13,890.10	74,126.33	45.45	0.00	88,963.67
550-MUNICIPAL COURT DEPT.	113,156.00	6,140.04	49,806.47	44.02	0.00	63,349.53
602-AIRPORT DEPARTMENT	133,495.00	73.67	39,200.05	29.36	0.00	94,294.95
603-STREETS DEPARTMENT	2,074,665.00	38,962.19	560,404.54	27.03	297.82	1,513,962.64
650-LIBRARY DEPARTMENT	291,833.00	20,411.89	140,874.25	48.27	0.00	150,958.75
660-MUSEUM DEPARTMENT	165,588.00	4,938.75	55,298.64	33.40	0.00	110,289.36
*** TOTAL EXPENDITURES ***	11,823,712.96	530,444.75	5,925,816.02	50.97	101,297.73	5,796,599.21
** REVENUES OVER(UNDER) EXPENDITURES **	( 365,114.00)	( 431,166.75)	( 93,155.14)	53.26	( 101,297.73)	( 170,661.13)

C I T Y O F G O N Z A L E S  
FINANCIAL STATEMENT  
AS OF: MARCH 31ST, 2022

203-JB WELLS PARK FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
REVENUE SUMMARY						
404-PARKS FEES REVENUE	664,620.00	36,607.50	250,869.18	37.75	0.00	413,750.82
406-MISCELLANEOUS REVENUE	0.00	0.00	0.00	0.00	0.00	0.00
*** TOTAL REVENUES ***	664,620.00	36,607.50	250,869.18	37.75	0.00	413,750.82
EXPENDITURE SUMMARY						
203-JB WELLS PARK	906,861.00	49,639.62	302,687.68	36.96	32,500.00	571,673.32
*** TOTAL EXPENDITURES ***	906,861.00	49,639.62	302,687.68	36.96	32,500.00	571,673.32
** REVENUES OVER(UNDER) EXPENDITURES **	( 242,241.00)	( 13,032.12)	( 51,818.50)	34.81	( 32,500.00)	( 157,922.50)

CITY OF GONZALES  
FINANCIAL STATEMENT  
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## 210-ELECTRIC FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
REVENUE SUMMARY						
400-DSF GOVERNMENT ACT.	0.00	0.00	0.00	0.00	0.00	0.00
710-ELECTRIC DEPARTMENT	10,357,097.00	845,712.35	4,864,884.21	46.97	0.00	5,492,212.79
750-REVENUE COLLECTION	218,627.00	2,055.00	135,068.25	61.78	0.00	83,558.75
809-HYDRO PLANT CONST.	0.00	0.00	0.00	0.00	0.00	0.00
*** TOTAL REVENUES ***	10,575,724.00	847,767.35	4,999,952.46	47.28	0.00	5,575,771.54
EXPENDITURE SUMMARY						
710-ELECTRIC DEPARTMENT	10,753,299.44	60,117.08	4,273,412.59	46.33	708,800.26	5,771,086.59
750-REVENUE COLLECTIONS	284,578.00	18,718.78	151,732.50	53.32	0.00	132,845.50
809-HYDRO PLANT CONST.	0.00	0.00	0.00	0.00	0.00	0.00
*** TOTAL EXPENDITURES ***	11,037,877.44	78,835.86	4,425,145.09	46.51	708,800.26	5,903,932.09
** REVENUES OVER (UNDER) EXPENDITURES **	( 462,153.44)	768,931.49	574,807.37	28.99	( 708,800.26)	( 328,160.55)

CITY OF GONZALES  
FINANCIAL STATEMENT  
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## 220-WATER FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
300-CAPITAL PROJECTS-BUS	0.00	0.00	0.00	0.00	0.00	0.00
720-WATER PRODUCTION DEPT	2,515,800.00	204,076.96	1,255,641.15	49.91	0.00	1,260,158.85
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
*** TOTAL REVENUES ***	<u>2,515,800.00</u>	<u>204,076.96</u>	<u>1,255,641.15</u>	<u>49.91</u>	<u>0.00</u>	<u>1,260,158.85</u>
EXPENDITURE SUMMARY						
720-WATER PRODUCTION DEPT	2,140,554.00	47,240.70	801,063.99	38.72	27,696.46	1,311,793.55
722-SERIES 2011 DEBT SERV	0.00	0.00	0.00	0.00	0.00	0.00
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
*** TOTAL EXPENDITURES ***	<u>2,140,554.00</u>	<u>47,240.70</u>	<u>801,063.99</u>	<u>38.72</u>	<u>27,696.46</u>	<u>1,311,793.55</u>
** REVENUES OVER (UNDER) EXPENDITURES **	<u>375,246.00</u>	<u>156,836.26</u>	<u>454,577.16</u>	<u>113.76</u>	<u>( 27,696.46)</u>	<u>( 51,634.70)</u>

