



CITY COUNCIL REGULAR MEETING CITY OF BAY CITY

Tuesday, June 25, 2024 at 6:00 PM
COUNCIL CHAMBERS | 1901 5th Street

COUNCIL MEMBERS

Mayor: Robert K Nelson

Mayor Pro Tem: Becca Sitz

Council Members: Benjamin Flores, Jim Folse, Bradley Westmoreland, Blayne Finlay

Vision Statement

Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.

AGENDA

THE FOLLOWING ITEM WILL BE ADDRESSED AT THIS OR ANY OTHER MEETING OF THE CITY COUNCIL UPON THE REQUEST OF THE MAYOR, ANY MEMBER(S) OF COUNCIL AND/OR THE CITY ATTORNEY:

ANNOUNCEMENT BY THE MAYOR THAT COUNCIL WILL RETIRE INTO CLOSED SESSION FOR CONSULTATION WITH CITY ATTORNEY ON MATTERS IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE OPEN MEETINGS ACT (TITLE 5, CHAPTER 551, SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE).

CALL TO ORDER AND CERTIFICATION OF QUORUM

INVOCATION & PLEDGE

Texas State Flag Pledge: *"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."*

Councilman Bradley Westmoreland

MISSION STATEMENT

The City of Bay City is committed to fostering future economic growth by collaborating with our citizens, employers, current and future businesses, as well as the Community and Economic Development Centers. We strive to deliver superior municipal services and to invest in quality-of-life initiatives such as housing, businesses, jobs and activities for all citizens. We make a concerted effort to respond to resident's concerns in a timely and professional manner in order to achieve customer satisfaction.

Councilman Bradley Westmoreland

APPROVAL OF AGENDA**PUBLIC COMMENTS**

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

AWARDS AND PROCLAMATIONS

1. **Recognition of Lt. Chris Hadash, Bay City Police Department, for successfully completing and graduating from the FBI Academy.** Christella Rodriguez, Chief of Police
2. **Proclamation ~ Proclamation recognizing July as "Parks and Recreation Month".** Mayor Robert K. Nelson

ACKNOWLEDGEMENT FROM CITY MANAGER**ITEMS / COMMENTS FROM THE MAYOR & COUNCIL MEMBERS****CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL**

3. **Approve the Master Service Agreement with Urban Engineering for ongoing and future engineering projects.**
4. **Approve a professional services agreement between the City of Bay City and CivilCorp, LLC, for professional engineering services for the development of 30% design plans for Nile Valley Road Phase 2 project.**
5. **Regular Council Meeting minutes of May 14, 2024.**
6. **Regular Council Meeting minutes of May 28, 2024.**
7. **Council Workshop Meeting minutes of June 11, 2024.**

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

8. **Report ~ Discuss, consider, and/or approve the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ending September 30, 2023.** Scotty Jones, Interim City Manager
9. **Report ~ Receive a report from GFL (WCA) on the sanitation operations in the City of Bay City and discuss, consider, and/or approve GFL's CPI rate increase request pursuant to the Solid Waste Contract with GFL.** Krystal Mason, Assistant Public Works Director
10. **Bid ~ Discuss, consider, and/or approve the bid selection for the Bay City Regional Airport AWOS Replacement Project.** James Mason, Airport Manager

- 11. Agreement ~ Discuss, consider, and/or approve Work Authorization 1 with Urban Engineering for engineering design and construction management services related to the drainage project at the Del Norte subdivision, specifically along Nichols Avenue. Herb Blomquist, Public Works Director**
- 12. Proposal ~ Discuss and take any action to approve proposal of FGM Architects to serve as architect to public safety headquarters and authorize Interim City Manager to enter into contract in accordance with proposal upon City Attorney's approval of form of contract. Scotty Jones, Interim City Manager**
- 13. Ordinance ~ Discuss, consider, and/or approve an ordinance by the City Council of the City of Bay City, Texas authorizing the issuance and sale of the City of Bay City, Texas Tax and Revenue Certificates of Obligation, Series 2024E; levying a tax and providing for the security and payment thereof; and enacting other provisions relating thereto. Scotty Jones, Interim City Manager**

