

# NOTICE OF THE CITY OF BRECKENRIDGE REGULAR MEETING OF THE BRECKENRIDGE CITY COMMISSION

June 07, 2022 at 5:30 PM

# AGENDA

Notice is hereby given as required by Title 5, Chapter 551.041 of the Government Code that the City Commission will meet in a Regular Meeting of the Breckenridge City Commission on June 07, 2022 at 5:30 PM at the Breckenridge City Offices, 105 N. Rose Avenue, Breckenridge, Texas.

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

#### American Flag

#### **OPEN FORUM**

This is an opportunity for the public to address the City Commission on any matter of public business, except public hearings. Comments related to public hearings will be heard when the specific hearing begins.

#### SPECIAL PRESENTATIONS AND ANNOUNCEMENTS

(Mayoral proclamations, presentations of awards and certificates, and other acknowledgements of significant accomplishments or service to the community.)

1. Receive an update from TxDOT on current highway construction projects ~ Eastland Area Engineer

#### **CONSENT AGENDA**

Any commission member may request an item on the Consent Agenda to be taken up for individual consideration.

- 2. Consider approval of the May 3, 2022 Regular Commission meeting minutes as recorded.
- 3. Consider approval of Resolution 2022-18 to suspend the June 17, 2022 effective date of Oncor Electric delivery company's requested rate change to permit the city time to study the request and to establish reasonable rates; approving cooperation with the steering committee of cities served by Oncor to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals.

- <u>4.</u> Consider approval of the Breckenridge Chamber of Commerce Hotel Occupancy Tax Fiscal Year 2022 Second Quarter Financials.
- 5. Conduct approval of a recommendation from the Breckenridge Planning and Zoning Commission to approve a request to vacate the Popular Buildings Plat, filed in Cabinet 1, Page 116 of the Plat Records of Stephens County, Texas.
- 6. Consider approval of an audit engagement agreement with George, Morgan & Sneed, P.C. for the Fiscal Year 2022 annual audit.

#### PUBLIC HEARING ITEMS

7. Public hearing and consider approval of Ordinance 2022-08 providing for a Specific Use Permit for the placement of a tiny house in a General Dwelling ("R4") District on property commonly known as 509 N. Shelton Street.

### **ACTION ITEMS**

- 8. Discuss and consider adoption of Ordinance 2022-09 authorizing the issuance of City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022A, in the principal amount of \$2,935,000 and awarding the sale of such Certificates of Obligation to the Texas Water Development Board.
- 9. Discuss and consider adoption of Resolution 2022-19 approving the execution and delivery of a Principal Forgiveness Agreement for sewer system improvements; and resolving other matters relating to the subject.
- 10. Discuss and consider adoption of Ordinance 2022-10 authorizing the issuance of City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022B, in the principal amount of \$2,325,000 and awarding the sale of such Certificates of Obligation to the Texas Water Development Board.
- 11. Discuss and consider adoption of Resolution 2022-20 approving the execution and delivery of a Principal Forgiveness Agreement for water system improvements; and resolving other matters relating to the subject.
- 12. Discuss and consider adoption of Resolution 2022-21 authorizing and directing establishment of four construction accounts and a sinking fund with Depository Bank pursuant to Bond Ordinances and Principal Forgiveness Agreements with the Texas Water Development Board; appointing authorized signatories with respect to such accounts; and resolving other matters relating to the subject.
- <u>13.</u> Discuss and consider approval of Resolution 2022-22 authorizing the submission of an application to the Texas Community Development Block Grant Program-2022 Downtown Revitalization Program and authorizing the Mayor and City Manager as authorized representatives.

- <u>14.</u> Discuss and consider approval of Resolution 2022-23 determining that an area of the downtown contains conditions that are detrimental to the community and constitute a slum and blighted area for the 2022 Downtown Revitalization Program grant application.
- <u>15.</u> Discuss and consider awarding a bid for the revamp of the existing prison lift station and authorize the Mayor to execute all necessary documents on behalf of the City.
- <u>16.</u> Discuss and consider approval of Ordinance 2022-11 amending Chapter 20, "Traffic", of the Breckenridge Code of Ordinances by adding Article VII, "Motorized Carts"; allowing for the use of motorized carts on authorized streets within the City and establishing regulations concerning the operation of motorized carts.
- <u>17.</u> Discuss and consider appropriate action on Resolution 2022-17 appointing a Commissioner to serve as Mayor Pro-Tem.

# RECEIVE REQUESTS FROM COMMISSION MEMBERS/STAFF FOR ITEMS TO BE PLACED ON NEXT MEETING AGENDA

Discussion under this section must be limited to whether or not the Commission wishes to include a potential item on a future agenda.

### ADJOURN

**NOTE:** As authorized by Section 551.071 of the Texas Government Code (Consultation with City Attorney), this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

#### CERTIFICATION

I hereby certify that the above notice was posted in the bulletin board at Breckenridge City Hall, 105 North Rose Avenue, Breckenridge, Texas , by **5:00 PM** on the **3rd day of June 2022.** 

**City Secretary** 



Persons with disabilities who plan to attend this public meeting and who may need auxiliary aid or services are requested to contact the Breckenridge City Hall 48 hours in advance, at 254-559-8287, and reasonable accommodations will be made for assistance.



# Commission Meeting Agenda Item Memorandum

ITEM TYPE

MEETING DATE:

Consent Agenda June 7, 2022

## PRESENTER:

Jessica Sutter, City Secretary

## **ITEM DESCRIPTION:**

Consider approval of the May 3, 2022 Regular Commission meeting minutes as recorded.

## **BACKGROUND INFORMATION:**

The minutes of the City Commission Meeting are recorded by the City Secretary and presented to the Commission for approval.

# FISCAL IMPACT:

Not Applicable

Proposed Expenditure:

General Ledger Code:

Proposed Revenue:

Budget Amendment Required: No

Financial Review Completed by:

## LEGAL REVIEW:

Not applicable.

## ATTACHMENTS:

A.Minutes

# **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve the minutes of the City Commission of Breckenridge as recorded.

#### MAY 03, 2022

# REGULAR TOWN COMMISSION MEETING OF THE TOWN OF BRECKENRIDGE, TEXAS, HELD ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

MAYOR COMMISSIONER PLACE 2 MAYOR PRO TEM, PLACE 3 COMMISSIONER PLACE 4

CITY MANAGER PUBLIC WORKS DIRECTOR PARKS DIRECTOR CITY SECRETARY CITY ATTORNEY BOB SIMS ROB DURHAM VINCE MOORE GARY MERCER

ERIKA MCCOMIS HOUSTON SATTERWHITE STACY HARRISON JESSICA SUTTER EILEEN HAYMAN

#### ABSENT

**COMMISSIONER PLACE 1** 

RUSSELL BLUE

#### **CALL MEETING TO ORDER**

Mayor Sims called the regular meeting to order at 5:40 p.m.

#### **OPEN FORUM**

This is an opportunity for the public to address the City Commission on any matter of public business, except public hearings.

No speakers.

#### **STAFF REPORT**

#### **City Manager**

- Recognition of National Employee Week dates throughout May May 1-7 Municipal Clerks Week
  May 4 Firefighter Appreciation Day
  May 9-15 National Police Week
  May 15-21 National Public Works Week
- 2. Presentation on FY 2022 Second Quarter Financials
- 3. Fiscal Year 2023 Preliminary Budget Calendar

#### **ACTION ITEMS**

4. Discuss and consider awarding a contract for engineering services for the 2022 TxCDBG Downtown Revitalization/Main Street Grant Program (DRP/MS) and authorize the City Manager to execute necessary documents on behalf of the City.

City Manager McComis informed the commission that two engineering services had submitted Statement of Qualification (SOQ) responses, Enprotech/Hibbs & Todd, Inc (EHT) and Jacob Martin. Both Engineering Companies are comparable regarding what they can offer. The staff has experience working with EHT but feels that working with Jacob Martin would be adequate as well. Staff expressed a preference for EHT, based on prior experience working with the company.

Mayor Pro Tem Moore moved to award a contract for engineering service for the 2022 TxCDBG to Enprotech/Hibbs & Todd, Inc. and authorize the City Manager to execute necessary documents on behalf of the City. Commissioner Durham seconded the motion. **The motion passed 4-0.** 

5. Discuss and consider awarding a bid for the 2022 Meter Replacement Project funded through the American Rescue Plan Act - Coronavirus State and Local Fiscal Recovery Funds Program.

Colton Rich, Project Manager with EHT, addressed the council. Two proposals have been reviewed for the Meter Replacement Project. The highest-ranking proposer is Secure Vision which offers CamStruck Meters, which have been previously selected for this project. Automatic Meter Reading System(AMR) uses hand held reader that scans as you drive by the meters. The second is Automatic Meter Infrastructure (AMI) which does not require anyone to drive by the meter unless a reading was missed manually. An antenna is set up that will receive signals from the meter. That information is then sent directly to the city computer system and generates a bill. The proposed price for the AMR is \$947,000.00 and \$1,300,000.00 for the AMI.

Commissioner Durham moved to award a bid for the 2022 Meter Replacement Project to Secure Vision AMI and authorizing the City Manager to execute necessary documents on behalf of the City. Mayor Pro Tem Moore seconded the motion. **The motion Passed 4-0.** 

6. Consider approval of Ordinance 2022-07 changing the zoning use designation of a 5.81 acre tract in the Northeast quarter of the Lunatic Asylum Lands Section Number 7, original grantee W. F. Lee Abstract Number 1197, City of Breckenridge, Stephens County, Texas from General Business District ("C-3") to Mobile Home Dwelling District ("MH") effective June 1, 2021; amending the Zoning Map for the City of Breckenridge to reflect such change, and adopting the Zoning Map so amended.

City Manager McComis advised that this was approved by commission previously in June of 2021. However, it was not approved through an ordinance; therefore in order to properly handle the approval an ordinance is needed.

Mayor Pro Tem Moore moved to approve Ordinance 2022-07 as presented. Commissioner Mercer seconded the motion. **The motion passed 4-0.** 

7. Discuss and consider approval of Engineering Services Work Order No. 33 with Enprotech / Hibbs & Todd, Inc. to conduct a pavement evaluation for the City of Breckenridge residential streets.

City Manager McComis stated that if approved Enprotech/Hibbs & Todd, Inc. (EHT) will be conducting an evaluation of the streets in Breckenridge. The evaluation will provide an indepth report which will prioritize which roads will need to be repaired as well as provide an anticipated cost for repairs to allow the commission the opportunity to review and further prioritize during the budget process.

Commissioner Mercer moved to approve Work order No. 33 as presented. Commissioner Durham seconded the motion. **The motion passed 4-0.** 

8. Consider approval of Resolution 2022-16 authorizing application for financial assistance from the Texas Water Development Board; and making certain findings in connection therewith.

City Manager McComis addressed the commission about a new grant that will assist the City in addressing turbidity issues within the City's water system. The City will be requesting financial assistance from the Texas Water Development Board.

Commissioner Durham moved to approve Resolution 2022-16 as presented. Mayor Pro Tem Moore seconded the motion. **The motion passed 4-0.** 

## WORKSHOP ITEMS

(Workshop items are for discussion only. No action may be taken on items listed under this portion of the agenda, other than to provide general direction to staff or to direct staff to place such items on a future agenda for action.)

9. Discussion on transitioning to a tandem axle service truck through Republic Services.

Discussion was had about the pros and cons of transitioning to tandem axle service trucks. Item will be placed on agenda for commission meeting at a later date. No action was taken.

#### **CONSENT AGENDA**

10. Consider approval of the April 5, 2022, Regular Commission meeting minutes as recorded.

- Consider approval of Resolution 2022-13 appointing Scott Harris as a member of the Board of Directors of the West Central Texas Municipal Water District for a term set to expire May 31, 2024.
- 12. Consider approval of Resolution 2022-14 appointing Ty Bartoskewitz to serve on the Breckenridge Economic Development Corporation Board of Directors for a term set to expire on September 30, 2022.
- 13. Consider approval of Resolution 2022-15 approving the Recovery Plan in connection with the American Rescue Plan for contract TX0206.
- 14. Consider approval of City of Breckenridge Second Quarter Investment report for the period including January through March, 2022.

Mayor Pro Tem Moore moved to approve the consent agenda as presented. Commissioner Mercer seconded the motion. **The motion passed 4-0.** 

#### **EXECUTIVE SESSION**

At 6:30 p.m., the City Commission adjourned into executive session pursuant to Texas Government Code, Annotated, Chapter 551, Subchapter D to discuss the following:

#### **Consultation with Attorney**

§551.071(1),(2): Consultation with attorney regarding pending or anticipated litigation, or a settlement offer; or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter:

15. 704 S. Roberts

#### **RECONVENE INTO OPEN SESSION**

In accordance with Texas Government Code, Section 551, the City Commission will reconvene into Open Session and consider action, if any, on matters discussed in Executive Session.

At 6:49 p.m., the City Council reconvened into open session.

No action was taken.

#### ADJOURN

There being no further business, the Mayor adjourned the regular session at 6:55 p.m.

Bob Sims, Mayor

Jessica Sutter, City Secretary



# Commission Meeting Agenda Item Memorandum

MEETING DATE:

Consent Agenda June 7, 2022

## **PRESENTER:**

Jessica Sutter, City Secretary

## **ITEM DESCRIPTION:**

Consider approval of Resolution 2022-18 to suspend the June 17, 2022 effective date of Oncor Electric delivery company's requested rate change to permit the city time to study the request and to establish reasonable rates; approving cooperation with the steering cmmittee of cities served by Oncor to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals.

## **BACKGROUND INFORMATION:**

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about May 13, 2022 with cities retaining original jurisdiction seeking to increase systemwide transmission and distribution rates by about \$251 million or approximately 4.5% over present revenues. The Company asks the City to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates. If approved, a residential customer using 1,300 kWh per month would see a bill increase of about \$6.02 per month.

The resolution suspends the June 17, 2022 effective date of the Company's rate increase for the maximum period permitted by law to allow the City, working in conjunction with the Steering Committee of Cities Served by Oncor, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Oncor's rate request is deemed administratively approved.

# FISCAL IMPACT:

Not Applicable
Proposed Expenditure:
General Ledger Code:
Proposed Revenue:
Budget Amendment Required:
Financial Review Completed by:

No

# LEGAL REVIEW:

Not applicable.

# ATTACHMENTS:

A. Resolution

## **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Resolution 2022-18 as presented.

#### **RESOLUTION NO. 2022-18**

**RESOLUTION OF THE CITY OF BRECKENRIDGE** SUSPENDING THE JUNE 17, 2022 EFFECTIVE DATE OF **ONCOR** ELECTRIC DELIVERY **COMPANY'S REQUESTED RATE CHANGE TO PERMIT THE CITY** TIME TO STUDY THE REQUEST AND TO ESTABLISH **REASONABLE RATES; APPROVING COOPERATION** WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS **RESOLUTION TO THE COMPANY** AND LEGAL **COUNSEL FOR THE STEERING COMMITTEE** 

WHEREAS, on or about May 13, 2022, Oncor Electric Delivery Company (Oncor), pursuant to PURA §§ 33.001 and 36.001 filed with the City of Breckenridge a Statement of Intent to increase electric transmission and distribution rates in all municipalities exercising original jurisdiction within its service area effective June 17, 2022; and

WHEREAS, the City of Breckenridge is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee") and will cooperate with the 169 similarly situated city members and other city participants in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company prior to getting reasonable rates and direct any necessary litigation; and

WHEREAS, PURA § 36.108 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days after the date the rate change would otherwise be effective; and

WHEREAS, PURA § 33.023 provides that costs incurred by Cities in ratemaking proceedings are to be reimbursed by the regulated utility.

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS:

1. That the June 17, 2022 effective date of the rate request submitted by Oncor on or about May 13, 2022, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

2. As indicated in the City's resolution approving membership in the Steering Committee, the Executive Committee of Steering Committee is authorized to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations regarding reasonable rates, and to intervene and direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Public Utility Commission.

3. That the City's reasonable rate case expenses shall be reimbursed by Oncor.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Oncor, Care of Howard V. Fisher, Oncor Electric Delivery Company LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary

9:41 AM

05/02/22

Cash Basis

# Breckenridge Chamber of Commerce Profit & Loss Budget vs. Actual January through March 2022

	City Hotel/Mo	tel
	Jan - Mar 22	Budget
Ordinary Income/Expense Income 47000 · Quarterly Sales Tax 47010 · City Quarterly Sales Tax	17,875.72	7,000.00
Total 47000 · Quarterly Sales Tax	17,875.72	7,000.00
Total Income	17,875.72	7,000.00
Gross Profit	17,875.72	7,000.00
Expense 62800 · Facilities and Equipment 62860 · Copier Lease	0.00	125.00
Total 62800 · Facilities and Equipment	0.00	125.00
63000 · Events/Development Expense 63020 · Christmas	0.00	26,500.00
Total 63000 · Events/Development Expense	0.00	26,500.00
65000 · Operations 65080 · Utilities Expense 65080.1 · Electric	38.26	80.00
Total 65080 · Utilities Expense	38.26	80.00
Total 65000 · Operations	38.26	80.00
Total Expense	38.26	26,705.00
Net Ordinary Income	17,837.46	-19,705.00
et Income	17,837.46	-19,705.00

13

9:41 AM

05/02/22

Cash Basis

# Breckenridge Chamber of Commerce Profit & Loss Budget vs. Actual January through March 2022

	City Hotel/Motel	TOTAL
-	\$ Over Budget	Jan - Mar 22
Ordinary Income/Expense Income		
47000 · Quarterly Sales Tax 47010 · City Quarterly Sales Tax	10,875.72	17,875.72
Total 47000 · Quarterly Sales Tax	10,875.72	17,875.72
Total Income	10,875.72	17,875.72
Gross Profit	10,875.72	17,875.72
Expense 62800 · Facilities and Equipment 62860 · Copier Lease	-125.00	0.00
Total 62800 · Facilities and Equipment	-125.00	0.00
63000 · Events/Development Expense 63020 · Christmas	-26,500.00	0.00
Total 63000 · Events/Development Expense	-26,500.00	0.00
65000 · Operations 65080 · Utilities Expense 65080.1 · Electric	-41.74	38.26
Total 65080 · Utilities Expense	-41.74	38.26
Total 65000 · Operations	-41.74	38.26
Total Expense	-26,666.74	38.26
Net Ordinary Income	37,542.46	17,837.46
let Income	37,542.46	17,837.46

14

9:41 AM

05/02/22

Cash Basis

# Breckenridge Chamber of Commerce Profit & Loss Budget vs. Actual January through March 2022

	TOTAL	
	Budget	\$ Over Budget
Ordinary Income/Expense Income 47000 · Quarterly Sales Tax		
47000 · Quarterly Sales Tax 47010 · City Quarterly Sales Tax	7,000.00	10,875.72
Total 47000 · Quarterly Sales Tax	7,000.00	10,875.72
Total Income	7,000.00	10,875.72
Gross Profit	7,000.00	10,875.72
Expense 62800 · Facilities and Equipment 62860 · Copier Lease	125.00	-125.00
Total 62800 · Facilities and Equipment	125.00	-125.00
63000 · Events/Development Expense 63020 · Christmas	26,500.00	-26,500.00
Total 63000 · Events/Development Expense	26,500.00	-26,500.00
65000 · Operations 65080 · Utilities Expense 65080.1 · Electric	80.00	-41.74
Total 65080 · Utilities Expense	80.00	-41.74
Total 65000 · Operations	80.00	-41.74
Total Expense	26,705.00	-26,666.74
Net Ordinary Income	-19,705.00	37,542.46
Net Income	-19,705.00	37,542.46

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# PLANNING AND ZONING COMMISSION STAFF REPORT

#### Meeting

Date: May 24, 2022

To: Chairman and Members of the Planning and Zoning Commission

From:

Subject: Request to revert plat to original at 103 W. Walker.