C I T Y O F G O N Z A L E S  
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## 230-WASTEWATER FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
REVENUE SUMMARY						
730-WASTEWATER COLLECTION	1,466,969.00	139,700.26	809,277.27	55.17	0.00	657,691.73
731-W/W CDBG PROJECT	720,917.00	0.00	24,167.70	3.35	0.00	696,749.30
*** TOTAL REVENUES ***	2,187,886.00	139,700.26	833,444.97	38.09	0.00	1,354,441.03
EXPENDITURE SUMMARY						
730-WASTEWATER COLLECTION	1,729,022.00	42,442.48	525,005.68	44.31	241,120.00	962,896.32
731-W/W CDBG PROJECT	1,617,945.00	0.00	5,675.29	0.35	0.00	1,612,269.71
*** TOTAL EXPENDITURES ***	3,346,967.00	42,442.48	530,680.97	23.06	241,120.00	2,575,166.03
** REVENUES OVER(UNDER) EXPENDITURES ** ( 1,159,081.00)		97,257.78	302,764.00	5.32-	( 241,120.00)	( 1,220,725.00)

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## 240-SOLID WASTE FUND

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
REVENUE SUMMARY						
740-SOLID WASTE DEPARTMEN	781,200.00	67,123.27	400,513.92	51.27	0.00	380,686.08
*** TOTAL REVENUES ***	781,200.00	67,123.27	400,513.92	51.27	0.00	380,686.08
EXPENDITURE SUMMARY						
740-SOLID WASTE DEPARTMEN	734,569.00	8,285.71	331,929.10	45.55	2,691.95	399,947.95
*** TOTAL EXPENDITURES ***	734,569.00	8,285.71	331,929.10	45.55	2,691.95	399,947.95
** REVENUES OVER (UNDER) EXPENDITURES **	46,631.00	58,837.56	68,584.82	141.31	( 2,691.95)	( 19,261.87)

CITY OF GONZALES  
FINANCIAL STATEMENT  
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## 300-CAPITAL PROJECTS-BUSINESS

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
300-CAPITAL PROJECTS-BUS	500.00	0.00	117.14	23.43	0.00	382.86
	-----	-----	-----	-----	-----	-----
*** TOTAL REVENUES ***	500.00	0.00	117.14	23.43	0.00	382.86
	-----	-----	-----	-----	-----	-----
EXPENDITURE SUMMARY						
300-TRANSFERS	0.00	0.00	0.00	0.00	0.00	0.00
301-STREETS	0.00	0.00	0.00	0.00	0.00	0.00
302-WASTEWATER	219,450.00	0.00	7,387.50	3.37	0.00	212,062.50
303-ELECTRIC	0.00	0.00	0.00	0.00	0.00	0.00
304-WATER	318,450.00	0.00	7,387.50	2.32	0.00	311,062.50
	-----	-----	-----	-----	-----	-----
*** TOTAL EXPENDITURES ***	537,900.00	0.00	14,775.00	2.75	0.00	523,125.00
	-----	-----	-----	-----	-----	-----
** REVENUES OVER (UNDER) EXPENDITURES ** (	537,400.00)	0.00	( 14,657.86)	2.73	0.00	( 522,742.14)
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C I T Y O F G O N Z A L E S  
FINANCIAL STATEMENT  
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## 400-DSF GOVERNMENT ACTIVITIES