CLOSED / EXECUTIVE SESSION

- 14. Personnel ~ Closed meeting to discuss personnel matters in accordance with Title 5, Section 551.074 of the Texas Government Code (To discuss appointment, employment, evaluation, responsibilities and duties, reassignment, discipline or dismissal of an officer or employee, or to hear a complaint or charge against an officer or employee: Interim City Manager**

RECONVENE AND ACTION

ITEMS / COMMENTS FROM THE MAYOR, COUNCIL MEMBERS AND CITY MANAGER

ADJOURNMENT

AGENDA NOTICES:

Attendance By Other Elected or Appointed Officials: It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

CERTIFICATION OF POSTING

This is to certify that the above notice of a Regular Called Council Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on **Friday, June 21, 2024 before 6:00 p.m.** Any questions concerning the above items, please contact the Mayor and City Manager's office at (979) 245-2137.



CITY OF BAY CITY
 1901 FIFTH STREET
 BAY CITY, TEXAS 77414
 (979) 245-2137
 FAX: (979) 323-1626

AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council must be included on this form and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

Requestor Name: Blomquist, Herb **Date Submitted:** 06/18/2024
Last, First *MM/DD/YYYY*

Requestor Type: City Staff **Meeting Date:** 06/25/2024
Citizen/City Staff/Council Member *MM/DD/YYYY*

Position Title Public Works Director
For City Staff Only

Agenda Location: Consent Agenda
(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)

Agenda Content:

Approve the master service agreement with Urban Engineering for ongoing and future engineering projects.

Executive Summary of Item:

BACKGROUND: Urban Engineering was selected from the city's RFQ process in February as a highly responsive and well-qualified firm. They have extensive experience with the city, including preliminary engineering related to previous HMA grants for the Del Norte subdivision. Notably, Urban Engineering successfully managed a TXCDBG waterline project in the northwest quadrant of Bay City during 2020-2021 and worked on waterline improvements along Hwy 60. Their proven track record and their familiarity with local infrastructure challenges ideally positions them for future projects.

The master service agreement outlines the terms and conditions under which Urban Engineering will undertake various engineering projects, including but not limited to drainage, sewer, and waterline projects. This agreement sets the framework for issuing specific work orders for projects as they arise, ensuring readiness and efficiency in addressing the city's needs.

FINANCIAL IMPLICATIONS: The agreement itself does not obligate funds but allows the city to issue work orders efficiently under the terms set. Each specific project under this agreement will have its financial implications detailed in individual work authorizations, which will be presented for council approval as required.

IMPACT ON COMMUNITY SUSTAINABILITY: Establishing a master service agreement with Urban Engineering allows the city to address infrastructure needs promptly and effectively. It provides a mechanism to manage projects that enhance community safety, sustainability, and resilience, improving overall quality of life for residents.

RECOMMENDATION: Staff recommends that City Council approve the master service agreement with Urban Engineering as part of the consent agenda. This approval will streamline the process for initiating critical infrastructure projects, ensuring that the city can respond quickly and effectively to community needs.

ATTACHMENTS:

1. Master Service Agreement for approval

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES TASK ORDER EDITION

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

EJCDC No. E-505 (2004 Edition)

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of June 25, 2024 ("Effective Date") between
City of Bay City ("Owner") and
Victoria Engineering, Inc. dba Urban Engineering ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Schedule of Engineer's Services."
- B. The general format of a Task Order is shown in Attachment 1 to this Agreement.
- C. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- D. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, Engineer's services, Engineer's compensation, and all other appropriate matters.

1.02 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Schedule of Owner's Responsibilities," and in each Task Order.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder from the Effective Date of the Agreement for until further written notice by the Owner or the Engineer.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer in a Task Order, Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and the Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

- G. Engineer shall not at any time supervise, direct, or have control over a Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Contractor, for security or safety at any Site, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work.
- H. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- J. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. C-700, 2002 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.

6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished by Engineer, if Owner does not retain Engineer, by Task Order or otherwise, for project observation, or review of a Contractor's performance, or any construction phase services, and such services will be provided by Owner or others, then (1) Engineer shall have no design or shop drawing review obligations during construction; (2) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary construction phase engineering and professional services; and (3) Owner waives any claims against the Engineer that may be in any way connected thereto. In such a case, Engineer's Basic Services under the applicable Task Order will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A and the Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. A party may rely on that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a license to use the Documents on the Specific Project, extensions of the Specific Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project.