### Purpose:

Consider and make recommendation on request PZ 22-02 to revert plat to original at 103 W. Walker – Original Addition, Block 16, Lot 2 & W/10 of 1, in Breckenridge, Texas.

### **Existing Condition of Property:**

The property in question is currently known as The Popular, an event venue.

### Adjacent Existing Land Uses and Zoning:

North: Commercial buildings – Zoned C-2 South: Commercial buildings – Zoned C-2 East: Commercial buildings – Zoned C-2 West: Commercial buildings – Zoned C-2

#### **Development Review Analysis:**

The property owner at 103 W. Walker has this property for sale and would like to plat it back to the original, as he did not do as he intended with it.

## Planning and Zoning Recommendation:

The Planning and Zoning Committee met on May 24, 2022 and did approve the recommendation to the City Commission to approve the Plat as requested.

## **Staff Recommendation:**

City staff forwards this request for your consideration.

# Attachments:

PZ request application Aerial view map

CITY OF BRECKEIIRIDGE	CITY OF BRECKENRIDGE 105 N. Rose Ave. Breckenridge, TX 76424 254-559-8287
APPLICATION FOR:	Planning & Zoning Board of Adjustments
DATE: 4 12/22 APPLICANT: Mike BG AGENT: NQ MAILING ADDRESS: 150	PHONE #: 254-522-5741 
LEGAL DESCRIPTION: DVIGING [B[V	UK. 16 Wt 2+ W/10 B 1
PROPERTY ZONED: LOCATION / PROPERTY ADDRESS: _	103 W. Walker
PRESENT USE OF PROPERTY: DESIRED USE OF PROPERTY: WHAT IS THE SPECIFIC REQUEST? _	h/a
	TMUST BE PRESENT FOR APPLICATION TO BE CONDISERED 0 (Make check payable to the City of Breckenridge)
The undersigned has read the above appli correct; and does hereby request that all r its next regular meeting.	cation and does hereby certify that all information contained therein is true and necessary legal steps be taken to submit such request to the proper Commission at

Signature of property owner or authorized agent

4

'	*****	**********
	(1	FOR OFFICE USE ONLY)
	CASE #:22	consideration date: $5 - 9 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2$
	RECEIPT #:	ACTION:

Page 1 of 1

ltem 5.

STATE OF TEXAS COUNTY OF STEPHENS 0

#### **DECLARATION VACATING A PLAT**

WHEREAS, on the 25<sup>th</sup> day of August, 2015, a certain plat entitled The Popular Buildings was filed in the Plat Records of Stephens County, Texas in Cabinet 1, Slide 116;

WHEREAS, no lots or land as described on said Plat have been sold since said Plat was approved and filed in the Stephens County Records and Bobby Mike and Cassie Dueser Griffith are the sole owners of all lots as shown on said Plat; and

WHEREAS, Bobby Mike and Cassie Dueser Griffith desire to vacate said Plat.

NOW, THEREFORE, in consider of the premises, we, Bobbie Mike and Cassie Dueser Griffith, sole owners of all lots shown on the Plat entitled The Popular Buildings, filed in Cabinet 1, Slide 116 of the Stephens County Plat Records, do hereby declare said plat to be vacated.

Bobby Mike Griffith

S S 0

STATE OF TEXAS

COUNTY OF STEPHENS

This instrument was acknowledged before me on the  $\partial \mathcal{H}$  day of  $\mathbf{N}$ 2022 by Bobby Mike and Cassie Dueser Griffith.



Notary Public. State of Texas

APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS on this the 24<sup>th</sup> day of May, 2022.

Chairman

APPROVED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS on this the \_\_\_\_\_ day of \_\_ , 2022.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary



# Мар

Local Road Labels

- /∿/ City Limits
- NV Stephens CAD Parcels

Data displayed were gathered by the City of Breckenridge for municipal purposes. No guarantee is made regarding suitability for any other use or purpose.









#### CITY OF BRECKENRIDGE 105 NORTH ROSE AVENUE BRECKENRIDGE, TEXAS 76424

Pursuant to Section 22-4(B)(5) of the Code of Ordinances of the City of Breckenridge, Texas will hold a public hearing:

DATE: Tuesday, June 7, 2022

TIME: 5:30 PM

PLACE: City Commission Chambers, 105 N. Rose Ave.

Said public hearing will be to consider:

PZ 22-02 – Mike Griffith on behalf of GPB Management requests to revert plat approval to original at 103 W. Walker, Original Addition, Block 16, Lot 2 & W/10 of 1, Breckenridge, Texas.

Any and all persons interested in the above referenced item may attend such hearing and will be given an opportunity to be heard.

Erika McConin

Erika McComis, City Manager City of Breckenridge, Texas

PUBLISH: May 18, 2022





# Commission Meeting Agenda Item Memorandum

ITEM TYPE

MEETING DATE:

Consent Agenda June 7, 2022

## PRESENTER:

Erika McComis, City Manager

## **ITEM DESCRIPTION:**

Consider approval of an audit engagement agreement with George, Morgan & Sneed, P.C. for the Fiscal Year 2022 annual audit.

## **BACKGROUND INFORMATION:**

The 2022 fiscal year ends as of September 30, 2022 and audit work will commence in October. Staff needs a signed engagement letter to begin work with the auditors. George, Morgan & Sneed, P.C. has performed the City's audit for the last four years. We have a good working relationship with this firm, and they work with small to mid-size municipalities. Their familiarity with issues unique to smaller towns, coupled with financials prepared in-house have kept our annual audit costs stable for the last seven years.

## FISCAL IMPACT:

Not Applicable

Proposed Expenditure:

General Ledger Code:

\$18,500 101-5-90-5564

Proposed Revenue:

No

Financial Review Completed by:

Budget Amendment Required:

## **LEGAL REVIEW:**

Not applicable.

# ATTACHMENTS:

A. Audit Engagement Letter

# **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve audit engagement letter with George, Morgan & Sneed, P.C. for the Fiscal Year 2022 annual audit.



April 27, 2022

City of Breckenridge, Texas 105 North Rose Breckinridge, Texas 76424

We are pleased to confirm our understanding of the services we are to provide for the City of Breckenridge, Texas for the year ended September 30, 2022.

#### Audit Scope and Objectives

We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the disclosures which collectively compromise the basic financial statements, of the City of Breckenridge, Texas as of and for the year ended September 30, 2022. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Breckinridge, Texas basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures but will not be audited.

- 1. Management's discussion and analysis.
- 2. Budgetary comparison schedules general fund and major special revenue funds
- 3. Texas Municipal Retirement System Pension Schedules
- 4. Texas Municipal Retirement System OPEB Schedule

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements.

1. Nonmajor governmental funds combining statements.

2. Schedule of expenditures of federal awards, if applicable.

In connection with our audit of the basic financial statements, we will read the following other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

1. Other supplementary information.

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and issue an auditors report that includes our opinions about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP, and report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements. The objectives also include reporting on:

• Internal control over financial reporting and compliance with the provisions of laws, regulations, contracts and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with Government Auditing Standards.

• Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. Code of Federal Regulations (CFR) Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), if applicable.

#### Auditor's Responsibilities for the Audit of the Financial Statements and Single Audit

We will conduct our audit in accordance with GAAS; the standards for financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with GAAS and *Government Auditing Standards,* we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of

waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to preform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit, if applicable. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the government's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and may include tests of the physical existence of inventories, and direct confirmations of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement.

We have identified the following significant risks of material misstatement as part of our audit planning:

- Risk of material misstatement due to revenue recognition
- Risk of material misstatement due to management override of controls

#### Audit procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to Government Auditing Standards.

If applicable, as required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our rep01t on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, Government Auditing Standards, and, if applicable, the Uniform Guidance.

#### Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

If applicable, the Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. For federal programs that are included in the Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to audit. The purpose of these procedures will be to express an opinion on City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

#### **Other Services**

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, if applicable, and related notes of the City in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

#### **Responsibilities of Management for the Financial Statements and Single Audit**

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for (1) designing, implementing, and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, if applicable, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award

agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (I) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine necessary to obtain audit evidence. At the conclusion of our audit, we will require certain representations from you about the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (I) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings: promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any

significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are responsible for preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period ( or, if they have changed, the reasons for such changes); and ( 4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining of a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, if applicable, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

#### **Engagement Administration, Fees and Other**

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

If a single audit is required, at the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and a corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of George, Morgan & Sneed, P.C. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a cognizant or oversight agency, a federal agency providing direct or indirect funding, or the U.S. General Accounting Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of George, Morgan & Sneed, P.C. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend or decide to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by a cognizant or oversight agency. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contract the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to perform our audit at mutually agreeable times in August and November 2022 and to issue our reports no later than the first City Commission meeting in February 2023. Daniel G Hungerford, CPA, is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, postage, travel, copies, etc.) except that we agree that our gross fee, including expenses, will not exceed \$28,000. If a single audit is required, an additional fee of approximately \$3,850 will be added to the estimated fee above. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 45 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, you will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our August 19, 2020, peer review report accompanies this letter.

All disputes arising under this agreement shall be submitted to mediation. Each party shall designate an executive officer empowered to attempt to resolve the dispute. Should the designated representatives be unable to agree on a resolution, a competent and impartial third patty acceptable to both patties shall be appointed to mediate. Each disputing party shall pay an equal percentage of the mediator's fees and expenses. No suit or arbitration proceedings shall be commenced under this agreement until at least 30

days after the mediator's first meeting with the involved parties. In the event that the dispute is required to be litigated, the court shall be authorized to assess litigation costs against any party found by the court not to have participated in the mediation process in good faith.

#### Reporting

We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Members of the City Commission of the City of Breckinridge, Texas. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

The Government Auditing Standards report on internal control over financial reporting and on compliance and other matters will state that (1) the purpose of the report is solely to describe the scope if testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will state that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

We appreciate the opportunity to be of service to the City of Breckenridge and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

Daniel Hungerton

Daniel G Hungerford, CPA GEORGE, MORGAN & SNEED, P.C.

This letter correctly sets forth the understanding of the City of Breckinridge.

MANAGEMENT:	 	 	
_			
TITLE:			

DATE:\_\_\_\_\_

GOVERNANCE:\_\_\_\_\_

TITLE:
--------

DATE:\_\_\_\_\_

# 

CPAs • Tax • Audit & Accounting

Empowering Peace of Mind

#### Report on the Firm's System of Quality Control

To the Owners of George, Morgan & Sneed, PC and the Peer Review Committee of the Texas Society of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of George, Morgan & Sneed, PC (the firm) in effect for the year ended December 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at <u>www.aicpa.org/prsummary</u>. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

#### Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

#### Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

#### **Required Selections and Considerations**

Engagements selected for review included an engagement performed under *Government Auditing Standards*, including a compliance audit under the Single Audit Act, and an employee benefit plan.

As part of our review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Bumgardner, Morrison & Company, LLP Certified Public Accountants

Members: American Institute of Certified Public Accountants Texas Society of Certified Public Accountants AICPA Private Companies Practice Section AICPA Employee Benefit Plan Audit Quality Center AICPA Government Audit Quality Center 1501 E Mockingbird Lane, Suite 300 PO Box 3750 Victoria, Texas 77903-3750 Phone: 361.575.0271 Fax: 361.578.08 Website: BMCcpa.g 33 To the Owners of George, Morgan & Sneed, PC and the Peer Review Committee of the Texas Society of Certified Public Accountants Page 2 of 2

#### Opinion

In our opinion, the system of quality control for the accounting and auditing practice of George, Morgan & Sneed, PC in effect for the year ended December 31, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass, pass with deficiency(ies) or fail.* George, Morgan & Sneed, PC has received a peer review rating of *pass.* 

Bungardner, Morrison & Company, LLP

BUMGARDNER, MORRISON & COMPANY, LLP August 19, 2020



# **Commission Meeting** Agenda Item Memorandum

**ITEM TYPE** 

MEETING DATE:

June 7, 2022 Public Hearing Item

## **PRESENTER:**

Erika McComis, City Manager

## **ITEM DESCRIPTION:**

Public hearing and consider approval of Ordinance 2022-08 providing for a Specific Use Permit for the placement of a tiny house in a General Dwelling ("R4") District on property commonly known as 509 N. Shelton Street.

## **BACKGROUND INFORMATION:**

The request for a Specific Use Permit was taken before the Planning and Zoning Commission and approved for recommendation in October of 2020. The item however was not brought before the City Commission for a public hearing and approval.

No

## **FISCAL IMPACT:**

- Not Applicable
- Proposed Expenditure:
- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required:
- Financial Review Completed by:

## LEGAL REVIEW:

The City Attorney reviewed this item.

## ATTACHMENTS:

Ordinance Planning and Zoning Agenda Packet from October 13, 2020

# **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Ordinance 2022-08 as presented.
#### CITY OF BRECKENRIDGE 105 NORTH ROSE AVENUE BRECKENRIDGE, TEXAS 76424

#### NOTICE OF PUBLIC MEETING

This notice is posted pursuant to the Texas Open Meetings Act, (Vernon's Texas Code Annotated, Government Code, Chapter 551).

The Planning and Zoning Commission of the City of Breckenridge, Texas, will hold a meeting at 5:30 P.M., October 13, 2020 in the City Commission Chambers, 105 North Rose Avenue, Breckenridge, Texas.

- 1. Call to order
- 2. Approval of Minutes: Meeting(s): July 14, 2020
- 3. Citizens Presentations (Regarding Issues Not on the Agenda)
- 4. Public Hearing:
  - A. PZ 20-04-Rosa Trinidad request SP22-6-502 (F)- placement of small home/tiny house in a R-4 General Dwelling District at 509 N. Shelton-A1101 LAL, Sec 4 SW/4, Tract 4, 4A, 4B & 4C in Breckenridge, Texas.
- 5. Discussion Items
- 6. Adjourn

I certify that this notice was posted at 4:00 P.M., Thursday, October 10, 2020 pursuant to the Texas Open Meetings Act.

Heather Robertson-Caraway, CCCII, TRMC **City Secretary** 

SEAL

This facility is wheelchair accessible, and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (254)559-8287 or FAX (254)559-7322 for further information.

Removed from City Offices bulletin board at \_\_\_\_\_\_ on \_\_\_\_\_by \_\_\_

## CITY OF BRECKENRIDGE 105 NORTH ROSE AVENUE BRECKENRIDGE, TEXAS 76424

Pursuant to Section 22-15-101(C) of the Code of Ordinances of the City of Breckenridge, Texas will hold a public hearing:

DATE: Tuesday, November 3, 2020

TIME: 5:30 PM

PLACE: City Commission Chambers, 105 N. Rose Ave.

Said public hearing will be to consider:

PZ 20-04 – Rosa Trinidad request SP 22-6-502(F) – placement of small home/tiny house in a R-4 General Dwelling District at 509 N. Shelton – A1101 LAL, Sec 4 SW/4, Tract 4, 4A, 4B & 4C in Breckenridge, Texas.

All persons interested in the above referenced item may attend such hearing and will be given an opportunity to be heard.

Heather Robertson-Caraway, CCCII, TRMC Interim City Manager – Administration / City Secretary City of Breckenridge, Texas

Publish: October 14, 2020

July 14, 2020

## Minutes Planning and Zoning Commission

# July 14, 2020 – 5:30 P.M. Commission Chambers – City Offices 105 North Rose Avenue

**Those Present:** Elaine Moore; Mike Griffith; Les Strickland; William Hardy; Randy Hash; Houston Satterwhite, Interim City Manager of Operations; Heather Robertson- Caraway, Interim City Manager of Administration; Calvin Chaney, Fire Chief; Betty Bordelon; Joe Martinez and Lynda Hinson

Those Absent: Coby Walker and Genoa Goad

1. Call to order: 5:30 P.M., a quorum was established

## 2. Approval of Minutes: Meeting(s): February 11, 2020

Moore made a motion, seconded by Strickland, for the approval of minutes: meeting(s): February 11, 2020. When the motion was put to vote, it prevailed as follows: Ayes: Moore, Strickland, Hardy, Hash and Griffith. Nays: None. Absent: Goad and Walker

## 3. Citizens Presentations (Regarding Issues Not on the Agenda)

None

#### 4. Public Hearing: Open at 5:31 pm

A. PZ 20-03-Chris & Karen Eaton request to close the alley ways in the 700, 800, 900 & 1000 blocks of Southward Addition, Blocks 12, 13, 20 & 21 between S. Liveoak and S. Parks and request to close the streets: Houston Street, between blocks 12 & 13 in the Southward Addition; San Antonio Street between blocks 13 & 20 in the Southward Addition and the 800, 900 & 1000 blocks of S. Parks in Breckenridge, Texas.

Calvin Chaney, Fire Chief stated this is an undeveloped property; the City has no intentions of developing the property. These streets are platted but do not exist at this time. The Eaton's want to move in several homes on multiple lots. Some lots are very small, and a home would take up several lots. Betty Bordelon spoke on not closing a portion of the alley within the lots she owns. Elaine Moore asked what type of homes are being moved in, are they trailer houses? Calvin Chaney stated this is a 1500 sq ft home. This area is zoned for mobile homes and above.

Mrs. Bordelon stated they have lived here and taken care of the property for 47 years. This portion of the alley is their only access to the back of their property.

Moore made a motion, seconded by Hardy, to approve closing the alley ways in the 700, 800, 900 & 1000 blocks of Southward Addition, Blocks 13, 20 & 21 between S. Liveoak and S. Parks and request to close the streets: Houston Street, between blocks 12 & 13 in the Southward Addition; San Antonio Street between blocks 13 & 20 in the Southward Addition and the 800, 900 & 1000 blocks of S. Parks in Breckenridge, Texas. When the motion was put to vote, it prevailed as follows: Ayes: Moore, Strickland, Hardy, Hash and Griffith. Nays: None. Absent: Goad and Walker

## 5. Discussion Items: None

## 6. Adjourn:

Moore made a motion, seconded by Hardy, to adjourn the meeting. When the motion was put to vote, it prevailed as follows: Ayes: Moore, Strickland, Hardy, Hash and Griffith. Nays: None. Absent: Goad and Walker

Meeting adjourned at 5:42 P.M.