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
400-DSF GOVERNMENT ACT.	1,262,050.00	0.00	1,123,750.52	89.04	0.00	138,299.48
	-----	-----	-----	-----	-----	-----
*** TOTAL REVENUES ***	1,262,050.00	0.00	1,123,750.52	89.04	0.00	138,299.48
	-----	-----	-----	-----	-----	-----
EXPENDITURE SUMMARY						
400-DSF GOVERNMENT ACT.	1,247,700.00	0.00	985,919.99	79.02	0.00	261,780.01
	-----	-----	-----	-----	-----	-----
*** TOTAL EXPENDITURES ***	1,247,700.00	0.00	985,919.99	79.02	0.00	261,780.01
	-----	-----	-----	-----	-----	-----
** REVENUES OVER (UNDER) EXPENDITURES **	14,350.00	0.00	137,830.53	960.49	0.00	( 123,480.53)
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CITY OF GONZALES  
FINANCIAL STATEMENT  
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## 500-RESTRICTED USE FUNDS

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
410-TRANSFERS	0.00	0.00	0.00	0.00	0.00	0.00
810-JB WELLS EXPO CENTER	0.00	0.00	0.00	0.00	0.00	0.00
811-HOTEL/MOTEL	303,100.00	14,825.10	176,664.83	58.29	0.00	126,435.17
812-MEMORIAL MUSEUM	3,580.00	0.00	1,407.93	39.33	0.00	2,172.07
813-FORFEITURES	110.00	0.00	57.52	52.29	0.00	52.48
814-MUNICIPAL COURT	1,820.00	51.05	701.61	38.55	0.00	1,118.39
815-ROBERT L BROTHERS	380.00	0.00	194.05	51.07	0.00	185.95
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*** TOTAL REVENUES ***	308,990.00	14,876.15	179,025.94	57.94	0.00	129,964.06
	-----	-----	-----	-----	-----	-----
EXPENDITURE SUMMARY						
810-JB WELLS EXPO CENTER	0.00	0.00	0.00	0.00	0.00	0.00
811-HOTEL MOTEL	502,448.15	1,946.52	191,937.94	38.20	0.00	310,510.21
812-MEMORIAL MUSEUM	34,000.00	0.00	1,480.72	4.36	0.00	32,519.28
813-FORFEITURES	21,000.00	0.00	0.00	0.00	0.00	21,000.00
814-MUNICIPAL COURT	17,500.00	47.65	8,454.55	48.31	0.00	9,045.45
815-ROBERT L BROTHERS	32,200.00	90.83	4,292.16	22.47	2,943.58	24,964.26
	-----	-----	-----	-----	-----	-----
*** TOTAL EXPENDITURES ***	607,148.15	2,085.00	206,165.37	34.44	2,943.58	398,039.20
	-----	-----	-----	-----	-----	-----
** REVENUES OVER(UNDER) EXPENDITURES **	( 298,158.15)	12,791.15	( 27,139.43)	10.09	( 2,943.58)	( 268,075.14)
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CITY OF GONZALES  
FINANCIAL STATEMENT  
AS OF: MARCH 31ST, 2022

575-CAPITAL PROJECTS-GOV.

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
575-CAPITAL PROJECTS-GOV	0.00	0.00	35.91	0.00	0.00	( 35.91)
	-----	-----	-----	-----	-----	-----
*** TOTAL REVENUES ***	0.00	0.00	35.91	0.00	0.00	( 35.91)
	-----	-----	-----	-----	-----	-----
EXPENDITURE SUMMARY						
CAPITAL PROJECTS-GOV	28,075.00	0.00	385,439.22	372.89	0.00	( 357,364.22)
	-----	-----	-----	-----	-----	-----
*** TOTAL EXPENDITURES ***	28,075.00	0.00	385,439.22	372.89	0.00	( 357,364.22)
	-----	-----	-----	-----	-----	-----
** REVENUES OVER (UNDER) EXPENDITURES **	( 28,075.00)	0.00	( 385,403.31)	372.76	0.00	357,328.31
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C I T Y O F G O N Z A L E S  
FINANCIAL STATEMENT  
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700-GONZALES ECONOMIC DEV