- B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to a Specific Project.
- C. Owner shall require Contractors to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee, and to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, Owner, or any insureds or additional insureds thereunder.
- F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05 *Suspension and Termination*

- A. *Suspension*
 - 1. By Owner: Owner may suspend a Task Order upon seven days written notice to Engineer.
 - 2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.
- B. *Termination.* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.

- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience and without recourse,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

D. *Payments Upon Termination*

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

This Contract is governed by the laws of the State of Texas and all obligations of the parties under this Contract are performable in Matagorda County, Texas. Venue for any matter including but not limited to a disputes, controversies, claims, interpretations, applications, and declarations regarding this Contract shall be exclusively lie in Matagorda County, Texas.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.
- D. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise any of their rights under law.

6.09 *Environmental Condition of Site*

A. With respect to each Task Order, Specific Project, and Site:

1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
3. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify, protect and hold harmless Owner, and Owner's officers, directors, elected officials(past and present), appointed officials(past and present), partners, agents, consultants, successors and employees from and against any and all claims, costs, losses, liabilities(of any kind) and damages(personal and property) (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of

tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act, error, willful misconduct, or omission of Engineer or Engineer's officers, directors, partners, employees, consultants or other persons for whom Engineer is legally liable. The Engineer will, at its own cost and expense, defend and protect the Owner and Owner's officers, directors, elected officials (past and present), appointed officials (past and present), partners, agents, consultants, successors and employees against any and all such claims and demands.

- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Specific Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Applicability to Task Orders.* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement.* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
 - 1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 - 2. *Additional Services* – Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
 - 3. *Agreement* – This "Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
 - 4. *Application for Payment* – The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work

and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
7. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
11. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract* – The entire and integrated written agreement between Owner and a Contractor concerning the Work.
13. *Construction Cost* – The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between Owner and a Contractor, Addenda (which pertain to the Contract Documents), a contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price* – The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times* – The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
18. *Contractor* – An individual or entity with whom Owner enters into a Construction Agreement for a Specific Project.
19. *Correction Period* – The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
21. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.

23. *Effective Date of the Construction Agreement* – The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order* – The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Field Order* – A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
27. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
28. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
33. *Record Drawings* – The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
34. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.

35. *Resident Project Representative* – The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative will be as set forth in each Task Order.
36. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
38. *Site* – Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
39. *Specifications* – That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
40. *Specific Project* – An undertaking of Owner as set forth in a Task Order.
41. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
42. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.
43. *Task Order* – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
44. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

45. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.
46. *Work Change Directive* – A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
47. *Written Amendment* – A written amendment of the Contract Documents signed by Owner and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

Included? (Yes or No)	Exhibit Letter	Exhibit Title
Yes		Attachment 1 – Task Order Form
Yes	A	Schedule of Engineer's Services
Yes	B	Schedule of Owner's Responsibilities
Yes	C	Payments to Engineer for Services and Reimbursable Expenses
Yes	D	Schedule of Duties, Responsibilities and Limitations of Authority of Resident Project Representative
Yes	E	Notice of Acceptability of Work (Form)
Yes	F	Construction Cost Limit
Yes	G	Insurance
Yes	H	Dispute Resolution
No	I	Allocation of Risks
No	J	Reserved
No	K	Amendment to Task Order (Form)

8.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 20 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended,

supplemented, modified, or canceled by a duly executed written instrument. Amendments to Task Orders shall be in writing, based upon the format provided in Exhibit K, "Amendment to Task Order."

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Equal Employment Opportunity in Minority Business Enterprise*

The Engineer agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants and employees are treated during employment without regard to their race, color, religion, national, origin, sex, age, handicap, or political belief or affiliation. Engineer expressly agrees to fully abide by all applicable municipal ordinances, state and federal laws governing employment, non-discrimination and civil rights. In the event non-compliance occurs, the Engineer, upon written notification by the Owner will immediately comply with this section. Engineer will save and hold harmless the Owner, its agents, officers and assigns from any liability which may accrue to them as a result of any failure by Engineer to comply with this section. The failure of Engineer to comply with the provisions of this section will constitute grounds for immediate termination of this agreement without recourse.