Mike Griffith, Chairman

SEAL

ATTEST:

Heather Robertson-Caraway, Interim City Manager of Administration,	
CCCII, TRMC ,City Secretary	

## CITY OF BRECKENRIDGE 105 NORTH ROSE AVENUE BRECKENRIDGE, TEXAS 76424

Pursuant to Section 22-15-101(C) of the Code of Ordinances of the City of Breckenridge, Texas will hold a public hearing:

DATE: Tuesday, October 13, 2020

TIME: 5:30 PM

PLACE: City Commission Chambers, 105 N. Rose Ave.

Said public hearing will be to consider:

PZ 20-04 – Rosa Trinidad request SP 22-6-502(F) – placement of small home/tiny house in a R-4 General Dwelling District at 509 N. Shelton – A1101 LAL, Sec 4 SW/4, Tract 4, 4A, 4B & 4C in Breckenridge, Texas.

All persons interested in the above referenced item may attend such hearing and will be given an opportunity to be heard.

Heather Robertson-Caraway, CCCII, TRMC Interim City Manager – Administration / City Secretary City of Breckenridge, Texas

Publish: October 14, 2020

4
CITY OF BRECKENRIDGE 105 N. Rose Ave. Breckenridge, TX 76424 254-559-8287
APPLICATION FOR: VIanning & Zoning Board of Adjustments
DATE: 8-31-20 APPLICANT: Rose Trinidad PHONE #: 817 239 5527
AGENT:PHONE #:
MAILING ADDRESS: rsg trinidd 74@ gmail.com 1206 Ashst
MAILING ADDRESS: <u>rsa trinidd 740 gmail.com</u> 1206 Ashst LEGAL DESCRIPTION: <u>PT SW/4</u> , <u>section 4</u> , <u>L.A.2</u> . <u>Commerce</u> TX
Steplens Courty, Texas
509 N. Shelton, Breckenridge, Tr
76424
PROPERTY ZONED: RL
LOCATION/PROPERTY ADDRESS: 509 N Shelton St
PRESENT USE OF PROPERTY: travel frailor
DESIRED USE OF PROPERTY: home
WHAT IS THE SPECIFIC REQUEST? allowa a tyny home
APPLICANT AND/OR AGENT MUST BE PRESENT FOR APPLICATION TO BE CONDISERED FILING FEE: \$75.00 (Make check payable to the City of Breckenridge)
The undersigned has read the above application and does hereby certify that all information contained therein is true and correct; and does hereby request that all necessary legal steps be taken to submit such request to the proper Commission at its next regular meeting.
Kosa Tronelord
Signature of property owner or authorized agent
 ******
(FOR OFFICE USE ONLY)
CASE #: 20-04 CONSIDERATION DATE: 10-13-20
RECEIPT #: ACTION:

Page 1 of 1

Item 7.





# Commission Meeting Agenda Item Memorandum

**ITEM TYPE** 

MEETING DATE:

Action Item

April 5, 2022

## PRESENTER:

Erika McComis, City Manager

## **ITEM DESCRIPTION:**

Discuss and consider adoption of Ordinance 2022-09 authorizing the issuance of City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022A, in the principal amount of \$2,935,000 and awarding the sale of such Certificates of Obligation to the Texas Water Development Board.

## **BACKGROUND INFORMATION:**

The City has recently been awarded funding through the Texas Water Development Board Clean Water State Revolving Fund for improvements throughout the wastewater collection system and wastewater treatment plant. The City received \$1,227,420 funds eligible for principal forgiveness (grant) and an amount not to exceed \$1,020,000 funded with an interest rate of zero percent (loan). The remaining amount of \$1,915,000 is to be funded in the form of an equivalency loan at the TWDB program's regular terms.

The next step in the process to approve the issuance of the certificates of obligation. The estimated combined principal and interest required to pay the certificates to be authorized on time and in full is \$3,589,246.11. The first principal payment due will be in March of 2024 with the first interest only payment due in March of 2023.

No

# FISCAL IMPACT:

- Not Applicable
- Proposed Expenditure:
- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required:
- Financial Review Completed by:

#### Item 8.

# LEGAL REVIEW:

Not applicable.

# ATTACHMENTS:

Resolutions CO Sale Summary

# **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Resolution(s) as presented.

Item 8.

## ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022A, IN THE PRINCIPAL AMOUNT OF \$2,935,000 AND AWARDING THE SALE OF SUCH CERTIFICATES OF OBLIGATION TO THE TEXAS WATER DEVELOPMENT BOARD

STATE OF TEXAS	§
COUNTY OF STEPHENS	§
CITY OF BRECKENRIDGE	§

WHEREAS, the City Commission of the City of Breckenridge, Texas (the "Issuer") deems it advisable to issue certificates of obligation (the "Certificates of Obligation" or the "Certificates") in the amount of \$2,935,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's sewer system, including multiple lift stations, wastewater treatment plant, sewer lines, manholes, equalization basin, pumping facilities, valves and related infrastructure improvements; and (ii) paying legal, fiscal and engineering fees in connection with such projects; and

WHEREAS, the Certificates of Obligation hereinafter authorized and designated are to be issued and delivered for cash pursuant to Subchapter C of Chapter 271, Texas Local Government Code, as amended, and Chapter 1502, Government Code, as amended; and

WHEREAS, the City Commission has heretofore passed a resolution authorizing and directing the City Secretary to give notice of intention to issue the Certificates of Obligation; and

WHEREAS, said notice has been duly posted on the Issuer's internet website and duly published in a newspaper of general circulation in the Issuer, said newspaper being a "newspaper" as defined in § 2051.044, Texas Government Code, as amended; and

WHEREAS, the Issuer received no petition from the qualified electors of the Issuer protesting the issuance of such Certificates of Obligation; and

WHEREAS, no bond proposition to authorize the issuance of bonds for the same purpose as any of the projects being financed with the proceeds of the Certificates of Obligation was submitted to the voters of the Issuer during the preceding three years and failed to be approved; and

WHEREAS, it is considered to be to the best interest of the Issuer that said Certificates of Obligation be issued.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE:

Section 1. RECITALS, AMOUNT AND PURPOSE OF THE CERTIFICATES. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. The Certificates of Obligation of the City of Breckenridge, Texas are hereby authorized to be issued and delivered in the aggregate principal amount of

\$2,935,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's sewer system, including multiple lift stations, wastewater treatment plant, sewer lines, manholes, equalization basin, pumping facilities, valves and related infrastructure improvements; and (ii) paying legal, fiscal and engineering fees in connection with such projects (collectively, the "Project").

DESIGNATION, DATE, DENOMINATIONS, NUMBERS AND Section 2. MATURITIES OF THE CERTIFICATES. Each Certificate of Obligation issued pursuant to this Ordinance shall be designated: "CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022A" and initially there shall be issued, sold and delivered hereunder one fully registered certificate, without interest coupons, dated March 15, 2022, in the aggregate principal amount stated above and in the denominations hereinafter stated, numbered T-1, with certificates issued in replacement thereof being in the denominations and principal amounts hereinafter stated and numbered consecutively from R-1 upward, payable to the respective Registered Owners thereof (with the initial certificate being made payable to the initial purchaser as described in Section 12 hereof), or to the registered assignee or assignees of said certificate or any portion or portions thereof (in each case, the "Registered Owner"). The Certificates of Obligation shall mature on September 15 in the years and in the principal amounts and interest rates set forth below. Interest on each Certificate shall accrue on the basis of a 360-day year consisting of twelve 30-day months from the date of initial delivery or the most recent interest payment date to which interest has been paid or provided for at the per annum rates of interest, payable semiannually on March 15 and September 15 of each year until the principal amount shall have been paid or provision for such payment shall have been made, commencing [March 15, 2023], as follows:

	Principal	Interest		Principal	Interest
Years	Amounts	Rates	Years	Amounts	Rates
2024			2039		
2025			2040		
2026			2041		
2027			2042		
2028			2043		
2029			2044		
2030			2045		
2031			2046		
2032			2047		
2033			2048		
2034			2049		
2035			2050		
2036			2051		
2037			2052		
2038			2053		

Section 3. CHARACTERISTICS OF THE CERTIFICATES. (a) <u>Registration</u>, <u>Transfer, Conversion and Exchange; Authentication</u>. The Issuer shall keep or cause to be kept at the corporate trust office of BOKF, NA, in Dallas, Texas (the "Paying Agent/Registrar"), books

2

or records for the registration of the transfer, conversion and exchange of the Certificates of Obligation (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Registered Owner of each Certificate of Obligation to which payments with respect to the Certificates of Obligation shall be mailed, as herein provided; but it shall be the duty of each Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Certificate or Certificates. Registration of assignments, transfers, conversions and exchanges of Certificates of Obligation shall be made in the manner provided and with the effect stated in the FORM OF CERTIFICATE set forth in this Ordinance. Each substitute Certificate of Obligation shall bear a letter and/or number to distinguish it from each other Certificate.

Except as provided in Section 3(c) of this Ordinance, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate of Obligation, date and manually sign said Certificate, and no such Certificate of Obligation shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates and Certificates surrendered for conversion and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Certificate of Obligation or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificates of Obligation in the manner prescribed herein, and the Certificates of Obligation shall be printed or typed on paper of customary weight and strength. Pursuant to Chapter 1201, Texas Government Code, as amended, the duty of conversion and exchange of Certificates of Obligation as aforesaid is hereby imposed upon the Paying Agent/Registrar and, upon the execution of said Certificate of Obligation, the converted and exchanged Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates of Obligation that initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General and registered by the Texas Comptroller of Public Accounts.

(b) <u>Payment of Certificates and Interest</u>. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Certificates, and of all conversions and exchanges of Certificates, and all replacements of Certificates, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the past due

interest shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

In General. The Certificates (i) shall be issued in fully registered form, without (c) interest coupons, with the principal of and interest on such Certificates to be payable only to the Registered Owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the Issuer at least 35 days prior to any such redemption date), (iii) may be converted and exchanged for other Certificates, (iv) may be transferred and assigned, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Certificates shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the Certificates, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE set forth in this Ordinance. The Certificate initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate issued in conversion of and exchange for any Certificate or Certificates issued under this Ordinance the Agent/Registrar shall PAYING AGENT/REGISTRAR'S Paving execute the AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF CERTIFICATE.

(d) <u>Book-Entry Only System</u>. The Certificates issued in exchange for the Certificate initially issued to the initial purchaser specified herein shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), and except as provided in subsection (f) hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown on the Registration Books, of any notice with respect to the Certificates, or (iii) the payment to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Registration Books as the absolute owner of such Certificate for the purpose of payment of principal and interest with respect to such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates only to or upon the order

of the Registered Owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the Registered Owner at the close of business on the Record Date (hereinafter defined), the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

Successor Securities Depository; Transfers Outside Book-Entry Only System. In (e) the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representations letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate certificated Certificates to DTC Participants having Certificates credited to their DTC accounts; provided that while the Texas Water Development Board (the "Board") is the holder of the Certificates, the DTC services shall not be discontinued by the Issuer until the Issuer has received the written consent thereto of the Board. In such event, the Certificates shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Registered Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

(f) <u>Payments to Cede & Co</u>. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the representations letter of the Issuer to DTC.

(g) <u>Successor Paying Agents</u>. The Issuer covenants with the Registered Owners of the Certificates that at all times while the Certificates are outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution, or other entity having trust powers to act as and perform the services of Paying Agent/Registrar for the Certificates under this Ordinance, and that the Paying Agent/Registrar will be one entity. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 50 days written notice to the Paying Agent/Registrar, to be effective not later than 30 days prior to the next principal payment or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar,

the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Certificates, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(h) <u>Cancellation of Initial Certificates</u>. On the closing date, one initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the purchaser designated in Section 12 or its designee, executed by manual or facsimile signature of the Mayor or the Mayor Pro-tem and City Secretary of the Issuer, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such purchaser or its designee. Upon payment for the initial Certificates, the Paying Agent/Registrar shall cancel the initial Certificate and deliver to the Depository Trust Company on behalf of such purchaser one registered definitive Certificate for each year of maturity of the Certificates, in the aggregate principal amount of all of the Certificates for such maturity.

(i) <u>Conditional Notice of Redemption</u>. With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the Issuer, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Issuer shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

Section 4. FORM OF CERTIFICATES. The form of the Certificates, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance.

NO. R-\_\_\_\_

## UNITED STATES OF AMERICA STATE OF TEXAS CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022A

Interest Rate Dated Date		Maturity Date	CUSIP No.
%	March 15, 2022	September 15, 20	

#### **REGISTERED OWNER:**

#### PRINCIPAL AMOUNT:

#### DOLLARS

PRINCIPAL AMOUNT

\$

ON THE MATURITY DATE specified above, the City of Breckenridge, in Stephens County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the date of delivery hereof (which date appears in the Delivery Certificate endorsed on this Certificate) at the Interest Rate per annum specified above. Interest is payable on [March 15, 2023] and semiannually on each September 15 and March 15 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date, such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND ANY INTEREST ON this Certificate are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate shall be paid to the Registered Owner hereof upon presentation and surrender of this Certificate at maturity, or upon the date fixed for its redemption prior to maturity, at the corporate trust office of BOKF, NA in Dallas, Texas, which is the "Paying Agent/Registrar" for this Certificate. The payment of interest on this Certificate shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Certificate (the "Certificate Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered

Owner hereof, at its address as it appeared at the close of business on the last business day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Texas Water Development Board, or such other Registered Owner, requested by, and at the risk and expense of, the Registered Owner; provided, however, that if this Certificate of Obligation is owned by the Texas Water Development Board, principal and interest will be paid by wire transfer or other method acceptable to the Texas Water Development Board, and there will be no charge. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Certificate appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Certificate prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Certificate for redemption and payment at the corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the Registered Owner of this Certificate that on or before each principal payment date, interest payment date, and accrued interest payment date for this Certificate it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Certificate Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates, when due.

IF THE DATE for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS CERTIFICATE is one of a series of Certificates dated as of March 15, 2022, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$2,935,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's sewer system, including multiple lift stations, wastewater treatment plant, sewer lines, manholes, equalization basin, pumping facilities, valves and related infrastructure improvements; and (ii) paying legal, fiscal and engineering fees in connection with such projects.

ON MARCH 15, 2032, or on any date thereafter, the Certificates may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the Issuer shall select and designate the maturity or maturities and the amount that is to be redeemed, and if less than a whole maturity is to be called, the Issuer shall direct the Paying Agent/Registrar to call by lot (provided that a portion of

a Certificate may be redeemed only in an integral multiple of \$5,000), at the redemption price of the principal amount thereof, plus accrued interest to the date fixed for redemption.

AT LEAST 30 days prior to the date fixed for any redemption of Certificates or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the Registered Owner of each Certificate to be redeemed at its address as it appeared on the 45th day prior to such redemption date; provided, however, that the failure of the Registered Owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Certificate. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Certificates or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Certificates or portions thereof that are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Issuer shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed. If a portion of any Certificate shall be redeemed, a substitute Certificate or Certificates having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Certificate Ordinance.

ALL CERTIFICATES OF THIS SERIES are issuable solely as fully registered certificates, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Certificate Ordinance, this Certificate may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered certificates, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Certificate to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Certificate Ordinance. Among other requirements for such assignment and transfer, this Certificate must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate or any portion or portions hereof from time to time by the Registered Owner.

The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Certificate or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Certificate or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Certificates is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Certificate Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Certificates.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Certificate have been performed, existed and been done in accordance with law; that this Certificate is a general obligation of the Issuer, issued on the full faith and credit thereof; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in the Issuer, and have been pledged for such payment, within the limit prescribed by law, and that this Certificate is additionally secured by and payable from a pledge of the revenues of the Issuer's Waterworks and Sewer System (the "System") described below, to wit: the Surplus Revenues of the System, which are the revenues of the System that remain (i) after payment of all operation and maintenance expenses thereof (constituting the "Net Revenues" of the System) and (ii) after payment of all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from the Net Revenues, all as provided in the Certificate Ordinance.

BY BECOMING the Registered Owner of this Certificate, the Registered Owner thereby acknowledges all of the terms and provisions of the Certificate Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Certificate Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Certificate and the Certificate Ordinance constitute a contract between each Registered Owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be signed with the manual or facsimile signature of the Mayor or the Mayor Pro-Tem of the Issuer and countersigned with the manual or facsimile signature of the City Secretary of the Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Certificate.

City Secretary

Mayor

(SEAL)

(b) [Form of Delivery Certificate]

## DELIVERY CERTIFICATE

This Certificate of Obligation was delivered to and paid for by the Purchaser thereof on

(c) [Form of Paying Agent/Registrar's Authentication Certificate]

## PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE (To be executed if this Certificate is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Certificate has been issued under the provisions of the Certificate Ordinance described in the text of this Certificate; and that this Certificate has been issued in conversion or replacement of, or in exchange for, a certificate, certificates, or a portion of a certificate or certificates of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: \_\_\_\_\_

BOKF, NA Dallas, Texas Paying Agent/Registrar

By:

Authorized Representative

(d) [Form of Assignment]

#### ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or Taxpayer Identification Number of Transferee

(Please print or typewrite name and address, including zip code, of Transferee.)

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_\_\_, attorney, to register the transfer of the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

#### Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program. NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

(e) [Form of Registration Certificate of the Comptroller of Public Accounts]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that there is on file and of record in my office a true and correct copy of the opinion of the Attorney General of the State of Texas approving this Certificate and that this Certificate has been registered this day by me.

Witness my signature and seal this

Comptroller of Public Accounts of the State of Texas

(COMPTROLLER'S SEAL)

(f) [Initial Certificate Insertions]

(i) The initial Certificate shall be in the form set forth is paragraph (a) of this Section, except that:

A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. \_\_\_\_\_" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE CITY OF BRECKENRIDGE, TEXAS, in Stephens County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on September 15 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

Years Principal Amounts Interest Rates
(Information from Section 2 to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the date of delivery hereof

(which date appears in the Delivery Certificate endorsed on this Certificate) at the respective Interest Rate per annum specified above. Interest is payable on [March 15, 2023] and semiannually on each September 15 and March 15 thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest for the interest on the Certificate or Certificates for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full."