	ANNUAL BUDGET	CURRENT PERIOD	Y-T-D ACTUAL	% OF BUDGET	Y-T-D ENCUMB.	BUDGET BALANCE
-----						
REVENUE SUMMARY						
700-ECONOMIC DEVELOPMENT	899,000.00	0.00	413,396.55	45.98	0.00	485,603.45
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
*** TOTAL REVENUES ***	899,000.00	0.00	413,396.55	45.98	0.00	485,603.45
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
EXPENDITURE SUMMARY						
700-ECONOMIC DEVELOPMENT	1,987,332.00	17,852.41	792,892.31	39.90	0.00	1,194,439.69
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
*** TOTAL EXPENDITURES ***	1,987,332.00	17,852.41	792,892.31	39.90	0.00	1,194,439.69
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
** REVENUES OVER (UNDER) EXPENDITURES **	( 1,088,332.00)	( 17,852.41)	( 379,495.76)	34.87	0.00	( 708,836.24)
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

FUND-ACCT. NO.	ACCOUNT NAME	CASH	INVESTMENTS
<hr/>			
100-GENERAL FUND			
-----			
<u>CASH</u>			
100 1-001.000	CASH - GENERAL FUND	976,349.40	
100 1-101.505	CASH - AIRPORT IMPROVEMENT	123,748.47	
100 1-101.702	CASH - IND PARK IMPT OIL	0.00	
		-----	
	TOTAL CASH	1,100,097.87	
 <u>INVESTMENTS</u>			
100 1-103.409	RBFCU-SAVINGS ACCOUNT		0.00
100 1-103.410	CERT OF DEPOSIT-RANDOLPH BROOK		287,184.26
100 1-103.413	MILLER EST. OIL & GAS ROYALTY		18,921.21
100 1-103.419	LIBRARY RESTRICTED USE-DONATIO		0.00
100 1-103.702	IND PARK IMPROVE OIL - INVEST.		0.00
			-----
	TOTAL INVESTMENTS		306,105.47
 <u>POOLED INVESTMENTS</u>			
100 1-104.002	TEXPOOL- GENERAL FUND		1,772,885.85
100 1-104.604	TEXPOOL - ARMORY LEASE		0.00
100 1-104.702	TEXPOOL - IND PARK IMPT OIL		0.00
100 1-104.703	TEXPOOL - LEWIS PROPERTY		0.00
			-----
	TOTAL POOLED INVESTMENTS		1,772,885.85
		-----	-----
	TOTAL 100-GENERAL FUND	1,100,097.87	2,078,991.32
<hr/>			
203-JB WELLS FUND			
-----			
<u>CASH</u>			
203 1-001.000	CASH - JB WELLS	( 218,921.13)	
		-----	
	TOTAL CASH	( 218,921.13)	
		-----	-----
	TOTAL 203-JB WELLS PARK FUND	( 218,921.13)	0.00
<hr/>			
210-ELECTRIC FUND			
-----			
<u>CASH</u>			
210 1-001.000	CASH - ELECTRIC FUND	910,229.13	
210 1-001.499	CASH -HYDRO CO'S	0.00	
210 1-001.500	CASH - HYDRO BOND I & S	0.00	
210 1-001.600	CONFIDENTIALITY FEE	0.00	
210 1-001.606	CASH CUSTOMER METER DEPOSIT	229,866.54	
		-----	
	TOTAL CASH	1,140,095.67	