8.05 *Political Interest in this Contract*

No employee of the Owner shall be admitted to any share or part of this contract, or to any benefit that may arise there from; provided, however, that this provision shall not be constructed to extend to this contract if made with a corporation for its general benefit.

8.06 *Governmental Immunity*

Nothing contained in this Contract shall ever be construed as a waiver of governmental immunity by the Owner. The Owner shall never be deemed by the execution of this Contract to have waived any sovereign governmental immunity and expressly reserves unto itself all such rights to the fullest extent authorized by law.

8.07 *Owner Obligations*

All required payments and obligations under this contract shall be made by Owner under appropriate funding allocations (grants, general funds, etc.)

8.08 *Attorney Fees*

Except as may be provided by any provision of this contract allowing for termination for convenience, if it is necessary for either party herein to file a cause of action at law or in equity against the other party due to: (a) a breach of this Contract by the other party and/or (b) any

intentional and/or negligent act or omission by the other party arising out of this Contract, the non-defaulting party shall be entitled to reasonable attorney's fees and costs, and any necessary disbursements, in addition to any other relief to which it is legally entitled.

8.09 *Waiver*

The failure on the part of either Party herein at any time to require the performance by the other Party, of any portion of this Agreement, shall not be deemed a waiver of, or in any way affect that Party's rights to enforce such provision, or any other provision. Any waiver by any Party herein of any provision hereof, shall not be taken or held to be a waiver of any other provision hereof, or any other breach hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER:

ENGINEER:

By: _____

By: 

Name: _____

Name: Matt A. Glaze, P.E.

Title: _____

Title: Vice President

Engineer License or Firm's
Certificate No. (if required by law) TREF# F-160

State of: Texas

Date Signed: _____

Date Signed: 6/17/24

Address for giving notices:

Address for giving notices:

2004 N. Commerce St.

Victoria, TX 77901

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

Matt A. Glaze, P.E.

Title: _____

Title: Vice President

Phone Number: _____

Phone Number: 361-578-9836

Facsimile Number: _____

Facsimile Number: N/A

E-Mail
Address: _____

E-Mail
Address: mglaze@urbanvictoria.com

TASK ORDER
(SUGGESTED FORMAT)

ITEM #3.

This is Task Order
No. _____, consisting of
_____ pages.

Task Order

In accordance with paragraph 1.01 of the Standard Form of Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

A. Title: _____

B. Description: _____

2. **Services of Engineer**

[Incorporate applicable text or paragraphs from Exhibit A, Schedule of Engineer's Services -- either by reference or by insertion here. Incorporate Exhibits D and/or F if applicable -- either by reference or by insertion here. Supplement or modify as needed for this specific Task Order.]

3. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following: *[Here state any additions or modifications to Exhibit B, for this Specific Project.]*

4. **Times for Rendering Services**

Phase

Completion Date

TASK ORDER
(SUGGESTED FORMAT)

ITEM #3.

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
<i>Basic Services (Study and Report, Preliminary Design, Final Design, Bidding or Negotiating, Construction Phase)</i>	<i>Choose <u>One</u>:</i> A. <i>Lump Sum</i> B. <i>Standard Hourly Rates</i> C. <i>Direct Labor Costs Times a Factor (Factor: _____)</i> D. <i>[Insert any other compensation method]</i>	
<i>Resident Project Representative and Post- Construction Phase Services</i>	<i>Choose <u>One</u>:</i> A. <i>Lump Sum</i> B. <i>Standard Hourly Rates</i> C. <i>Direct Labor Costs Times a Factor (Factor: _____)</i> D. <i>[Insert any other compensation method]</i>	
<i>Additional Services</i>	<i>Choose <u>One</u>:</i> A. <i>[Omitted]</i> B. <i>Standard Hourly Rates</i> C. <i>Direct Labor Costs Times a Factor (Factor: _____)</i> D. <i>[Insert any other compensation method]</i>	

C. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. **Consultants:**

7. **Other Modifications to Agreement:**

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. **Attachments:**

9. **Documents Incorporated By Reference:**

TASK ORDER
(SUGGESTED FORMAT)

ITEM #3.