C. The Initial Certificate shall be numbered "T-1".

Section 5. INTEREST AND SINKING FUND. A special "Interest and Sinking Fund" has been created and shall be established and maintained by the Issuer at an official depository bank of the Issuer. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the Issuer, and shall be used only for paying the interest on and principal of the Certificates. All amounts received from the sale of the Certificates as accrued interest shall be deposited upon receipt to the Interest and Sinking Fund, and all ad valorem taxes levied and collected for and on account of the Certificates shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of the Certificates are outstanding and unpaid, the governing body of the Issuer shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on the Certificates as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Certificates as such principal matures (but never less than 2% of the original amount of the Certificates as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Issuer, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the Issuer, for each year while any of the Certificates are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Certificates, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

Section 6. PLEDGE OF SURPLUS REVENUES. (a) The Certificates, together with other obligations of the Issuer, are additionally secured by a pledge of the revenues of the Issuer's Waterworks and Sewer System (the "System") that remain (i) after payment of all operation and maintenance expenses of the System (constituting the "Net Revenues" of the System) and (ii) after payment of all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from the Net Revenues (such revenues, constituting the "Surplus Revenues" of the System). The Surplus Revenues are hereby pledged to secure the payment of the Certificates. The Issuer shall maintain sufficient rates and charges for the payment of System operations and, if Surplus Revenues are used in lieu of ad valorem taxes for the payment of the debt service requirements of System debt, such rates and

charges shall produce sufficient Surplus Revenues therefor. If Surplus Revenues are required for the payment of debt service on the Certificates, the Issuer shall deposit Surplus Revenues to the credit of the Interest and Sinking Fund created pursuant to Section 5, to the extent necessary to pay the principal and interest on the Certificates.

(b) Notwithstanding the requirements of Section 5, if Surplus Revenues or other lawfully available funds of the Issuer are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied pursuant to Section 5 may be reduced to the extent and by the amount of the revenues then on deposit in the Interest and Sinking Fund.

(c) Notwithstanding the requirements of Section 5 and Section 6(b), if Surplus Revenues and/or other lawfully available funds of the Issuer are not on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, but there are budgeted for collection revenues ("Budgeted Revenues") in sufficient amounts to pay the principal and interest coming due on the Certificates in any year, then, subject to the requirements set forth below, the amount of taxes which otherwise would have been required to be levied pursuant to Section 5 may be reduced to the extent and by the amount of the Budgeted Revenues. In the event that Budgeted Revenues are to be used to pay principal and interest coming due on the Certificates in any year, the Issuer:

- (i) shall transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Certificates until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Certificates; further, the Issuer shall not transfer any funds from the Issuer's Waterworks and Sewer System Fund to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Certificates for the then current fiscal year has been deposited in the Interest and Sinking Fund; and, provided further that transfers may be made from the Waterworks and Sewer System Fund to an interest and sinking fund, debt service reserve fund, contingency fund or other fund or account established for the benefit of any revenue obligations of the Issuer that are secured by a pledge of the Net Revenues (which transfers shall be made in accordance with the provisions of the Ordinance pursuant to which such obligations were issued or incurred) and to any other interest and sinking fund established for the benefit of any revenue obligations of the Issuer that are secured by a pledge of the Surplus Revenues (and any such transfers shall be made on a pro rata basis as the transfers made for the benefit of the Certificates):
- (ii) shall establish, adopt and maintain an annual budget that provides for either the monthly deposit of sufficient Surplus Revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Certificates; and
- (iii) shall at all times maintain and collect sufficient System rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the System, produce revenues in an amount not less

than 1.10 times debt service requirements of all outstanding System revenue obligations of the Issuer and other obligations of the Issuer which are secured in whole or in part by a pledge of revenues of the System, for which the Issuer is budgeting the repayment of such obligations from the revenues of the System, or the Issuer shall prepare and provide documentation to any holder of a Certificate who requests same, which evidences the levy of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds except System rates and charges, sufficient for the repayment of System debt service requirements.

Section 7. DEFEASANCE OF CERTIFICATES. (A) Any Certificate of Obligation and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Certificate") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Certificate, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates shall have become due and payable. At such time as a Certificate of Obligation shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate of Obligation and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged or the pledge of the Surplus Revenues as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates that is made in conjunction with the payment arrangements specified in subsection 7(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates of Obligation and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 7(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) The term "Defeasance Securities" means any securities and obligations now or hereafter authorized by Texas law that are eligible to discharge obligations such as the Certificates.

(d) Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) In the event that the Issuer elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

(f) In the event that the Issuer establishes a defeasance escrow for the Certificates in accordance with Section 7, written notice thereof shall be promptly given to the Texas Water Development Board.

Section 8. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES. (a) <u>Replacement Certificates</u>. In the event any outstanding Certificate is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new certificate of the same principal amount, maturity and interest rate, as the damaged, mutilated, lost, stolen or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

(b) <u>Application for Replacement Certificates</u>. Application for replacement of damaged, mutilated, lost, stolen or destroyed Certificates shall be made by the Registered Owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Certificate, the Registered Owner applying for a replacement certificate shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Certificate, the Registered Owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the Registered Owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.

(c) <u>No Default Occurred</u>. Notwithstanding the foregoing provisions of this Section, in the event any such Certificate shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement Certificate, provided security or indemnity is furnished as above provided in this Section.

(d) <u>Charge for Issuing Replacement Certificates</u>. Prior to the issuance of any replacement certificate, the Paying Agent/Registrar shall charge the Registered Owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every

replacement certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.

(e) <u>Authority for Issuing Replacement Certificates</u>. In accordance with Chapter 1201, Texas Government Code, as amended, this Section 8 of this Ordinance shall constitute authority for the issuance of any such replacement certificate without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 3(a) of this Ordinance for Certificates issued in conversion and exchange for other Certificates.

Section 9. CUSTODY, APPROVAL AND REGISTRATION OF CERTIFICATES; BOND COUNSEL'S OPINION; CUSIP NUMBERS; AND CONTINGENT INSURANCE PROVISION, IF OBTAINED. The Mayor (or in the Mayor's absence, the Mayor Pro-Tem) of the Issuer is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Certificates issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the Registered Owners of the Certificates. In addition, if bond insurance is obtained, the Certificates may bear an appropriate legend as provided by the insurer. The officers, employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments, agreements and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this Ordinance. In the absence of the Mayor, the Mayor Pro-tem is directed to sign as Mayor on behalf of the Issuer.

Section 10. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE CERTIFICATES. The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Certificates as obligations described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Certificates (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the

projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds 5 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action that would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Certificates, other than investment property acquired with –

(1) proceeds of the Certificates invested for a reasonable temporary period of 3 years or, in the case of refunding bonds, for a period of 90 days or less, until such proceeds are needed for the purpose for which the Certificates or refunding bonds are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the rules and regulations of the United States Department of the Treasury (the "Treasury Regulations"), and

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;

(g) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(h) to refrain from using the proceeds of the Certificates or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Certificates in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);

(i) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent

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of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code;

(j) to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the applicable Treasury Regulations promulgated thereunder;

(k) the Issuer will not acquire any of the Texas Water Development Board's source series bonds in an amount related to the amount of Certificates acquired by the Texas Water Development Board;

(1) In order to facilitate compliance with the above covenant (i), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the certificateholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code;

For purposes of the foregoing (a) and (b), the Issuer understands that the term (m)"proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Certificates. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the United States Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the Certificates, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Certificates, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor, the Mayor Pro-tem, City Manager and City Secretary to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates; and

(n) This Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

Section 11. METHOD OF AMENDMENT. The Issuer hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The Issuer may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i)

cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (iv) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (v) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the holders of Certificates aggregating in principal amount 51% of the aggregate principal amount of then outstanding Certificates that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the Issuer; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Certificates, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Certificates so as to:

(1) Make any change in the maturity of any of the outstanding Certificates;

(2) Reduce the rate of interest borne by any of the outstanding Certificates;

(3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Certificates;

(4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Certificates or any of them or impose any condition with respect to such payment; or

(5) Change the minimum percentage of the principal amount of the Certificates necessary for consent to such amendment.

(c) If at any time the Issuer shall desire to amend this Ordinance under this Section, the Issuer shall send by U.S. mail to each Registered Owner of the affected Certificates a copy of the proposed amendment and cause notice of the proposed amendment to be published at least once in a financial publication published in the City of New York, New York or in the State of Texas. Such published notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the office of the Issuer for inspection by all holders of such Certificates.

(d) Whenever at any time within one year from the date of publication of such notice the Issuer shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Certificates then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the Issuer may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such

amendatory Ordinance, and the respective rights, duties, and obligations of the Issuer and all holders of such affected Certificates shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Certificate pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the publication of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Certificate during such period. Such consent may be revoked at any time after six months from the date of the publication of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the Issuer, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Certificates then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

For the purposes of establishing ownership of the Certificates, the Issuer shall rely solely upon the registration of the ownership of such Certificates on the registration books kept by the Paying Agent/Registrar.

(g) Notwithstanding any provision of this Section 11, there shall be no modification of this Ordinance without the written consent of the Texas Water Development Board (while it is a Registered Owner of the Certificates).

Section 12. SALE OF CERTIFICATES OF OBLIGATION. The Certificates of Obligation are hereby sold and shall be delivered to the Texas Water Development Board for cash for the principal amount thereof. In accordance with its Resolution No. 22-017, the Texas Water Development Board will purchase the Certificates, with an amount approved by the Texas Water Development Board to be deposited to the Construction Fund authorized by Section 13 hereof (the "Construction Fund") upon initial delivery of the Certificates, and the balance of the proceeds to be deposited to the Escrow Account authorized by Section 24 hereof until authorized for transfer to the Construction Fund by the Texas Water Development Board.

Section 13. CONSTRUCTION FUND. There shall be established by the Issuer a separate fund to be designated the "Series 2022A CO Construction Fund" (the "Construction Fund") to be held by the Issuer's depository bank, and upon the delivery of the purchase price for the Certificates, the proceeds from the sale of the Certificates shall be deposited into the Construction Fund. The costs of issuance of the Certificates, which include legal, fiscal and engineering fees, may be paid from the Construction Fund. The cost of the construction of the Construction of the Project will be paid from this Construction Fund upon direction of the City Commission of the Issuer. All interest and profits from investments made with moneys in the Construction Fund shall remain on deposit in the Construction Fund as a part thereof. After completion of the payment of all costs of the Project, any residue remaining in the Construction Fund shall be applied in accordance with Section 15 hereof.

Section 14. INVESTMENTS; COLLATERALIZATION OF PROCEEDS. Proceeds of the Certificates shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Chapter 2256, Texas Government Code (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Texas Government Code, (the "PFCA"). Money in any fund established pursuant to this Ordinance may, at the option of the Issuer, be invested in eligible investments described in the PFIA,

consistent with the investment policy of the Issuer, as approved by the City Commission of the Issuer. All investments shall be made in such manner as will, in the opinion of the Issuer, permit the money required to be expended from any fund to be available at the proper time or times as expected to be needed. Any uninvested, uninsured proceeds of the Certificates shall be subject to the PFCA.

Section 15. SURPLUS PROCEEDS. Notwithstanding any other provision of this Ordinance or the Certificates restricting early redemption of the Certificates, the Issuer shall use any surplus proceeds from the Certificates that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Texas Water Development Board's ("TWDB") Executive Administrator (the "Executive Administrator"), including without limitation to redeem, on any date, the Certificates owned by the TWDB, at a price of par plus accrued interest to the date fixed for redemption.

Section 16. EFFECTIVE DATE. In accordance with the provisions of Texas Government Code, Section 1201.028, this Ordinance shall be effective immediately upon its adoption by the City Commission of the Issuer.

Section 17. COMPLIANCE WITH THE TEXAS WATER DEVELOPMENT BOARD'S RULES AND REGULATIONS. The provisions of this Section shall apply so long as the Certificates, or any of them, are owned by the Texas Water Development Board. The Issuer hereby agrees to comply with all conditions set forth in TWDB Resolution No. 22-017, which conditions are incorporated herein.

(a) <u>Annual Audit Reporting</u>. The Issuer shall provide the Texas Water Development Board with an annual report prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, to be submitted without charge within 180 days of the close of each fiscal year.

(b) <u>Covenant to Abide with Rules</u>. The Issuer will abide with all applicable laws of the State of Texas and Rules of the Texas Water Development Board relating to the loan of funds evidenced by the Certificates and the Project for which the Certificates are issued, sold and delivered.

(c) <u>Water Conservation Program</u>. The Issuer agrees and covenants that it will implement an approved water conservation program in accordance with 31 TAC § 375.43.

(d) <u>Records and Accounts</u>. The Issuer agrees and covenants that it will maintain current, accurate and complete records and accounts regarding the System in accordance with 31 TAC § 375.3.

(e) <u>Environmental Determinations</u>. The Issuer agrees and covenants that it will comply with any special conditions of the environmental determination of the Executive Administrator in accordance with Title 31, Texas Administrative Code, Chapter 375, Subchapter E, as amended.

(f) <u>Prohibition on Use of Proceeds</u>. The Issuer covenants and agrees that none of the proceeds of the Certificates will be expended on costs incurred or to be incurred relating to the

sampling, testing, removing or disposing of potentially contaminated soils and/or media at the project site.

(g) <u>Indemnification</u>. The Issuer further agrees, to the extent permitted by law, to indemnify, hold harmless and protect the Texas Water Development Board from any and all claims or causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, removal and off-site disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Issuer, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project.

(h) <u>Conveyance of Obligations</u>. Prior to any action by the Issuer to convey its obligations under the Certificates to another entity, if permitted by law, the conveyance and the assumption of such obligations must be approved by the Texas Water Development Board. The Issuer shall notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such a sale-transfer-merger with another retail public utility.

(i) <u>Davis-Bacon Act Compliance</u>. All laborers and mechanics employed by contractors and subcontractors for the Project who are paid from proceeds of the Certificates on deposit in the Construction Fund shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality of the Issuer in accordance with the federal Davis-Bacon Act and the U.S. Department of Labor's implementing regulations pertaining thereto.

(j) <u>Federal Funding Accountability and Transparency Act</u>. The Issuer shall provide the Texas Water Development Board with all information required by the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282.

(k) <u>DUNS Number and CAGE Code</u>. The Issuer shall obtain a Data Information Numbering System (DUNS) Number and shall register with the System for Award Management to obtain a Commercial and Government Entity (CAGE) Code, and maintain current registration at all times during which the Certificates are outstanding.

(1) <u>Timely Expenditures</u>. All proceeds of the Certificates will be timely and expeditiously used, as required by applicable federal statutes and U.S. Environmental Protection Agency regulations, and the Issuer shall adhere to a project construction schedule acceptable to the Executive Administrator that facilitates timely use of funds and project completion.

(m) <u>As-Built Plans</u>. The Issuer shall provide to the Texas Water Development Board a full and complete set of "as-built" plans relating to the Project, promptly upon completion of the Project.

(n) <u>Final Accounting</u>. The Issuer shall render a final accounting of the cost of the Project to the Texas Water Development Board within 60 days of the completion of the Project. If the total cost of the Project, as finally completed, is less than originally estimated, so that the proper share of the participation by the Texas Water Development Board in the Project is reduced, such surplus proceeds shall be used in accordance with Section 15 hereof.

(o) <u>Insurance</u>. Insurance coverage be obtained and maintained by the Issuer in an amount sufficient to protect the interest of the Texas Water Development Board in the Project.

(p) <u>Remedies</u>. The TWDB may exercise all remedies available to it in law or equity, and any provision of the Certificates or this Ordinance that restricts or limits the TWDB's full exercise of such remedies shall be of no force and effect.

(q) <u>American Iron and Steel Requirements</u>. The Issuer will abide by all applicable construction contract requirements related to the use of iron and steel products in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines.

(r) <u>Covenant Regarding Taxes and System Rates</u>. The Issuer hereby agrees that, for so long as the Certificates are outstanding, to levy a tax and/or maintain and collect sufficient rates and charges to produce System revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Certificates.

(s) <u>Outlay Reports</u>. The Issuer shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines.

Section 18. ALLOCATION OF CERTIFICATE PROCEEDS. The Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the construction and acquisition of the Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the Issuer shall not expend proceeds of the sale of the Certificates or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates, or (2) the date the Certificates are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of the Certificates or the interest thereon. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest on the Certificates, if any.

Section 19. DISPOSITION OF PROJECT. The Issuer covenants that the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax proposes from gross income of the interest on the Certificates, if any.

Section 20. INTEREST EARNINGS ON CERTIFICATE PROCEEDS. Interest earnings derived from the investment of proceeds from the sale of the Certificates shall be used along with other Certificate proceeds for the Project; provided that after completion of such purpose, if any of such interest earnings remain on hand, such interest earnings shall be used as directed in Section 15. It is further provided, however, that any interest earnings on Certificate proceeds that are required to be rebated to the United States of America pursuant to Section 10 hereof in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

Section 21. COMPLIANCE WITH RULE 15c2-12. (a) <u>Definitions</u>. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board or any successor to its functions under the Rule.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) <u>Annual Reports</u>.

The Issuer shall provide annually to the MSRB, within twelve months after the end of each fiscal year ending in or after 2022, financial information and operating data with respect to the Issuer to the extent that such information is customarily prepared by the Issuer and is publicly available. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in the notes to the financial statements filed with the Texas Water Development Board as part of the Issuer's application to the Texas Water Development Board, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the Issuer shall provide unaudited financial information that is available to the Issuer by the required time and will provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available. Such information shall be transmitted electronically to the MSRB, in such format and accompanied by such identifying information as prescribed by the MSRB.

If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC. (c) <u>Notice of Certain Events</u>. (i) The Issuer shall file notice of any of the following events with respect to the Certificates with the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the Issuer;
- (13) The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

For these purposes, (i) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer., and (ii) the Issuer intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same

meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The Issuer shall file notice with the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with Subsection (b) of this Section by the time required by such Subsection.

(d) <u>Limitations, Disclaimers, and Amendments</u>. (i) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the Issuer in any event will give the notice required by Subsection (a) hereof of any Certificate calls and defeasance that cause the Issuer to no longer be such an "obligated person".

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

(iii) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

(v) The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (b) a person that is
unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Certificates. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates.

Section 22. PUBLIC NOTICE. It is hereby officially found and determined that public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code, and that no petition was received from the qualified electors of the Issuer protesting the issuance of the Certificates.

Section 23. ESCROW AGREEMENT. The Mayor (or in the Mayor's absence, the Mayor Pro-Tem) is hereby authorized and directed to execute and deliver an Escrow Agreement substantially in the form attached hereto as <u>Exhibit A</u>, with such changes as may be approved by the Mayor (or in the Mayor's absence, the Mayor Pro-Tem), such approval to be evidenced by his execution thereof.