## CASH &amp; INVESTMENTS BY FUND

AS OF: MARCH 31ST, 2022

MARCH 31ST, 2022

FUND-ACCT. NO.	ACCOUNT NAME	CASH	INVESTMENTS
<u>INVESTMENTS</u>			
210 1-103.000	AGENCY SECURITIES - ELECTRIC		0.00
210 1-103.403	CERT OF DEPOSIT - I&S BOND RES		0.00
210 1-103.410	CERT OF DEP - SOUTH STAR BANK		281,166.79
210 1-103.411	CERT OF DEPOSIT - RBFCU		0.00
210 1-103.606	CUSTOMER METER DEPOSITS - INVT		0.00
210 1-103.706	ELEC CAPITAL IMPROVEMENT-INST.		0.00
			-----
TOTAL INVESTMENTS			281,166.79
<u>POOLED INVESTMENTS</u>			
210 1-104.000	TEXPOOL- UNDESIGNATED		0.00
210 1-104.001	TEXPOOL-HYDRO CO'S		0.00
210 1-104.002	TEXPOOL- ELECTRIC FUND		1,982,810.20
210 1-104.606	TEXPOOL - CUSTOMER METER DEP		0.00
210 1-104.706	TEXPOOL - JOHNSON ST PROP		0.00
			-----
TOTAL POOLED INVESTMENTS			1,982,810.20
TOTAL 210-ELECTRIC FUND			-----
		1,140,095.67	2,263,976.99
<hr/>			
220-WATER FUND			
=====			
<u>CASH</u>			
220 1-001.000	CASH - WATER FUND	1,135,064.02	
220 1-001.606	CASH CUSTOMER METER DEPOSITS	30,416.00	
		-----	
TOTAL CASH		1,165,480.02	
<u>INVESTMENTS</u>			
220 1-103.403	CERT OF DEPOSIT - I&S BOND RES		0.00
220 1-103.411	CERTIFICATE OF DEPOSIT-SAGE		0.00
220 1-103.606	CUSTOMER METER DEPOSITS - INVT		0.00
			-----
TOTAL INVESTMENTS			0.00
<u>POOLED INVESTMENTS</u>			
220 1-104.000	TEXPOOL - WATER FUND		0.00
220 1-104.001	TEXPOOL CONSTRUCTION		0.00
220 1-104.002	TEXPOOL- WATER FUND		752,008.48
220 1-104.606	CUSTOMER METER DEPOSIT - TXPOL		0.00
			-----
TOTAL POOLED INVESTMENTS			752,008.48
TOTAL 220-WATER FUND			-----
		1,165,480.02	752,008.48

## CASH &amp; INVESTMENTS BY FUND

AS OF: MARCH 31ST, 2022

MARCH 31ST, 2022

FUND-ACCT. NO.	ACCOUNT NAME	CASH	INVESTMENTS
<b>230-WASTEWATER FUND</b>			
=====			
<u>CASH</u>			
230 1-001.000	CASH - WASTEWATER FUND	980,411.24	
230 1-001.606	CASH CUSTOMER METER DEPOSIT	3,014.00	
		-----	
TOTAL CASH		983,425.24	
<u>INVESTMENTS</u>			
230 1-103.000	INVESTMENTS AGENCY SECURITIES		0.00
230 1-103.403	CERT OF DEPOSIT - I&S BOND RES		0.00
230 1-103.411	CERT. OF DEP - SOUTH STAR BANK		281,676.15
			-----
TOTAL INVESTMENTS			281,676.15
<u>POOLED INVESTMENTS</u>			
230 1-104.000	TEXPOOL - WASTEWATER		0.00
230 1-104.002	TEXPOOL- WASTEWATER FUND		509,313.42
230 1-104.003	TEXPOOL-CORONAVIRUS LOCAL FIS		933,460.70
			-----
TOTAL POOLED INVESTMENTS			1,442,774.12
		-----	-----
TOTAL 230-WASTEWATER FUND		983,425.24	1,724,450.27
<hr/>			
<b>240-SOLID WASTE</b>			
=====			
<u>CASH</u>			
240 1-001.000	CASH - SOLID WASTE FUND	115,614.93	
240 1-001.606	CASH CUSTOMER GARBAGE DEP	0.00	
		-----	
TOTAL CASH		115,614.93	
<u>INVESTMENTS</u>			
240 1-103.000	INVESTMENTS AGENCY SECURITIES		0.00
240 1-103.402	INVESTMENTS - I & S REVENUE BD		0.00
240 1-103.403	INVESTMENTS - I & S BOND RES		0.00
			-----
TOTAL INVESTMENTS			0.00
<u>POOLED INVESTMENTS</u>			
240 1-104.000	TEXPOOL - SOLID WASTE FUND		0.00
240 1-104.100	TEXASTERM		0.00
240 1-104.402	TEXPOOL - I & S REVENUE BOND		0.00
240 1-104.403	TEXPOOL - I & S BOND RESERVE		0.00
			-----
TOTAL POOLED INVESTMENTS			0.00
		-----	-----
TOTAL 240-SOLID WASTE FUND		115,614.93	0.00