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. _____

State of: _____

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Schedule of Engineer's Services

Services to be provided under a Task Order may include the following:

PART 1 – BASIC SERVICES

A.1.01 Study and Report Phase

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B which are not part of Engineer's Basic Services, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate the number of alternate solutions available to Owner listed in the Task Order for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. This Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and, on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.
7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

A.1.02 *Preliminary Design Phase*

- A. After determination by Owner of the scope, extent, character or design requirements of a Specific Project, including the acceptance with any specific modifications by Owner of Engineer's Report, if any, from a preceding phase or Specific Project, Engineer shall:
1. On the basis of the above acceptance, selection, and authorization, prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in paragraph A.1.01.A.5.
 5. Furnish the Preliminary Design Phase documents to and review them with Owner.
 6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A.1.03 *Final Design Phase*

- A. After determination by Owner of the scope, extent, character, or design requirements of a Specific Project, including the acceptance of any specific modifications by Owner of a preceding phase or Specific Project, Engineer shall:
1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.

3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in paragraph A.1.01.A.5.
 4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
 5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
- B. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to the Task Order whether or not the work under such contracts is to proceed concurrently.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established is identified in the Task Order.
- D. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A.1.03.A.5 have been delivered to Owner.

A.1.04 *Bidding or Negotiating Phase*

- A. The Engineer shall:
1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of the Task Order).

A.1.05 Construction Phase

A. Engineer shall:

1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. *[Note: For those Specific Projects for which Engineer will not be providing the services of an RPR, do not incorporate this paragraph A.1.05.A.2, and do not include Exhibit D.]*
3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in paragraph B.2.01.0.
4. *Pre-Construction Conference.* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
6. *Visits to Site and Observation of Construction.* In connection with observations of Work in progress :
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Engineer will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. *Defective Work.* Have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Engineer believes that such work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Contract Documents.
8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Engineer has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to Engineer.
11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.23 of this Exhibit A.

12. *Inspections and Tests.* Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
13. *Disagreements between Owner and Contractor.* Render formal written decisions on all claims of Owner and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
14. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in paragraph A.1.05.A.6.a are expressly subject to the limitations set forth in paragraph A.1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of the Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the

moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.*

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such Engineer's review will be limited as provided in paragraph A.1.05.A.10.
- c. Engineer shall transmit these documents to Owner.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

17. *Final Notice of Acceptability of the Work.* Conduct a final payment inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.14.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Engineer shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

A. Engineer shall:

1. Provide assistance in connection with the testing and adjusting of Specific Project equipment or systems.

2. Assist Owner in training Owner's staff to operate and maintain Specific Project, equipment, and systems.
 3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for, equipment and systems for the Specific Project.
 4. Together with Owner, visit the Specific Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. In company with Owner or Owner's representative, provide an inspection of the Specific Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in the Task Order, will terminate at the end of the Correction Period.

PART 2 – ADDITIONAL SERVICES

A.2.01 Additional Services Requiring Owner's Authorization in Advance

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in a Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with a Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect project information with respect to Exhibit B.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Specific Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in the Task Order.
10. Services during out-of-town travel required of Engineer other than for visits to the Specific Project Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
15. Providing construction surveys and staking to enable a Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.

17. Providing assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
18. Preparing and furnishing to Owner, in the format agreed to, Record Drawings showing appropriate record information based on project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner under paragraph 6.01.G of the Agreement or a Task Order.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of any Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for a Specific Project or an excessive number of substitutions.
24. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
25. Additional or extended services during construction made necessary by (a) a significant amount of defective, neglected or delayed Work by a Contractor, or (b) default by a Contractor.
26. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to its Substantial Completion.
27. Evaluating an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.
28. Other services performed or furnished by Engineer not otherwise provided for in this Agreement or a Task Order.