Section 24. ESCROW ACCOUNT. An escrow account is hereby authorized to be created pursuant to the Escrow Agreement referred to in Section 23. Proceeds of the Certificates shall be deposited to the escrow account and disbursed to the Construction Fund created pursuant to Section 13 upon the authorized release of moneys from the escrow account in accordance with the Escrow Agreement.

Section 25. EVENTS OF DEFAULT. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an event of default (an "Event of Default"):

(i) the failure to make payment of the principal of or interest on any of the Certificates when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the Issuer, the failure to perform which materially, adversely affects the rights of the Registered Owners, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the Issuer.

Section 26. REMEDIES FOR DEFAULT. (a) Upon the happening of any Event of Default, then and in every case, any Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Issuer for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement

contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

Section 27. REMEDIES NOT EXCLUSIVE. (a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(c) By accepting the delivery of a Certificate authorized under this Ordinance, such Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Issuer or the City Commission.

Section 28. SEVERABILITY. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 29. APPROPRIATION. To pay the debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, if any, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount, which together with capitalized interest received from the sale of the Certificates, if any, will be sufficient to pay such debt service, and such amount shall be used for no other purpose.

#### EXHIBIT A

#### FORM OF ESCROW AGREEMENT

[See attached]

# RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF A PRINCIPAL FORGIVENESS AGREEMENT FOR SEWER SYSTEM IMPROVEMENTS; AND RESOLVING OTHER MATTERS RELATING TO THE SUBJECT

THE STATE OF TEXAS	§
COUNTY OF STEPHENS	§
CITY OF BRECKENRIDGE	§

WHEREAS, the City of Breckenridge, Texas (the "City") has received approval from the Texas Water Development Board ("TWDB") for financial assistance from TWDB to the City in the amount of \$4,162,420 (the "Loan"), consisting of the City's Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022A, in the amount of \$2,935,000, and Principal Forgiveness in the amount of \$1,227,420;

WHEREAS, TWDB has presented to the City a Principal Forgiveness Agreement (the "Principal Forgiveness Agreement") in connection with the Loan, in which the City agrees to certain conditions with respect to the Loan;

WHEREAS, this City Commission hereby finds and determines that it is a public benefit to and in the best interests of the City and its residents to enter into the Principal Forgiveness Agreement in order to obtain the Loan to fund needed sanitary sewer improvements within the City; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Resolution has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Resolution, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code; Now, Therefore

BE IT RESOLVED BY THE CITY COMMISSION OF CITY OF BRECKENRIDGE, TEXAS THAT:

1. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

2. The Principal Forgiveness Agreement, in substantially the form presented at this meeting, is hereby approved and the Mayor or Mayor Pro-Tem of the City Commission is hereby authorized and directed to execute and deliver the Principal Forgiveness Agreement. The Escrow Agreement relating to the Principal Forgiveness Agreement between the City and the escrow agent named therein (the "Escrow Agent"), substantially in the form and content presented at this meeting, is hereby approved and the Mayor or Mayor Pro-Tem of the City Commission is hereby authorized and directed to execute the Escrow Agreement on behalf of the City. The Escrow Agent named in the Escrow Agreement is hereby appointed as the Escrow Agent pursuant to such Escrow Agreement.

3. The Mayor, Mayor Pro-Tem and City Secretary of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to take such actions and to execute and deliver in the name and on behalf of the City all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution.

4. This Resolution shall become effective immediately upon adoption.

DULY PASSED AND APPROVED by the City Commission of the City of Breckenridge, Texas, on June 7, 2022.

ATTEST

Mayor

City Secretary

### **City of Breckenridge, Texas**

Financing Through the Texas Water Development Board (TWDB)

June 7, 2022

#### **Clean Water State Revolving Fund (CWSRF)**

- > The City received funding commitment on March 8, 2022
  - Commitment expires September 30, 2022
- Commitment totaling \$4,162,420 in funding
  - \$1,020,000 0% Loan
  - \$1,915,000 Loan
  - \$1,227,420 in Principal Forgiveness
  - \$3,413,060 in estimated interest savings compared to a public market issuance

#### Series 2022A CWSRF Financing Terms

#### \$2,935,000 Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022A

#### > \$2,935,000 Combined Loan (CW GC057)

- Closing date: 7/13/2022
- Construction proceeds: \$2,797,521
- Interest Rates: 0.90 2.02%
- True Interest Cost: 1.78%
- First principal payment due (annual): 3/15/2024
- Final payment due: 3/15/2053
- Optional call feature: 3/15/2032 at par



## City of Breckenridge, Texas

Financing Through the Texas Water Development Board (TWDB)

June 7, 2022

	Planned Utility Supported		Certificates of Obligation Series 2022A			Aggregate	
FYE	Debt Service <sup>(1)</sup>	Debt Service	Principal Interest		Debt Service	Debt Service	
2022	\$ 464,139	\$ -	\$ -	\$ -	\$ -	\$ 464,139	
2023	462,360	36,216	-	51,175	51,175	549,752	
2024	464,589	95,656	80,000	43,297	123,297	683,541	
2025	460,816	95,176	85,000	42,537	127,537	683,528	
2026	458,191	99,656	85,000	41,737	126,737	684,583	
2027	459,274	99,096	85,000	40,937	125,937	684,306	
2028	461,355	98,536	85,000	40,137	125,137	685,027	
2029	461,452	97,976	85,000	39,337	124,337	683,764	
2030	458,599	97,403	85,000	38,537	123,537	679,539	
2031	458,482	96,807	90,000	37,686	127,686	682,974	
2032	459,373	96,187	90,000	36,767	126,767	682,327	
2033	464,313	95,529	90,000	35,788	125,788	685,630	
2034	464,135	99,770	90,000	34,732	124,732	688,637	
2035	458,692	98,918	90,000	33,615	123,615	681,225	
2036	459,233	98,030	95,000	32,396	127,396	684,658	
2037	461,821	97,112	95,000	31,079	126,079	685,011	
2038	461,267	96,168	95,000	29,722	124,722	682,157	
2039	459,352	95,200	95,000	28,330	123,330	677,882	
2040	463,256	99,148	100,000	26,846	126,846	689,249	
2041	465,246	98,011	100,000	25,269	125,269	688,526	
2042	458,175	96,853	100,000	23,661	123,661	678,688	
2043	456,855	95,676	105,000	21,963	126,963	679,493	
2044	463,225	99,417	105,000	20,178	125,178	687,819	
2045	350,994	98,074	105,000	18,368	123,368	572,436	
2046	213,870	96,719	110,000	16,476	126,476	437,064	
2047	213,524	90,354	105,000	14,503	119,503	423,381	
2048	213,210	93,910	110,000	12,449	122,449	429,569	
2049	213,490	92,387	110,000	10,313	120,313	426,189	
2050	213,773	90,852	110,000	8,161	118,161	422,786	
2051	213,919	94,239	115,000	5,929	120,929	429,087	
2052	213,030	92,547	115,000	3,617	118,617	424,194	
2053	213,825	95,849	125,000	1,229	126,229	435,902	
2054	213,558	-	-	-	-	213,558	
2055	213,154	-	-	-	-	213,154	
2056	213,629	-	-	-	-	213,629	
2057	213,877					213,877	
	\$ 13,518,049	\$ 2,927,467	\$ 2,935,000	\$ 846,765	\$ 3,781,765	\$ 20,227,282	

(1) The City currently supports all debt service from ad valorem tax. It is the City's intent to adjust utility rates sufficient to support all debt service from utility revenues.





## Commission Meeting Agenda Item Memorandum

**ITEM TYPE** 

MEETING DATE:

Action Item

April 5, 2022

#### PRESENTER:

Erika McComis, City Manager

#### **ITEM DESCRIPTION:**

Discuss and consider adoption of Ordinance 2022-10 authorizing the issuance of City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022B, in the principal amount of \$2,325,000 and awarding the sale of such Certificates of Obligation to the Texas Water Development Board.

#### **BACKGROUND INFORMATION:**

The City has recently been awarded funding through the Texas Water Development Board Drinking Water State Revolving Fund for improvements at the water treatment plant and raw water intake to replace several sections of the water distribution system. The City received \$1,312,809 funds eligible for principal forgiveness (grant) and an amount not to exceed \$1,020,000 funded with an interest rate of zero percent (loan). The remaining amount of \$1,305,000 is to be funded in the form of an equivalency loan at the TWDB program's regular terms.

The next step in the process is to approve the issuance of the certificates of obligation. The resolution before the commission this evening lists an amount not to exceed \$2,325,000. The estimated combined principal and interest required to pay the certificates to be authorized on time and in full is \$2,853,802.88. The first payment due will be interest only and will be in March of 2023.

No

#### **FISCAL IMPACT:**

Not Applicable

Proposed Expenditure:

- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required:

Financial Review Completed by:

#### LEGAL REVIEW:

The City Manager reviewed this item.

#### **ATTACHMENTS:**

Resolution

#### **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Ordinance 2022-10 as presented.

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022B, IN THE PRINCIPAL AMOUNT OF \$2,325,000 AND AWARDING THE SALE OF SUCH CERTIFICATES OF OBLIGATION TO THE TEXAS WATER DEVELOPMENT BOARD

STATE OF TEXAS	§
COUNTY OF STEPHENS	§
CITY OF BRECKENRIDGE	§

WHEREAS, the City Commission of the City of Breckenridge, Texas (the "Issuer") deems it advisable to issue certificates of obligation (the "Certificates of Obligation" or the "Certificates") in the amount of \$2,325,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's water system, including the water treatment plant and raw water intake structure, the replacement and/or rehabilitation of portions of the water distribution system, water lines and related infrastructure improvements and asset management plan; and (ii) paying legal, fiscal and engineering fees in connection with such projects; and

WHEREAS, the Certificates of Obligation hereinafter authorized and designated are to be issued and delivered for cash pursuant to Subchapter C of Chapter 271, Texas Local Government Code, as amended, and Chapter 1502, Government Code, as amended; and

WHEREAS, the City Commission has heretofore passed a resolution authorizing and directing the City Secretary to give notice of intention to issue the Certificates of Obligation; and

WHEREAS, said notice has been duly posted on the Issuer's internet website and duly published in a newspaper of general circulation in the Issuer, said newspaper being a "newspaper" as defined in § 2051.044, Texas Government Code, as amended; and

WHEREAS, the Issuer received no petition from the qualified electors of the Issuer protesting the issuance of such Certificates of Obligation; and

WHEREAS, no bond proposition to authorize the issuance of bonds for the same purpose as any of the projects being financed with the proceeds of the Certificates of Obligation was submitted to the voters of the Issuer during the preceding three years and failed to be approved; and

WHEREAS, it is considered to be to the best interest of the Issuer that said Certificates of Obligation be issued.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE:

Section 1. RECITALS, AMOUNT AND PURPOSE OF THE CERTIFICATES. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. The Certificates of Obligation of the City of Breckenridge,

Texas are hereby authorized to be issued and delivered in the aggregate principal amount of \$2,325,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's water system, including the water treatment plant and raw water intake structure, the replacement and/or rehabilitation of portions of the water distribution system, water lines and related infrastructure improvements and asset management plan; and (ii) paying legal, fiscal and engineering fees in connection with such projects (collectively, the "Project").

DESIGNATION, DATE, DENOMINATIONS, NUMBERS AND Section 2. MATURITIES OF THE CERTIFICATES. Each Certificate of Obligation issued pursuant to this Ordinance shall be designated: "CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022B" and initially there shall be issued, sold and delivered hereunder one fully registered certificate, without interest coupons, dated March 15, 2022, in the aggregate principal amount stated above and in the denominations hereinafter stated, numbered T-1, with certificates issued in replacement thereof being in the denominations and principal amounts hereinafter stated and numbered consecutively from R-1 upward, payable to the respective Registered Owners thereof (with the initial certificate being made payable to the initial purchaser as described in Section 12 hereof), or to the registered assignee or assignees of said certificate or any portion or portions thereof (in each case, the "Registered Owner"). The Certificates of Obligation shall mature on September 15 in the years and in the principal amounts and interest rates set forth below. Interest on each Certificate shall accrue on the basis of a 360-day year consisting of twelve 30-day months from the date of initial delivery or the most recent interest payment date to which interest has been paid or provided for at the per annum rates of interest, payable semiannually on March 15 and September 15 of each year until the principal amount shall have been paid or provision for such payment shall have been made, commencing [March 15, 2023], as follows:

	Principal	Interest		Principal	Interest
Years	Amounts	Rates	Years	Amounts	Rates
2024			2039		
2025			2040		
2026			2041		
2027			2042		
2028			2043		
2029			2044		
2030			2045		
2031			2046		
2032			2047		
2033			2048		
2034			2049		
2035			2050		
2036			2051		
2037			2052		
2038			2053		

CHARACTERISTICS OF THE CERTIFICATES. Section 3. (a) Registration, Transfer, Conversion and Exchange; Authentication. The Issuer shall keep or cause to be kept at the corporate trust office of BOKF, NA, in Dallas, Texas (the "Paying Agent/Registrar"), books or records for the registration of the transfer, conversion and exchange of the Certificates of Obligation (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Registered Owner of each Certificate of Obligation to which payments with respect to the Certificates of Obligation shall be mailed, as herein provided; but it shall be the duty of each Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Certificate or Certificates. Registration of assignments, transfers, conversions and exchanges of Certificates of Obligation shall be made in the manner provided and with the effect stated in the FORM OF CERTIFICATE set forth in this Ordinance. Each substitute Certificate of Obligation shall bear a letter and/or number to distinguish it from each other Certificate.

Except as provided in Section 3(c) of this Ordinance, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate of Obligation, date and manually sign said Certificate, and no such Certificate of Obligation shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates and Certificates surrendered for conversion and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Certificate of Obligation or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificates of Obligation in the manner prescribed herein, and the Certificates of Obligation shall be printed or typed on paper of customary weight and strength. Pursuant to Chapter 1201, Texas Government Code, as amended, the duty of conversion and exchange of Certificates of Obligation as aforesaid is hereby imposed upon the Paying Agent/Registrar and, upon the execution of said Certificate of Obligation, the converted and exchanged Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates of Obligation that initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General and registered by the Texas Comptroller of Public Accounts.

(b) <u>Payment of Certificates and Interest</u>. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Certificates, and of all conversions and exchanges of Certificates, and all replacements of Certificates, as provided in this Ordinance. However, in the event of a nonpayment of interest on

a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the past due interest shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(c) In General. The Certificates (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates to be payable only to the Registered Owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the Issuer at least 35 days prior to any such redemption date), (iii) may be converted and exchanged for other Certificates, (iv) may be transferred and assigned, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Certificates shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the Certificates, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE set forth in this Ordinance. The Certificate initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate issued in conversion of and exchange for any Certificate or Certificates issued under this Ordinance the Agent/Registrar PAYING AGENT/REGISTRAR'S Paying shall execute the AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF CERTIFICATE.

(d) <u>Book-Entry Only System</u>. The Certificates issued in exchange for the Certificate initially issued to the initial purchaser specified herein shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), and except as provided in subsection (f) hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown on the Registration Books, of any notice with respect to the Certificates, or (iii) the payment to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Registration Books as the absolute owner of such Certificate for the purpose of

payment of principal and interest with respect to such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates only to or upon the order of the Registered Owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the Registered Owner at the close of business on the Record Date (hereinafter defined), the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

Successor Securities Depository; Transfers Outside Book-Entry Only System. In (e) the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representations letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate certificated Certificates to DTC Participants having Certificates credited to their DTC accounts; provided that while the Texas Water Development Board (the "Board") is the holder of the Certificates, the DTC services shall not be discontinued by the Issuer until the Issuer has received the written consent thereto of the Board. In such event, the Certificates shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Registered Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

(f) <u>Payments to Cede & Co</u>. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the representations letter of the Issuer to DTC.

(g) <u>Successor Paying Agents</u>. The Issuer covenants with the Registered Owners of the Certificates that at all times while the Certificates are outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution, or other entity having trust powers to act as and perform the services of Paying Agent/Registrar for the Certificates under this Ordinance, and that the Paying Agent/Registrar will be one entity. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 50 days written notice to the Paying Agent/Registrar, to be effective not later than 30 days prior to the next principal payment or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method)

should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Certificates, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(h) <u>Cancellation of Initial Certificates</u>. On the closing date, one initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the purchaser designated in Section 12 or its designee, executed by manual or facsimile signature of the Mayor or the Mayor Pro-tem and City Secretary of the Issuer, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such purchaser or its designee. Upon payment for the initial Certificates, the Paying Agent/Registrar shall cancel the initial Certificate and deliver to the Depository Trust Company on behalf of such purchaser one registered definitive Certificate for each year of maturity of the Certificates, in the aggregate principal amount of all of the Certificates for such maturity.

(i) <u>Conditional Notice of Redemption</u>. With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the Issuer, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Issuer shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

Section 4. FORM OF CERTIFICATES. The form of the Certificates, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance.

NO. R-\_\_\_\_

#### UNITED STATES OF AMERICA STATE OF TEXAS CITY OF BRECKENRIDGE, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022B

Interest RateDated DateMaturity DateCUSIP No.\_\_\_\_%March 15, 2022September 15, 20\_\_\_

#### **REGISTERED OWNER:**

#### PRINCIPAL AMOUNT:

#### DOLLARS

PRINCIPAL

AMOUNT

\$

ON THE MATURITY DATE specified above, the City of Breckenridge, in Stephens County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the date of delivery hereof (which date appears in the Delivery Certificate endorsed on this Certificate) at the Interest Rate per annum specified above. Interest is payable on [March 15, 2023] and semiannually on each September 15 and March 15 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date, such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND ANY INTEREST ON this Certificate are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate shall be paid to the Registered Owner hereof upon presentation and surrender of this Certificate at maturity, or upon the date fixed for its redemption prior to maturity, at the corporate trust office of BOKF, NA in Dallas, Texas, which is the "Paying Agent/Registrar" for this Certificate. The payment of interest on this Certificate shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Certificate (the "Certificate Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered

Owner hereof, at its address as it appeared at the close of business on the last business day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Texas Water Development Board, or such other Registered Owner, requested by, and at the risk and expense of, the Registered Owner; provided, however, that if this Certificate of Obligation is owned by the Texas Water Development Board, principal and interest will be paid by wire transfer or other method acceptable to the Texas Water Development Board, and there will be no charge. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Certificate appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Certificate prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Certificate for redemption and payment at the corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the Registered Owner of this Certificate that on or before each principal payment date, interest payment date, and accrued interest payment date for this Certificate it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Certificate Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates, when due.

IF THE DATE for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS CERTIFICATE is one of a series of Certificates dated as of March 15, 2022, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$2,325,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred in connection with: (i) acquiring, constructing, installing, and equipping additions, improvements, extensions, and equipment for the Issuer's water system, including the water treatment plant and raw water intake structure, the replacement and/or rehabilitation of portions of the water distribution system, water lines and related infrastructure improvements and asset management plan; and (ii) paying legal, fiscal and engineering fees in connection with such projects.