## CASH &amp; INVESTMENTS BY FUND

AS OF: MARCH 31ST, 2022

MARCH 31ST, 2022

FUND-ACCT. NO.	ACCOUNT NAME	CASH	INVESTMENTS
<b>250-DSF PROPRIETARY</b>			
=====			
<u>CASH</u>			
250 1-001.000	CASH-DSF PROPRIETARY	0.00	
		-----	
	TOTAL CASH	0.00	
		-----	
	TOTAL 250-DSF PROPRIETARY	0.00	0.00
<hr/>			
<b>300-CAPITAL PROJECTS-BUS</b>			
=====			
<u>CASH</u>			
300 1-001.000	CASH CONTROL - CAPITAL PROJ	0.00	
300 1-101.301	BOND - CIP	0.00	
		-----	
	TOTAL CASH	0.00	
<u>POOLED INVESTMENTS</u>			
300 1-104.101	CASH-CO SERIES 2019 CIP STREET		0.00
300 1-104.102	CASH-CO SERIES 2019 CIP W/W		259,605.56
300 1-104.103	CASH-CO SERIES 2019 CIP WATER		358,619.77
300 1-104.104	CASH-CO SERIES 2019 CIP GEN.		0.00
			-----
	TOTAL POOLED INVESTMENTS		618,225.33
		-----	
	TOTAL 300-CAPITAL PROJECTS-BUSINESS	0.00	618,225.33
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<b>400-DSF GOVERNMENTAL ACTI</b>			
=====			
<u>CASH</u>			
400 1-001.000	CASH - CONTROL ACCT	0.00	
400 1-001.101	CASH-DSF GOV. ACTIVITIES	356,636.09	
		-----	
	TOTAL CASH	356,636.09	
		-----	
	TOTAL 400-DSF GOVERNMENT ACTIVITIES	356,636.09	0.00
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<b>500-RESTRICTED USE FUNDS</b>			
=====			
<u>CASH</u>			
500 1-001.000	CASH - CONTROL ACCT	( 13,595.64)	
500 1-001.501	CASH - TEXAS CAPITAL	0.00	
500 1-001.502	CASH - HOTEL MOTEL TAX	569,927.43	
500 1-001.503	CASH - MUSEUM FUNDS	31,877.69	



## CASH &amp; INVESTMENTS BY FUND

AS OF: MARCH 31ST, 2022

MARCH 31ST, 2022

FUND-ACCT. NO.	ACCOUNT NAME	CASH	INVESTMENTS
500 1-001.504	CASH - FORFEITURES	24,148.99	
500 1-001.505	CASH - MUN CRT CHILD SAFETY	7,157.26	
500 1-001.506	CASH - MUN CRT SECURITY	22,715.43	
500 1-001.507	CASH - MUN CRT TECH	707.29	
500 1-001.508	CASH - SPECIAL EXPENSE	6,979.16	
500 1-001.509	CASH - AIRPORT IMPT	0.00	
500 1-001.510	PEG FRANCHISE (RESTRICTED USE)	0.00	
500 1-001.511	ROBERT LEE BROTHERS JR LIBRARY	79,094.83	
TOTAL CASH		729,012.44	
TOTAL 500-RESTRICTED USE FUNDS		729,012.44	0.00

## 575-CAPITAL PROJECTS-GOV

CASH			
575 1-001.000	CASH-CONTROL ACCT	0.00	
TOTAL CASH		0.00	
POOLED INVESTMENTS			
575 1-104.101	CASH-CO SERIES 19 CIP STREET		9,093.14
TOTAL POOLED INVESTMENTS			9,093.14
TOTAL 575-CAPITAL PROJECTS-GOV.		0.00	9,093.14

## 700-COMPONENT UNIT

CASH			
700 1-001.000	CASH -CONTROL ACCOUNT	( 8,180.60)	
700 1-001.101	CASH - ECONOMIC DEV CORP	3,094,305.29	
TOTAL CASH		3,086,124.69	
INVESTMENTS			
700 1-103.412	CERT OF DEPOSIT-SAGE CAPITAL		0.00
700 1-103.419	RBFCU- BASIC BUSINESS CHECKING		0.00
700 1-103.420	RBFCU - MONEY MARKET ACCT		0.00
700 1-103.430	SAVINGS ACCT - RBFCU		0.00
TOTAL INVESTMENTS			0.00
TOTAL 700-GONZALES ECONOMIC DEV		3,086,124.69	0.00

FUND TOTAL OTHER INVESTMENTS	868,948.41
FUND TOTAL POOLED INVESTMENTS	6,577,797.12
TOTAL CASH AND INVESTMENTS	8,457,565.82

7,446,745.53

\*\*\* END OF REPORT \*\*\*