A.2.02 Additional Services Not Requiring Owner's Authorization in Advance

- A. Engineer shall perform or furnish, without requesting or receiving specific advance authorization from Owner, the Additional Services of the types listed below. Engineer shall advise Owner in writing within seven days after beginning any such Additional Services. If Owner does not want Engineer to continue to perform or furnish the services, Owner shall notify Engineer in writing to cease, and Engineer shall comply.
1. Additional or extended services during construction made necessary by (a) emergencies or acts of God endangering the Work, (b) the presence at the site of any Constituent of Concern, (c) Work damaged by fire or other cause during construction, or (d) acceleration of the progress schedule involving services beyond normal working hours.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Schedule of Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that

affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.
- I. Provide, as required for the Specific Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Engineer may assist the Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- M. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- P. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- Q. Additional Owner responsibilities:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C.2.01 Method of Payment

- A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:
1. Method A: Lump Sum
 2. Method B: Standard Hourly Rates
 3. Method C: Direct Labor Costs Times a Factor
 4. Method D: Other as specified

C.2.02 Explanation of Methods

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.

2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C. Method C – Direct Labor Costs Times a Factor

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a Factor of 1.1 for the services of Engineer's employees engaged on the Specific Project, plus Reimbursable Expenses, and Engineer's Consultant's charges, if any. Direct Labor Costs means salaries and wages paid to employees but does not include payroll related costs or benefits.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant's charges, if any.
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
5. The Direct Labor Costs and the Factor applied to Direct Labor Costs will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C.2.03 *Reimbursable Expenses*

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix 1 to this Exhibit C which shall be adjusted annually (as of January 1st) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.1.

C.2.04 *Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.1 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C.2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
 - 1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - 2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated _____, _____.

Reimbursable Expenses Schedule

All reimbursable Expenses are charged at Engineer's cost, plus ten percent (10%).

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____,

Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services effective on the date of this Agreement are:

Registered Professional Engineer (Level 1-5)	\$175.00-\$215.00
EIT (Level 1-6)	\$125.00-\$175.00
Designer (Level 1-6)	\$100.00-\$150.00
Project Inspector (Level 1-6)	\$100.00-\$150.00
Clerical	\$100.00
CAD Technician (Level 1-6)	\$ 75.00-\$100.00

Cost of printing and postage will be charged at cost plus 10%.

Fees paid to regulatory agencies will be charged at cost plus 10%.

Overtime, authorized by owner, will be charged at 1.5 times the regular rate.

Authorized travel and lodging, in connection with the project, will be charged at cost plus 10%.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D.1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A.1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
 1. *General.* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary.
 - RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.

2. *Schedules.* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Engineer concerning acceptability.
3. *Conferences and Meetings.* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, and assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents.* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications.* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does

not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups*

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems start-ups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Engineer.

10. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Engineer.

11. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests*

- a. Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals*

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion*

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT: _____

CONSTRUCTION CONTRACT DATE: _____

ENGINEER: _____

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of Engineer.
3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F.5.02 Designing to Construction Cost Limit

- A. A Construction Cost limit may be set forth in the Task Order.
- B. In such case, a bidding or negotiating contingency will be added to any Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of Engineer's Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or Bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G.6.04 Insurance

A. The limits of liability for the insurance required by paragraphs 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|---|----------------|
| a. Workers' Compensation: | Statutory |
| b. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$ 500,000.00 |
| 2) General Aggregate: | \$1,000,000.00 |
| c. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | \$2,000,000.00 |
| 2) General Aggregate: | \$2,000,000.00 |
| d. Automobile Liability -- | |
| 1) Bodily Injury: | |
| a) Each Accident | \$ 500,000.00 |
| 2) Property Damage: | |
| a) Each Accident | \$ 100,000.00 |
| e. Professional Liability -- | |
| 1) Each Occurrence: | \$1,000,000.00 |
| 2) General Aggregate: | \$2,000,000.00 |

2. By Owner:

- | | |
|---------------------------|-----------|
| a. Workers' Compensation: | Statutory |
| b. General Liability -- | |

- 1) General Aggregate: \$ _____
- 2) Each Occurrence (Bodily Injury and Property Damage): \$ _____

c. Excess Umbrella Liability --

- 1) Each Occurrence: \$ _____
- 2) General Aggregate: \$ _____

B. Additional Insureds

1. Engineer and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's policies of insurance as additional insureds as provided in paragraph 6.04.B.
2. Engineer shall provide liability coverage naming Owner as an additional insured on the Engineer's General Liability Insurance policies for any agreement in force. Engineer shall further provide in its policies a clause waiving subrogation rights against the Owner. Engineer shall provide in its policies of insurance that it shall not be cancelled or changed without at least 30 days written notice to the Owner.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H.6.08 Dispute Resolution

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation by a mediator mutually agreeable to Owner and Engineer.
- B. If such mediation is unsuccessful in resolving a Dispute, then the parties hereto agree that Owner and Engineer may seek any and all legal remedies available to the each according to law.