ON MARCH 15, 2032, or on any date thereafter, the Certificates may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the Issuer shall select and designate the maturity or maturities and the amount that is to be redeemed, and if less than a whole maturity is to be called, the Issuer shall direct the Paying Agent/Registrar to call by lot (provided that a portion of

a Certificate may be redeemed only in an integral multiple of \$5,000), at the redemption price of the principal amount thereof, plus accrued interest to the date fixed for redemption.

AT LEAST 30 days prior to the date fixed for any redemption of Certificates or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the Registered Owner of each Certificate to be redeemed at its address as it appeared on the 45th day prior to such redemption date; provided, however, that the failure of the Registered Owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Certificate. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Certificates or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Certificates or portions thereof that are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Issuer shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed. If a portion of any Certificate shall be redeemed, a substitute Certificate or Certificates having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Certificate Ordinance.

ALL CERTIFICATES OF THIS SERIES are issuable solely as fully registered certificates, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Certificate Ordinance, this Certificate may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered certificates, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Certificate to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Certificate Ordinance. Among other requirements for such assignment and transfer, this Certificate must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate or any portion or portions hereof from time to time by the Registered Owner.

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The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Certificate or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Certificate or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Certificates is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Certificate Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Certificates.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Certificate have been performed, existed and been done in accordance with law; that this Certificate is a general obligation of the Issuer, issued on the full faith and credit thereof; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in the Issuer, and have been pledged for such payment, within the limit prescribed by law, and that this Certificate is additionally secured by and payable from a pledge of the revenues of the Issuer's Waterworks and Sewer System (the "System") described below, to wit: the Surplus Revenues of the System, which are the revenues of the System that remain (i) after payment of all operation and maintenance expenses thereof (constituting the "Net Revenues" of the System) and (ii) after payment of all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from the Net Revenues, all as provided in the Certificate Ordinance.

BY BECOMING the Registered Owner of this Certificate, the Registered Owner thereby acknowledges all of the terms and provisions of the Certificate Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Certificate Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Certificate and the Certificate Ordinance constitute a contract between each Registered Owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be signed with the manual or facsimile signature of the Mayor or the Mayor Pro-Tem of the Issuer and countersigned with the manual or facsimile signature of the City Secretary of the Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Certificate.

City Secretary

Mayor

(SEAL)

(b) [Form of Delivery Certificate]

#### DELIVERY CERTIFICATE

This Certificate of Obligation was delivered to and paid for by the Purchaser thereof on

(c) [Form of Paying Agent/Registrar's Authentication Certificate]

#### PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE (To be executed if this Certificate is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Certificate has been issued under the provisions of the Certificate Ordinance described in the text of this Certificate; and that this Certificate has been issued in conversion or replacement of, or in exchange for, a certificate, certificates, or a portion of a certificate or certificates of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: \_\_\_\_\_

BOKF, NA Dallas, Texas Paying Agent/Registrar

By:

Authorized Representative

(d) [Form of Assignment]

#### ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or Taxpayer Identification Number of Transferee

(Please print or typewrite name and address, including zip code, of Transferee.)

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_\_\_\_, attorney, to register the transfer of the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

#### Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program. NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

(e) [Form of Registration Certificate of the Comptroller of Public Accounts]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that there is on file and of record in my office a true and correct copy of the opinion of the Attorney General of the State of Texas approving this Certificate and that this Certificate has been registered this day by me.

Witness my signature and seal this

Comptroller of Public Accounts of the State of Texas

(COMPTROLLER'S SEAL)

(f) [Initial Certificate Insertions]

(i) The initial Certificate shall be in the form set forth is paragraph (a) of this Section, except that:

A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. \_\_\_\_\_" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE CITY OF BRECKENRIDGE, TEXAS, in Stephens County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on September 15 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

Years Principal Amounts Interest Rates
(Information from Section 2 to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the date of delivery hereof

(which date appears in the Delivery Certificate endorsed on this Certificate) at the respective Interest Rate per annum specified above. Interest is payable on [March 15, 2023] and semiannually on each September 15 and March 15 thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest for the interest on the Certificate or Certificates for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full."

C. The Initial Certificate shall be numbered "T-1".

Section 5. INTEREST AND SINKING FUND. A special "Interest and Sinking Fund" has been created and shall be established and maintained by the Issuer at an official depository bank of the Issuer. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the Issuer, and shall be used only for paying the interest on and principal of the Certificates. All amounts received from the sale of the Certificates as accrued interest shall be deposited upon receipt to the Interest and Sinking Fund, and all ad valorem taxes levied and collected for and on account of the Certificates shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of the Certificates are outstanding and unpaid, the governing body of the Issuer shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on the Certificates as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Certificates as such principal matures (but never less than 2% of the original amount of the Certificates as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Issuer, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the Issuer, for each year while any of the Certificates are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Certificates, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

Section 6. PLEDGE OF SURPLUS REVENUES. (a) The Certificates, together with other obligations of the Issuer, are additionally secured by a pledge of the revenues of the Issuer's Waterworks and Sewer System (the "System") that remain (i) after payment of all operation and maintenance expenses of the System (constituting the "Net Revenues" of the System) and (ii) after payment of all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from the Net Revenues (such revenues, constituting the "Surplus Revenues" of the System). The Surplus Revenues are hereby pledged to secure the payment of the Certificates. The Issuer shall maintain sufficient rates and charges for the payment of System operations and, if Surplus Revenues are used in lieu of ad valorem taxes for the payment of the debt service requirements of System debt, such rates and

charges shall produce sufficient Surplus Revenues therefor. If Surplus Revenues are required for the payment of debt service on the Certificates, the Issuer shall deposit Surplus Revenues to the credit of the Interest and Sinking Fund created pursuant to Section 5, to the extent necessary to pay the principal and interest on the Certificates.

(b) Notwithstanding the requirements of Section 5, if Surplus Revenues or other lawfully available funds of the Issuer are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied pursuant to Section 5 may be reduced to the extent and by the amount of the revenues then on deposit in the Interest and Sinking Fund.

(c) Notwithstanding the requirements of Section 5 and Section 6(b), if Surplus Revenues and/or other lawfully available funds of the Issuer are not on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, but there are budgeted for collection revenues ("Budgeted Revenues") in sufficient amounts to pay the principal and interest coming due on the Certificates in any year, then, subject to the requirements set forth below, the amount of taxes which otherwise would have been required to be levied pursuant to Section 5 may be reduced to the extent and by the amount of the Budgeted Revenues. In the event that Budgeted Revenues are to be used to pay principal and interest coming due on the Certificates in any year, the Issuer:

- (i) shall transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Certificates until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Certificates; further, the Issuer shall not transfer any funds from the Issuer's Waterworks and Sewer System Fund to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Certificates for the then current fiscal year has been deposited in the Interest and Sinking Fund; and, provided further that transfers may be made from the Waterworks and Sewer System Fund to an interest and sinking fund, debt service reserve fund, contingency fund or other fund or account established for the benefit of any revenue obligations of the Issuer that are secured by a pledge of the Net Revenues (which transfers shall be made in accordance with the provisions of the Ordinance pursuant to which such obligations were issued or incurred) and to any other interest and sinking fund established for the benefit of any revenue obligations of the Issuer that are secured by a pledge of the Surplus Revenues (and any such transfers shall be made on a pro rata basis as the transfers made for the benefit of the Certificates):
- (ii) shall establish, adopt and maintain an annual budget that provides for either the monthly deposit of sufficient Surplus Revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Certificates; and
- (iii) shall at all times maintain and collect sufficient System rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the System, produce revenues in an amount not less

than 1.10 times debt service requirements of all outstanding System revenue obligations of the Issuer and other obligations of the Issuer which are secured in whole or in part by a pledge of revenues of the System, for which the Issuer is budgeting the repayment of such obligations from the revenues of the System, or the Issuer shall prepare and provide documentation to any holder of a Certificate who requests same, which evidences the levy of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds except System rates and charges, sufficient for the repayment of System debt service requirements.

Section 7. DEFEASANCE OF CERTIFICATES. (A) Any Certificate of Obligation and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Certificate") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Certificate, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates shall have become due and payable. At such time as a Certificate of Obligation shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate of Obligation and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged or the pledge of the Surplus Revenues as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates that is made in conjunction with the payment arrangements specified in subsection 7(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates of Obligation and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 7(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) The term "Defeasance Securities" means any securities and obligations now or hereafter authorized by Texas law that are eligible to discharge obligations such as the Certificates.

(d) Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) In the event that the Issuer elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

(f) In the event that the Issuer establishes a defeasance escrow for the Certificates in accordance with Section 7, written notice thereof shall be promptly given to the Texas Water Development Board.

Section 8. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES. (a) <u>Replacement Certificates</u>. In the event any outstanding Certificate is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new certificate of the same principal amount, maturity and interest rate, as the damaged, mutilated, lost, stolen or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

(b) <u>Application for Replacement Certificates</u>. Application for replacement of damaged, mutilated, lost, stolen or destroyed Certificates shall be made by the Registered Owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Certificate, the Registered Owner applying for a replacement certificate shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Certificate, the Registered Owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the Registered Owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.

(c) <u>No Default Occurred</u>. Notwithstanding the foregoing provisions of this Section, in the event any such Certificate shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement Certificate, provided security or indemnity is furnished as above provided in this Section.

(d) <u>Charge for Issuing Replacement Certificates</u>. Prior to the issuance of any replacement certificate, the Paying Agent/Registrar shall charge the Registered Owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every

replacement certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.

(e) <u>Authority for Issuing Replacement Certificates</u>. In accordance with Chapter 1201, Texas Government Code, as amended, this Section 8 of this Ordinance shall constitute authority for the issuance of any such replacement certificate without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 3(a) of this Ordinance for Certificates issued in conversion and exchange for other Certificates.

Section 9. CUSTODY, APPROVAL AND REGISTRATION OF CERTIFICATES; BOND COUNSEL'S OPINION; CUSIP NUMBERS; AND CONTINGENT INSURANCE PROVISION, IF OBTAINED. The Mayor (or in the Mayor's absence, the Mayor Pro-Tem) of the Issuer is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Certificates issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the Registered Owners of the Certificates. In addition, if bond insurance is obtained, the Certificates may bear an appropriate legend as provided by the insurer. The officers, employees and agents of the Issuer, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments, agreements and other papers, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this Ordinance. In the absence of the Mayor, the Mayor Pro-tem is directed to sign as Mayor on behalf of the Issuer.

Section 10. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE CERTIFICATES. The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Certificates as obligations described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Certificates (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the

projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds 5 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action that would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Certificates, other than investment property acquired with –

(1) proceeds of the Certificates invested for a reasonable temporary period of 3 years or, in the case of refunding bonds, for a period of 90 days or less, until such proceeds are needed for the purpose for which the Certificates or refunding bonds are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the rules and regulations of the United States Department of the Treasury (the "Treasury Regulations"), and

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;

(g) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(h) to refrain from using the proceeds of the Certificates or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Certificates in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);

(i) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent

of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code;

(j) to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the applicable Treasury Regulations promulgated thereunder;

(k) the Issuer will not acquire any of the Texas Water Development Board's source series bonds in an amount related to the amount of Certificates acquired by the Texas Water Development Board;

(1) In order to facilitate compliance with the above covenant (i), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the certificateholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code;

For purposes of the foregoing (a) and (b), the Issuer understands that the term (m)"proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Certificates. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the United States Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the Certificates, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Certificates, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor, the Mayor Pro-tem, City Manager and City Secretary to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates; and

(n) This Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

Section 11. METHOD OF AMENDMENT. The Issuer hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The Issuer may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i)

cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (iv) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (v) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the holders of Certificates aggregating in principal amount 51% of the aggregate principal amount of then outstanding Certificates that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the Issuer; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Certificates, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Certificates so as to:

(1) Make any change in the maturity of any of the outstanding Certificates;

(2) Reduce the rate of interest borne by any of the outstanding Certificates;

(3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Certificates;

(4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Certificates or any of them or impose any condition with respect to such payment; or

(5) Change the minimum percentage of the principal amount of the Certificates necessary for consent to such amendment.

(c) If at any time the Issuer shall desire to amend this Ordinance under this Section, the Issuer shall send by U.S. mail to each Registered Owner of the affected Certificates a copy of the proposed amendment and cause notice of the proposed amendment to be published at least once in a financial publication published in the City of New York, New York or in the State of Texas. Such published notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the office of the Issuer for inspection by all holders of such Certificates.

(d) Whenever at any time within one year from the date of publication of such notice the Issuer shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Certificates then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the Issuer may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such

amendatory Ordinance, and the respective rights, duties, and obligations of the Issuer and all holders of such affected Certificates shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Certificate pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the publication of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Certificate during such period. Such consent may be revoked at any time after six months from the date of the publication of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the Issuer, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Certificates then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

For the purposes of establishing ownership of the Certificates, the Issuer shall rely solely upon the registration of the ownership of such Certificates on the registration books kept by the Paying Agent/Registrar.

(g) Notwithstanding any provision of this Section 11, there shall be no modification of this Ordinance without the written consent of the Texas Water Development Board (while it is a Registered Owner of the Certificates).

Section 12. SALE OF CERTIFICATES OF OBLIGATION. The Certificates of Obligation are hereby sold and shall be delivered to the Texas Water Development Board for cash for the principal amount thereof. In accordance with its Resolution No. 22-016, the Texas Water Development Board will purchase the Certificates, with an amount approved by the Texas Water Development Board to be deposited to the Construction Fund authorized by Section 13 hereof (the "Construction Fund") upon initial delivery of the Certificates, and the balance of the proceeds to be deposited to the Escrow Account authorized by Section 24 hereof until authorized for transfer to the Construction Fund by the Texas Water Development Board.

Section 13. CONSTRUCTION FUND. There shall be established by the Issuer a separate fund to be designated the "Series 2022B CO Construction Fund" (the "Construction Fund") to be held by the Issuer's depository bank, and upon the delivery of the purchase price for the Certificates, the proceeds from the sale of the Certificates shall be deposited into the Construction Fund. The costs of issuance of the Certificates, which include legal, fiscal and engineering fees, may be paid from the Construction Fund. The cost of the construction of the Construction of the Project will be paid from this Construction Fund upon direction of the City Commission of the Issuer. All interest and profits from investments made with moneys in the Construction Fund shall remain on deposit in the Construction Fund as a part thereof. After completion of the payment of all costs of the Project, any residue remaining in the Construction Fund shall be applied in accordance with Section 15 hereof.

Section 14. INVESTMENTS; COLLATERALIZATION OF PROCEEDS. Proceeds of the Certificates shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Chapter 2256, Texas Government Code (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Texas Government Code, (the "PFCA"). Money in any fund established pursuant to this Ordinance may, at the option of the Issuer, be invested in eligible investments described in the PFIA,

consistent with the investment policy of the Issuer, as approved by the City Commission of the Issuer. All investments shall be made in such manner as will, in the opinion of the Issuer, permit the money required to be expended from any fund to be available at the proper time or times as expected to be needed. Any uninvested, uninsured proceeds of the Certificates shall be subject to the PFCA.

Section 15. SURPLUS PROCEEDS. Notwithstanding any other provision of this Ordinance or the Certificates restricting early redemption of the Certificates, the Issuer shall use any surplus proceeds from the Certificates that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Texas Water Development Board's ("TWDB") Executive Administrator (the "Executive Administrator"), including without limitation to redeem, on any date, the Certificates owned by the TWDB, at a price of par plus accrued interest to the date fixed for redemption.

Section 16. EFFECTIVE DATE. In accordance with the provisions of Texas Government Code, Section 1201.028, this Ordinance shall be effective immediately upon its adoption by the City Commission of the Issuer.

Section 17. COMPLIANCE WITH THE TEXAS WATER DEVELOPMENT BOARD'S RULES AND REGULATIONS. The provisions of this Section shall apply so long as the Certificates, or any of them, are owned by the Texas Water Development Board. The Issuer hereby agrees to comply with all conditions set forth in TWDB Resolution No. 22-016, which conditions are incorporated herein.

(a) <u>Annual Audit Reporting</u>. The Issuer shall provide the Texas Water Development Board with an annual report prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, to be submitted without charge within 180 days of the close of each fiscal year.

(b) <u>Covenant to Abide with Rules</u>. The Issuer will abide with all applicable laws of the State of Texas and Rules of the Texas Water Development Board relating to the loan of funds evidenced by the Certificates and the Project for which the Certificates are issued, sold and delivered.

(c) <u>Water Conservation Program</u>. The Issuer agrees and covenants that it will implement an approved water conservation program in accordance with 31 TAC § 371.71.

(d) <u>Records and Accounts</u>. The Issuer agrees and covenants that it will maintain current, accurate and complete records and accounts regarding the System in accordance with 31 TAC § 371.71.

(e) <u>Environmental Determinations</u>. The Issuer agrees and covenants that it will comply with any special conditions of the environmental determination of the Executive Administrator in accordance with 31 TAC § 371.71.

(f) <u>Prohibition on Use of Proceeds</u>. The Issuer covenants and agrees that none of the proceeds of the Certificates will be expended on costs incurred or to be incurred relating to the

sampling, testing, removing or disposing of potentially contaminated soils and/or media at the project site.

(g) <u>Indemnification</u>. The Issuer further agrees, to the extent permitted by law, to indemnify, hold harmless and protect the Texas Water Development Board from any and all claims or causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, removal and off-site disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Issuer, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project.

(h) <u>Conveyance of Obligations</u>. Prior to any action by the Issuer to convey its obligations under the Certificates to another entity, if permitted by law, the conveyance and the assumption of such obligations must be approved by the Texas Water Development Board. The Issuer shall notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such a sale-transfer-merger with another retail public utility.

(i) <u>Davis-Bacon Act Compliance</u>. All laborers and mechanics employed by contractors and subcontractors for the Project who are paid from proceeds of the Certificates on deposit in the Construction Fund shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality of the Issuer in accordance with the federal Davis-Bacon Act and the U.S. Department of Labor's implementing regulations pertaining thereto.

(j) <u>Federal Funding Accountability and Transparency Act</u>. The Issuer shall provide the Texas Water Development Board with all information required by the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282.

(k) <u>DUNS Number and CAGE Code</u>. The Issuer shall obtain a Data Information Numbering System (DUNS) Number and shall register with the System for Award Management to obtain a Commercial and Government Entity (CAGE) Code, and maintain current registration at all times during which the Certificates are outstanding.

(1) <u>Timely Expenditures</u>. All proceeds of the Certificates will be timely and expeditiously used, as required by applicable federal statutes and U.S. Environmental Protection Agency regulations, and the Issuer shall adhere to a project construction schedule acceptable to the Executive Administrator that facilitates timely use of funds and project completion.

(m) <u>As-Built Plans</u>. The Issuer shall provide to the Texas Water Development Board a full and complete set of "as-built" plans relating to the Project, promptly upon completion of the Project.

(n) <u>Final Accounting</u>. The Issuer shall render a final accounting of the cost of the Project to the Texas Water Development Board within 60 days of the completion of the Project. If the total cost of the Project, as finally completed, is less than originally estimated, so that the proper share of the participation by the Texas Water Development Board in the Project is reduced, such surplus proceeds shall be used in accordance with Section 15 hereof.

(o) <u>Insurance</u>. Insurance coverage be obtained and maintained by the Issuer in an amount sufficient to protect the interest of the Texas Water Development Board in the Project.

(p) <u>Remedies</u>. The TWDB may exercise all remedies available to it in law or equity, and any provision of the Certificates or this Ordinance that restricts or limits the TWDB's full exercise of such remedies shall be of no force and effect.

(q) <u>American Iron and Steel Requirements</u>. The Issuer will abide by all applicable construction contract requirements related to the use of iron and steel products in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines.

(r) <u>Covenant Regarding Taxes and System Rates</u>. The Issuer hereby agrees that, for so long as the Certificates are outstanding, to levy a tax and/or maintain and collect sufficient rates and charges to produce System revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Certificates.

(s) <u>Outlay Reports</u>. The Issuer shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines.

Section 18. ALLOCATION OF CERTIFICATE PROCEEDS. The Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the construction and acquisition of the Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the Issuer shall not expend proceeds of the sale of the Certificates or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates, or (2) the date the Certificates are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of the Certificates or the interest thereon. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest on the Certificates, if any.

Section 19. DISPOSITION OF PROJECT. The Issuer covenants that the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax proposes from gross income of the interest on the Certificates, if any.

Section 20. INTEREST EARNINGS ON CERTIFICATE PROCEEDS. Interest earnings derived from the investment of proceeds from the sale of the Certificates shall be used along with other Certificate proceeds for the Project; provided that after completion of such purpose, if any of such interest earnings remain on hand, such interest earnings shall be used as directed in Section 15. It is further provided, however, that any interest earnings on Certificate proceeds that are required to be rebated to the United States of America pursuant to Section 10 hereof in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

Section 21. COMPLIANCE WITH RULE 15c2-12. (a) <u>Definitions</u>. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board or any successor to its functions under the Rule.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) <u>Annual Reports</u>.

The Issuer shall provide annually to the MSRB, within twelve months after the end of each fiscal year ending in or after 2022, financial information and operating data with respect to the Issuer to the extent that such information is customarily prepared by the Issuer and is publicly available. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in the notes to the financial statements filed with the Texas Water Development Board as part of the Issuer's application to the Texas Water Development Board, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the Issuer shall provide audited financial information that is available to the Issuer by the required time and will provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available. Such information shall be transmitted electronically to the MSRB, in such format and accompanied by such identifying information as prescribed by the MSRB.

If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC. (c) <u>Notice of Certain Events</u>. (i) The Issuer shall file notice of any of the following events with respect to the Certificates with the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the Issuer;
- (13) The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

For these purposes, (i) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer., and (ii) the Issuer intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same

meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The Issuer shall file notice with the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with Subsection (b) of this Section by the time required by such Subsection.

(d) <u>Limitations, Disclaimers, and Amendments</u>. (i) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the Issuer in any event will give the notice required by Subsection (a) hereof of any Certificate calls and defeasance that cause the Issuer to no longer be such an "obligated person".

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

(iii) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

(v) The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (b) a person that is
unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Certificates. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates.

Section 22. PUBLIC NOTICE. It is hereby officially found and determined that public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code, and that no petition was received from the qualified electors of the Issuer protesting the issuance of the Certificates.

Section 23. ESCROW AGREEMENT. The Mayor (or in the Mayor's absence, the Mayor Pro-Tem) is hereby authorized and directed to execute and deliver an Escrow Agreement substantially in the form attached hereto as <u>Exhibit A</u>, with such changes as may be approved by the Mayor (or in the Mayor's absence, the Mayor Pro-Tem), such approval to be evidenced by his execution thereof.

Section 24. ESCROW ACCOUNT. An escrow account is hereby authorized to be created pursuant to the Escrow Agreement referred to in Section 23. Proceeds of the Certificates shall be deposited to the escrow account and disbursed to the Construction Fund created pursuant to Section 13 upon the authorized release of moneys from the escrow account in accordance with the Escrow Agreement.

Section 25. EVENTS OF DEFAULT. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an event of default (an "Event of Default"):

(i) the failure to make payment of the principal of or interest on any of the Certificates when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the Issuer, the failure to perform which materially, adversely affects the rights of the Registered Owners, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the Issuer.

Section 26. REMEDIES FOR DEFAULT. (a) Upon the happening of any Event of Default, then and in every case, any Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Issuer for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement

contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

Section 27. REMEDIES NOT EXCLUSIVE. (a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(c) By accepting the delivery of a Certificate authorized under this Ordinance, such Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Issuer or the City Commission.

Section 28. SEVERABILITY. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 29. APPROPRIATION. To pay the debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, if any, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount, which together with capitalized interest received from the sale of the Certificates, if any, will be sufficient to pay such debt service, and such amount shall be used for no other purpose.

## EXHIBIT A

## FORM OF ESCROW AGREEMENT

[See attached]

# RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF A PRINCIPAL FORGIVENESS AGREEMENT FOR WATER SYSTEM IMPROVEMENTS; AND RESOLVING OTHER MATTERS RELATING TO THE SUBJECT

THE STATE OF TEXAS	§
COUNTY OF STEPHENS	§
CITY OF BRECKENRIDGE	§

WHEREAS, the City of Breckenridge, Texas (the "City") has received approval from the Texas Water Development Board ("TWDB") for financial assistance from TWDB to the City in the amount of \$3,637,809 (the "Loan"), consisting of the City's Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022B, in the amount of \$2,325,000, and Principal Forgiveness in the amount of \$1,312,809;

WHEREAS, TWDB has presented to the City a Principal Forgiveness Agreement (the "Principal Forgiveness Agreement") in connection with the Loan, in which the City agrees to certain conditions with respect to the Loan;

WHEREAS, this City Commission hereby finds and determines that it is a public benefit to and in the best interests of the City and its residents to enter into the Principal Forgiveness Agreement in order to obtain the Loan to fund needed sanitary sewer improvements within the City; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Resolution has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Resolution, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code; Now, Therefore

BE IT RESOLVED BY THE CITY COMMISSION OF CITY OF BRECKENRIDGE, TEXAS THAT:

1. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

2. The Principal Forgiveness Agreement, in substantially the form presented at this meeting, is hereby approved and the Mayor or Mayor Pro-Tem of the City Commission is hereby authorized and directed to execute and deliver the Principal Forgiveness Agreement. The Escrow Agreement relating to the Principal Forgiveness Agreement between the City and the escrow agent named therein (the "Escrow Agent"), substantially in the form and content presented at this meeting, is hereby approved and the Mayor or Mayor Pro-Tem of the City Commission is hereby authorized and directed to execute the Escrow Agreement on behalf of the City. The Escrow Agent named in the Escrow Agreement is hereby appointed as the Escrow Agent pursuant to such Escrow Agreement.

3. The Mayor, Mayor Pro-Tem and City Secretary of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to take such actions and to execute and deliver in the name and on behalf of the City all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution.

4. This Resolution shall become effective immediately upon adoption.

DULY PASSED AND APPROVED by the City Commission of the City of Breckenridge, Texas, on June 7, 2022.

ATTEST

Mayor

City Secretary

Resolution Approving the Execution and Delivery of a Principal Forgiveness Agreement – Drinking Water State Revolving Fund Between the Texas Water Development Board and the City of Breckenridge, Texas

## **City of Breckenridge, Texas**

Financing Through the Texas Water Development Board (TWDB)

June 7, 2022

### Drinking Water State Revolving Fund (DWSRF)

- > The City received funding commitment on March 8, 2022
  - Commitment expires September 30, 2022
- Commitment totaling \$3,637,809 in funding
  - \$1,020,000 0% Loan
  - \$1,305,000 Loan
  - \$1,312,809 in Principal Forgiveness
  - \$3,336,835 in estimated interest savings compared to a public market issuance

## Series 2022B DWSRF Financing Terms

## \$2,325,000 Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022B

## > \$2,325,000 Combined Loan (DW GC056)

- Closing date: 7/13/2022
- Construction proceeds: \$2,187,412
- Interest Rates: 0.74 1.89%
- True Interest Cost: 1.64%
- First principal payment due (annual): 3/15/2024
- Final payment due: 3/15/2053
- Optional call feature: 3/15/2032 at par



## City of Breckenridge, Texas

Financing Through the Texas Water Development Board (TWDB)

June 7, 2022

	Planned Utility Supported	CWSRF Series 2022A	Certifica	ates of Obligation Seri	ies 2022B	Aggregate
FYE	Debt Service <sup>(1)</sup>	Debt Service		Principal Interest Debt Service		
2022	\$ 464,139	\$ -	\$ -	\$ -	\$ -	Debt Service \$ 464,139
2023	462,360	51,175	-	36,216	36,216	549,752
2024	464,589	123,297	65,000	30,656	95,656	683,541
2025	460,816	127,537	65,000	30,176	95,176	683,528
2026	458,191	126,737	70,000	29,656	99,656	684,583
2027	459,274	125,937	70,000	29,096	99,096	684,306
2028	461,355	125,137	70,000	28,536	98,536	685,027
2029	461,452	124,337	70,000	27,976	97,976	683,764
2030	458,599	123,537	70,000	27,403	97,403	679,539
2031	458,482	127,686	70,000	26,807	96,807	682,974
2032	459,373	126,767	70,000	26,187	96,187	682,327
2033	464,313	125,788	70,000	25,529	95,529	685,630
2034	464,135	124,732	75,000	24,770	99,770	688,637
2035	458,692	123,615	75,000	23,918	98,918	681,225
2036	459,233	127,396	75,000	23,030	98,030	684,658
2037	461,821	126,079	75,000	22,112	97,112	685,011
2038	461,267	124,722	75,000	21,168	96,168	682,157
2039	459,352	123,330	75,000	20,200	95,200	677,882
2040	463,256	126,846	80,000	19,148	99,148	689,249
2041	465,246	125,269	80,000	18,011	98,011	688,526
2042	458,175	123,661	80,000	16,853	96,853	678,688
2043	456,855	126,963	80,000	15,676	95,676	679,493
2044	463,225	125,178	85,000	14,417	99,417	687,819
2045	350,994	123,368	85,000	13,074	98,074	572,436
2046	213,870	126,476	85,000	11,719	96,719	437,064
2047	213,524	119,503	80,000	10,354	90,354	423,381
2048	213,210	122,449	85,000	8,910	93,910	429,569
2049	213,490	120,313	85,000	7,387	92,387	426,189
2050	213,773	118,161	85,000	5,852	90,852	422,786
2051	213,919	120,929	90,000	4,239	94,239	429,087
2052	213,030	118,617	90,000	2,547	92,547	424,194
2053	213,825	126,229	95,000	849	95,849	435,902
2054	213,558	-	-	-	-	213,558
2055	213,154	-	-	-	-	213,154
2056	213,629	-	-	-	-	213,629
2057	213,877					213,877
	\$ 13,518,049	\$ 3,781,765	\$ 2,325,000	\$ 602,467	\$ 2,927,467	\$ 20,227,282

(1) The City currently supports all debt service from ad valorem tax. It is the City's intent to adjust utility rates sufficient to support all debt service from utility revenues.



#### RESOLUTION AUTHORIZING AND DIRECTING ESTABLISHMENT OF FOUR CONSTRUCTION ACCOUNTS AND A SINKING FUND WITH DEPOSITORY BANK PURSUANT TO BOND ORDINANCES AND PRINCIPAL FORGIVENESS AGREEMENTS WITH THE TEXAS WATER DEVELOPMENT BOARD; APPOINTING AUTHORIZED SIGNATORIES WITH RESPECT TO SUCH ACCOUNTS: AND RESOLVING OTHER MATTERS RELATING TO THE SUBJECT

THE STATE OF TEXAS	§
COUNTY OF STEPHENS	§
CITY OF BRECKENRIDGE	§

WHEREAS, the City of Breckenridge, Texas (the "City") has authorized notice of its intention to adopt two ordinances (the "Bond Ordinances") authorizing the issuance of \$2,935,000 City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022A and \$2,325,000 City of Breckenridge, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022B (collectively, the "Bonds") to the Texas Water Development Board ("TWDB") for loans in the amounts of \$2,935,000 and \$2,325,000 (the "Loans"), and as required by the terms of said Loans, the City will enter into that certain Principal Forgiveness Agreement – Clean Water State Revolving Fund with the TWDB for a grant in the amount of \$1,227,420 and that certain Principal Forgiveness Agreement – Drinking Water State Revolving Fund with the TWDB for a grant in the amount of \$1,312,809 (collectively, the "Grant Agreements", and together with the Bond Ordinances, the "Agreements");

WHEREAS, in each of the Agreements, the City has agreed to maintain at its depository bank, being First National Bank – Albany/Breckenridge (the "Bank"), an account separate from all other funds and accounts to be known as the "Series 2022A CO Construction Fund", "Series 2022B CO Construction Fund" and two "Construction Accounts", respectively (collectively, the "Construction Accounts");

WHEREAS, in each Bond Ordinance, the City will covenant to at all times maintain a special "Sinking Fund" at an official depository bank of the City, to be kept separate and apart from all other funds and accounts of the City;

WHEREAS, this City Commission hereby finds and determines that it is a public benefit to and in the best interests of the City and its residents to open at the Bank a Series 2022A CO Construction Fund and a Series 2022B CO Construction Fund as required by the Bond Ordinances, and two Construction Accounts, as required by the Grant Agreements, respectively, to open a Sinking Fund, and to authorize signatories with respect to such accounts; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Resolution has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Resolution, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code; Now, Therefore

#### BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE:

1. That five new accounts be established at the Bank, which shall be designated as "City of Breckenridge Series 2022A CO Construction Fund", "City of Breckenridge Series 2022B CO Construction Fund", "City of Breckenridge, Texas, Principal Forgiveness Agreement, Texas Water Development Board Commitment LF1001492 Construction Account", "City of Breckenridge, Texas, Principal Forgiveness Agreement, Texas Water Development Board Commitment LF1001495 Construction Account", and "City of Breckenridge Sinking Fund", respectively (collectively, the "Bank Accounts").

2. That any account opening documentation as required from time to time be executed by the signatories designated hereunder (the "Authorized Signatories"), binding the City to the terms and

conditions governing the Bank Accounts.

3. That instructions relating to banking transactions may be given electronically or by fax to the Bank for execution and to this end any electronic or facsimile indemnity letter authorizing the Bank to act upon such instructions may be signed by the Authorized Signatories.

4. That the following officers and directors are hereby appointed as Authorized Signatories with respect to the Bank Accounts: any two of the following officials, acting jointly:

- a.) Mayor
- b.) Finance Director
- c.) City Manager
- d.) Assistant City Secretary

5. That the Authorized Signatories are hereby authorized to enter into, make, sign, execute, perform and do all such acts, consents, signature cards and other agreements necessary in connection with establishment of the Bank Accounts at the Bank.

DULY PASSED AND APPROVED by the City Commission of the City of Breckenridge, Texas on June 7, 2022.

Mayor City of Breckenridge, Texas

ATTEST:

City Secretary, City of Breckenridge, Texas

#### RESOLUTION 2022-22

A RESOLUTION OF THE CITY COMMISSION OF BRECKENRIDGE, TEXAS, AUTHORIZING THE SUBMISSION OF A TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE <u>DOWNTOWN</u> <u>REVITALIZATION PROGRAM FUND</u>; AND AUTHORIZING <u>THE MAYOR</u> AND THE <u>CITY</u> <u>MANAGER</u> TO ACT AS THE CITY'S EXECUTIVE OFFICERS AND AUTHORIZED REPRESENTATIVES IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

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

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

WHEREAS, it is necessary and in the best interests of the City of BRECKENRIDGE to apply for funding under the Texas Community Development Block Grant Program;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF BRECKENRIDGE, TEXAS:

- 1. That a Texas Community Development Block Grant Program application for the Downtown Revitalization Program Fund is hereby authorized to be filed on behalf of the City with the Texas Department of Agriculture.
- 2. That the City's application be placed in competition for funding under the Downtown Revitalization Program Fund.
- 3. That the application be for \$500,000 of grant funds to provide sidewalk, lighting and accessibility and pavement improvements in the City's downtown area.
- 4. That the City Commission directs and designates the following to act in all matters in connection with this application and the City's participation in the Texas Community Development Block Grant Program:
  - The Mayor and City Manager shall serve as the City's Chief Executive Officers and Authorized Representatives to execute this application and any subsequent contractual documents;
  - The Mayor and City Manager are authorized to execute environmental review documents between the Texas Department of Agriculture and the City; and
  - If this application is funded, the Mayor, Mayor Pro-Tem, City Manager and City Secretary are authorized to execute the Request for Payment Form documents and/or other forms required for requesting funds to reimburse project costs.

- 5. That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.
- 6. That it further be stated that the City of BRECKENRIDGE is committing \$75,000 from its <u>General Fund</u> as a cash contribution toward this project.

Passed and approved this \_\_\_\_\_day of \_\_\_\_\_, 2022.

ATTEST:

Bob Sims, Mayor

Jessica Sutter, City Secretary



# Commission Meeting Agenda Item Memorandum

ITEM TYPE

MEETING DATE:

Action Item

June 7, 2022

## PRESENTER:

Erika McComis, City Manager

## **ITEM DESCRIPTION:**

Discuss and consider approval of Resolution 2022-22 authorizing the submission of an application to the Texas Community Development Block Grant Program-2022 Downtown Revitalization Program and authorizing the Mayor and City Manager as authorized representatives.

Discuss and consider approval of Resolution 2022-23 determining that an area of the downtown contains conditions that are detrimental to the community and constitute a slum and blighted area for the 2022 Downtown Revitalization Program grant application.

## **BACKGROUND INFORMATION:**

The City will be applying to the 2021 Texas Community Development Block Grant Program Downtown Revitalization Grant Program. The grant program will fund a project between \$250,000 and \$500,000 with at least 50% of the project being focused on sidewalks in a downtown area to be determined during the planning phase. Staff has determined it would be in the best interest of the City to utilize the grant to construct sidewalks and crosswalks in the area surrounding city hall. Staff welcomes input and suggestions from the Commission on this project.

## FISCAL IMPACT:

- Not Applicable
- Proposed Expenditure:
- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required: No
- Financial Review Completed by:

Item 13.

## LEGAL REVIEW:

Not applicable.

#### **ATTACHMENTS:**

Enprotech / Hibbs & Todd, Inc. SOQ Jacob & Martin SOQ

#### **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Resolution 2022-22 authorizing the submission of an application to the Texas Community Development Block Grant Program-2022 Downtown Revitalization Program.

Move to approve the area as discussed for the submission of the 2022 Downtown Revitalization Program grant application.

#### **RESOLUTION 2022-23**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS, DETERMINING THAT AN AREA OF THE CITY CONTAINS CONDITIONS WHICH ARE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY AND CONSTITUTES A SLUM AND BLIGHTED AREA.

WHEREAS, the City Commission of the City of Breckenridge has reviewed and evaluated conditions in the Downtown District (Designated Area) of the municipality; and

WHEREAS, The City Commission has found conditions which are detrimental to the public health, safety, and welfare of the community within the Downtown District, as follows:

Vacant and deteriorated buildings, cracked sidewalks, inadequate and deteriorated infrastructure, non-ADA compliant access and inadequate lighting. These features present a threat to public health and safety.

WHEREAS, the City Commission of the City of Breckenridge has authorized an application for funding under the Downtown Revitalization Program, as follows:

Install sidewalks and integrated curbing, curb cuts, ADA access improvements, pavement repair, lighting, and associated appurtenances within the Downtown District.

WHEREAS, these project activities will aid in the elimination of slum and blight in the community by: Reconstructing and installing new sidewalks and ADA access and installing safe lighting for pedestrians. This will increase public use and reduce the existing threat to public health and safety.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT THE AREA IDENTIFIED BY THE FOLLOWING BOUNDARIES AND OUTLINED ON THE MAP ATTACHED HERETO HAS BEEN DETERMINED TO BE A SLUM/BLIGHTED AREA.

#### **Boundaries**

North: W. Dyer South: W. Walker St. (U.S. 180) East: N. McAmis St. West: N. Court St.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

Bob Sims, Mayor

Jessica Sutter, City Secretary

## City of Breckenridge S/B Area Map



 $\star$ National Register Properties Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Item 14.



# Commission Meeting Agenda Item Memorandum

## **ITEM TYPE**

MEETING DATE:

Action Item June 7, 2022

## PRESENTER:

Erika McComis, City Manager Houston Satterwhite, Public Works Director Sage Diller, City Engineer

## **ITEM DESCRIPTION:**

Discuss and consider awarding a bid for the rehabilitation of the existing prison lift station and authorize the Mayor to execute all necessary documents on behalf of the City.

## **BACKGROUND INFORMATION:**

The lift station in question currently provides service to the Walker Sayle Prison and was brought online in 1994. The building is a 28-year-old structure made of fiberglass panels and has a temporary roof due to the original roof collapsing a few years ago. The suction pipes now have holes in them, making it difficult to prime and pump the wastewater in an automatic operation. Both suction pipes are now compromised, and the station is in failure with two worn-out pumps. The City has purchased a six-inch bypass pump which is the only means of maintaining flow at the facility at this time.

Staff put the lift station rehabilitation out for bid and received them back on Friday, June 3rd. Mr. Diller with EHT will be present on Monday to present the received bids to the commission for discussion and consideration. Staff will use the upcoming bond proceeds to fund this project.

## FISCAL IMPACT:

- Not Applicable
- Proposed Expenditure:
- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required:
- Financial Review Completed by:

Between \$180,000 and \$240,000

Grant Funds

No

Item 15.

## LEGAL REVIEW:

Not applicable.

## ATTACHMENTS:

Information will be presented during the meeting by the City Engineer.

## **RECOMMENDED MOTION AND/OR ACTION:**

Move to award bid to \_\_\_\_\_.

#### Enprotec / Hibbs & Todd, Inc., 402 Cedar Street, Abilene, Texas 79601

#### PROPOSAL TABULATION: Lift Station 4 Rehabilitation 1 RFP, City of Breckenridge, Texas

PROPOSALS RECEIVED: 6/3/2022

PE Firm Reg	PE Firm Registration No. 1151 BASE PROPOSAL Dowtech Specialty Contractors				L. Howard Construction, Inc.					atterson Profe	ssio	sional Services			
Item No.	Quantity	Unit	Item		Unit Cost		Amount		Unit Cost		Amount	Unit Cost		Amount	
1	1	LS	Mobilization, Bonds, and Insurance	\$	11,000.00	\$	11,000.00	\$	16,610.34	\$	16,610.34	\$	16,100.95	\$	16,100.95
2	1	LS	Demolish existing Lift Station	\$	8,682.00	\$	8,682.00	\$	28,179.11	\$	28,179.11	\$	13,000.00	\$	13,000.00
3	1	LS	Two Submersible Pumps	\$	75,808.00	\$	75,808.00	\$	55,727.35	\$	55,727.35	\$	78,000.00	\$	78,000.00
4	1	LS	Portable Hoist for Submersible Pumps	\$	5,300.00	\$	5,300.00	\$	6,145.89	\$	6,145.89	\$	15,000.00	\$	15,000.00
5	35	LF	6" Stainless Steel Pipe	\$	713.00	\$	24,955.00	\$	1,741.56	\$	60,954.60	\$	429.00	\$	15,015.00
6	14	LF	6" Ductile Iron Pipe	\$	637.00	\$	8,918.00	\$	1,056.55	\$	14,791.70	\$	1,786.00	\$	25,004.00
7	4	LF	8" Ductile Iron Pipe	\$	1,602.00	\$	6,408.00	\$	2,847.75	\$	11,391.00	\$	6,250.00	\$	25,000.00
8	2	EA	6" Ductile Iron Check Valve	\$	6,327.00	\$	12,654.00	\$	3,470.22	\$	6,940.44	\$	10,000.00	\$	20,000.00
9	2	EA	6" Ductile Iron Plug Valve	\$	5,914.00	\$	11,828.00	\$	6,689.58	\$	13,379.16	\$	10,000.00	\$	20,000.00
10	1	EA	7'L x 7'W x 8'D Valve Vault	\$	29,372.00	\$	29,372.00	\$	39,655.44	\$	39,655.44	\$	40,000.00	\$	40,000.00
11	1	EA	6' x 6' Hatch	\$	12,920.00	\$	12,920.00	\$	15,892.10	\$	15,892.10	\$	8,500.00	\$	8,500.00
12	1	LS	New Control Panel	\$	35,572.00	\$	35,572.00	\$	39,657.24	\$	39,657.24	\$	55,000.00	\$	55,000.00
13	1	EA	New Sunshade	\$	9,047.00	\$	9,047.00	\$	12,490.65	\$	12,490.65	\$	4,500.00	\$	4,500.00
14	30	CY	Concrete to fill existing Lift Station sump	\$	399.00	\$	11,970.00	\$	414.92	\$	12,447.60	\$	100.00	\$	3,000.00
		TOTAL	BASE PROPOSAL PRICE (Items 1 thru 14)			\$	264,434.00			\$	334,262.62			\$	338,119.95
			TOTAL DAYS OF COMPLETION		150			150				150			

I, SAGE DILLER, P.E., #96645, DO HEREBY CERTIFY THAT THE ABOVE REFERENCED PROPOSALS WERE RECEIVED, IN ACCORDANCE WITH THE ADVERTISED PROCEDURES, OPENED, AND READ ALOUD. THE PROPOSAL TABULATION HEREIN IS A TRUE AND ACCURATE REPRESENTATION OF THE PROPOSALS READ ALOUD.

SAGE DILLER, P.E., #96645



#### Enprotec / Hibbs & Todd, Inc., 402 Cedar Street, Abilene, Texas 79601

#### PROPOSAL TABULATION: Lift Station 4 Rehabilitation 2 RFP, City of Breckenridge, Texas

PROPOSALS RECEIVED: 6/3/2022

PE Firm Registration No. 1151			BASE PROPOSAL	Patterson Professional Services				L. Howard Co	ruction, Inc.		
Item No.	Quantity	Unit	Item		Unit Cost		Amount		Unit Cost		Amount
1	1	LS	Mobilization, Bonds, and Insurance	\$	8,925.00	\$	8,925.00	\$	8,915.56	\$	8,915.56
2	1	LS	Demolish existing self-priming sewage & trach pumps and motors, etc	\$	12,000.00	\$	12,000.00	0.00 \$ 29,782.80		\$	29,782.80
3	2	EA	Self-Priming Sewage & Trash Pumps and Motors, etc	\$	30,500.00	\$	61,000.00	\$	36,398.37	\$	72,796.74
4	2	EA	Ductile Iron Pipe Suction Piping	\$	17,500.00	\$	35,000.00	\$	13,267.99	\$	26,535.98
5	1	EA	Ductile Iron Pump Discharge Piping	\$	20,000.00	\$	20,000.00	\$	25,336.61	\$	25,336.61
6	1	EA	New Control Panel	\$	45,000.00	\$	45,000.00	\$	20,365.35	\$	20,365.35
7	1	EA	New Sunshade	\$	5,500.00	\$	5,500.00	\$	13,201.50	\$	13,201.50
TOTAL BASE PROPOSAL PRICE (Items 1 thru 7)				\$	187,425.00	**		\$	196,934.54		
TOTAL DAYS OF COMPLETION			ç	0			ç	90			

#### \*\* Due to calculation error, L. Howard Construction's Proposal is higher than what was read aloud.

I, SAGE DILLER, P.E., #96645, DO HEREBY CERTIFY THAT THE ABOVE REFERENCED PROPOSALS WERE RECEIVED, IN ACCORDANCE WITH THE ADVERTISED PROCEDURES, OPENED, AND READ ALOUD. THE PROPOSAL TABULATION HEREIN IS A TRUE AND ACCURATE REPRESENTATION OF THE PROPOSALS READ ALOUD.

LER, P.E., #96645

SAGE DI 6/6/2022



# Commission Meeting Agenda Item Memorandum

ITEM TYPE

MEETING DATE:

Action Item

June 7, 2022

## PRESENTER:

Bacel Cantrell, Chief of Police

## **ITEM DESCRIPTION:**

Discuss and consider approval of Ordinace 2022-11 amending Chapter 20, "Traffic", of the Breckenridge Code of Ordinances by adding Article VII, "Motorized Carts"; allowing for the use of motorized carts on authorized streets within the City and establishing regulations concerning the operation of motorized carts.

## **BACKGROUND INFORMATION:**

Staff has received requests from citizens to allow the use of golf carts on residential streets. In researching the options of allowing the use in a legal and safe manner staff discovered that pursuant to TC 551.404 the city can adopt an ordinance to allow golf carts to be operated on city streets with speed limits of less than 35 mph. The proposed ordinance will require that the motorized (golf) cart be equipped with headlamps, taillamps, side reflectors, parking brake, rearview mirror and a horn. The cart must ben driven by a person that holds a current valid Texas driver's license and be at least 16 years of age. The definition of motorized cart does exclude motorized conveyances commonly referred to as ATVs, four-wheelers, "go-carts," mules, and gators. Staff has coordinated with the city attorney in drafting the proposed ordinance and does support the passing of such.

No

## FISCAL IMPACT:

- Not Applicable
- Proposed Expenditure:
- General Ledger Code:
- Proposed Revenue:
- Budget Amendment Required:
- Financial Review Completed by:

## LEGAL REVIEW:

The City Attorney reviewed this item.

## **ATTACHMENTS:**

Ordinance

## **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Ordinance 2022-11 as presented.

#### ORDINANCE NO. 2022-11

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING CHAPTER 20, "TRAFFIC", OF THE BRECKENRIDGE CODE OF ORDINANCES BY ADDING ARTICLE VII, "MOTORIZED CARTS"; ALLOWING FOR THE USE OF MOTORIZED CARTS ON AUTHORIZED STREETS WITHIN THE CITY; ESTABLISHING REGULATIONS CONCERNING THE OPERATION OF MOTORIZED CARTS; PROVIDING A PENALTY; PROVIDING REPEALER AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Breckenridge, Texas (the "City") is a home-rule city operating pursuant to its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution;

**WHEREAS**, the City has the power to adopt ordinances "necessary to protect health, life, and property" within the City, as long as those ordinances are not inconsistent with State law, pursuant to Section 3.2 of the Charter;

**WHEREAS**, pursuant to Section 551.404(a) of the Texas Transportation Code, the City Commission of the City of Breckenridge (the "City Commission") "may allow an operator to operate a golf cart on all or part of a highway that is in the corporate boundaries of the municipality and has a posted speed limit of not more than 35 miles per hour"; and

**WHEREAS**, pursuant to this authority, the City Commission wishes to allow the operation of golf carts within the City and to provide for reasonable regulations for same.

## NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. <u>Amendment to Chapter 20</u>. The following provisions are hereby enacted to regulate the operation of motorized carts within the City, to be codified as Article VII, "Motorized Carts", of Chapter 20, "Traffic", of the Breckenridge Code of Ordinances:

#### Sec. 20-110. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this article except where the context clearly indicates a different meaning:

<u>Authorized Street</u>. The public roadways of the city by whatever name (e.g., road, alley, avenue, highway, route, boulevard, etc.) that:

- (1) Has a posted speed limit of 35 miles per hour or less.
- (2) Provides for no more than two lanes of vehicular traffic per direction: or
- (3) Is not designated as part of either the state or federal highway system.

Driver. The person driving and having physical control over the motorized cart.

<u>Motorized cart</u>. Those electric or gas-powered carts, commonly referred to as golf carts, but which must have a minimum of four wheels and which have an attainable top speed not greater than 25 miles per hour on a paved level surface and which is manufactured in compliance with those federal motor vehicle safety standards for low-speed vehicles. Specifically excluded from this definition are those motorized conveyances commonly referred to as ATVs, four-wheelers, "go-carts," mules, and gators.

Owner. The person holding title to the motorized cart and the person required to register the motorized cart with the city.

<u>Parking area</u>. Those areas accessible to the public by motor vehicular traffic and which are designated for temporary parking of motor vehicles, usually in places referred to as parking lots.

#### Sec. 20-111. Required equipment.

Every motorized cart must be equipped, as mandated by Section 551.4041 of the Texas Transportation Code, with the following:

- (1) Operational headlamps;
- (2) Operational taillamps;
- (3) Side reflectors;
- (4) Operational parking brake;
- (5) Rearview mirror(s); and
- (6) Horn.

#### Sec. 20-112. Operation regulations.

(a) All drivers of motorized carts must carry a current and valid Texas driver's license and be at least 16 years of age.

(b) All drivers of motorized carts shall abide by all traffic regulations applicable to vehicular traffic when using the authorized streets and parking areas of the city.

(c) Motorized carts shall not be operated on sidewalks at any time.

(d) All motorized carts are entitled to a full use of a lane on the authorized streets and parking areas of the city and no motor vehicle shall be driven in such a manner as to deprive any motorized cart of the full use of a lane.

(e) The driver of a motorized cart shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(f) No driver shall operate a motorized cart between lanes of traffic or between adjacent lines of rows of vehicles.

(g) The driver of a motorized cart operating the cart on an authorized street may cross a road or authorized street at an intersection controlled by stop sign or traffic light.

#### Sec. 20-113. Liability.

Nothing in this article shall be construed as an assumption of liability by the city for any injuries to persons, pets or property which may result from the operation of a motorized cart an authorized driver. Registered owners are fully liable and accountable for the actions of any individual that they provide permission to operate and drive said motorized cart, both on personal and/or city and public properties. This described liability responsibility especially applies to personal injuries or property damage resulting from motorized cart drivers.

#### Sec. 20-114. Penalties.

Violations of the terms of this article shall be punishable as stated in Sec. 1-6 of this Code.

#### Sec. 20-115-20-119. Reserved.

**II.** <u>**Repeal**</u>. Any prior ordinances or ordinance provisions are hereby repealed to the extent they are in conflict with the terms of this Ordinance. Any remaining provisions of said ordinances shall remain in full force and effect.

**III.** <u>Severability</u>. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Breckenridge hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, clauses, or phrases be declared unconstitutional or invalid.

**IV.** <u>Effective Date</u>. This Ordinance shall become effective immediately upon its adoption and after publication as required by law.

PASSED, APPROVED, AND ADOPTED on this the 7<sup>th</sup> day of June 2022.

ATTEST:

Bob Sims, Mayor

Jessica Sutter, City Secretary



# Commission Meeting Agenda Item Memorandum

**ITEM TYPE** 

MEETING DATE:

Action Item

June 7, 2022

## **PRESENTER:**

Jessica Sutter, City Secretary

## **ITEM DESCRIPTION:**

Discuss and consider appropriate action on Resolution 2022-17 appointing a Commissioner to serve as Mayor Pro-Tem.

## **BACKGROUND INFORMATION:**

In accordance with Section 1.08(g) of the Texas Municipal Law, At the first meeting of each new City Commission, one of the commission members shall be elected president pro-tempore (i.e., mayor pro-tem) who shall hold this office for one year. In the case of the failure, inability, or refusal of the Mayor to act, the mayor pro-tem shall perform the duties of the Mayor. If both the Mayor pro-tem and the Mayor are absent, any commission member may be appointed to preside at the meeting. (Tex. Loc. Gov't Code §22.037.) When serving as the presiding officer at a meeting in the Mayor's absence, the mayor pro-tem or the commission member acting in the Mayor's place shall retain their right to vote on matters before the commission without regard to a tie.

No

## FISCAL IMPACT:

Not Applicable

Proposed Expenditure:

General Ledger Code:

Proposed Revenue:

Budget Amendment Required:

Financial Review Completed by:

## **LEGAL REVIEW:**

Not applicable.

## ATTACHMENTS:

A. Resolution

## **RECOMMENDED MOTION AND/OR ACTION:**

Move to approve Commissioner \_\_\_\_\_ to serve as Mayor Pro-Tem.

#### CITY OF BRECKENRIDGE, TEXAS RESOLUTION 2022-17

### A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS APPOINTING COMMISIONER \_\_\_\_\_\_ TO SERVE AS MAYOR PRO TEM; PROVIDING FOR THE INCORPORATION OF PREMISES; AND PROVIDING AN EFFECTIVE DATE.

- WHEREAS, in accordance with Section 4.11 of the City Charter of the City of Breckenridge, the Commission shall elect a Mayor Pro Tem; and
- **WHEREAS,** the City Commission wishes to appoint a Commission Member to serve as Mayor Pro Tem.

## NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF BRECKENRIDGE, TEXAS:

- Section 1. That the above findings are true and correct.
- Section 2. That Commission Member \_\_\_\_\_\_ is hereby appointed by the City Commission to serve as Mayor Pro Tem.
- Section 3. That this resolution shall become effective immediately upon its passage and approval.

#### PASSED AND APPROVED this 7th of June 2022.

#### **CITY OF BRECKENRIDGE**

ATTEST:

Bob Sims, Mayor

Jessica Sutter, City Secretary