CITY OF BAY CITY
 1901 FIFTH STREET
 BAY CITY, TEXAS 77414
 (979) 245-2137
 FAX: (979) 323-1626

AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council must be included on this form and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

Requestor Name: Blomquist, Herbert **Date Submitted:** 6/20/2024
Last, First *MM/DD/YYYY*

Requestor Type: City Staff **Meeting Date:** 6/25/2024
Citizen/City Staff/Council Member *MM/DD/YYYY*

Position Title Director of Public Works
For City Staff Only

Agenda Location: Consent Agenda
(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)

Agenda Content:

Approve a professional services agreement between the City of Bay City and CivilCorp, LLC, for professional engineering services for the development of 30% design plans for Nile Valley Road Phase 2 project.

Executive Summary of Item:

During a previous selection qualification process for professional services earlier this year, CivilCorp, LLC was one of the professional services firms the City Council approved to move forward with to assist with project implementation for various City projects.

The City of Bay City has a previous working relationship with CivilCorp, LLC on street rehabilitation and other projects involving professional engineering services. CivilCorp has submitted a proposal for Professional Services with a contract cost of \$212,700.00 for design, engineering, surveying, and geotechnical services to assist with development of 30% design plans for Nile Valley Road Phase 2 project. The proposal has been reviewed by City of Bay City staff for completeness. Funding will be provided out of the remaining Nile Valley Bond Funds.

It is the staff's recommendation to approve this Agreement for Professional Services with CivilCorp, LLC so the City of Bay City can begin the design and plan preparation for development of 30% design plans for Nile Valley Road Phase 2 project.

**AGREEMENT BETWEEN THE CITY
OF BAY CITY AND CIVILCORP, LLC. FOR
PROFESSIONAL SERVICES**

OWNER: The City of Bay City, Texas, 1901 Fifth Street, Bay City, Texas 77414

ENGINEER: CivilCorp, LLC., 4611 Airline Road, Suite 300, Victoria, Texas 77904

PROJECT: 2024-2025 Capital Improvement Projects consisting of the design and preparation of plans, bidding, limited construction administration services, and additional services provided herein for the construction of the following proposed projects:

Nile Valley Road Phase 2 from Avenue F to Nichols Ave (approximately one mile in length). Scope is for completing of project to 30% design which includes the following:

- Topographic survey, aerial photography, and ROW confirmation of project area
- Geotechnical testing for bridge and road design
- Preparation of 30% design plans including bridge plan and profiles, roadway plan and profiles, and drainage plan
- Prepare 30% cost estimate

OWNER' S REPRESENTATIVE: Shall mean the City Engineer of the City of Bay City or a person designated by this Director.

ENGINEER'S AGREEMENT: ENGINEER shall provide professional engineering services for OWNER in all phases of the Project described below, serve as OWNER's professional engineering representative for the Project as set forth below, and give professional engineering consultation and advice to OWNER during the performance of services hereunder.

OWNER' S AGREEMENT: OWNER agrees to pay for the services as set forth below.

Nile Valley Phase 2 – 30% Plans

\$212,700

SECTION I - BASIC SERVICES OF ENGINEER

1.1 General. See attached letter proposal as Attachment A that this scope and fee are based on.

1.1.1. ENGINEER shall perform professional services as hereinafter stated which include customary incidental engineering services

1.2 Preliminary Design Phase (30%). ENGINEER shall:

1.2.1. Consult with OWNER to clarify and define OWNER'S requirements for the Project and review available data.

1.2.2. Advise OWNER of the need to provide or obtain from others data or services of the types described in paragraph 3.3, and act as OWNER'S representative in connection with any such services.

1.2.3. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.2.5. Based on the information contained in the preliminary design documents, submit an opinion of probable Project Cost.

1.2.6. Furnish one (1) copy of the above preliminary design documents and review them in person with OWNER'S REPRESENTATIVE

SECTION 2 – ADDITIONAL SERVICES, IF SELECTED

2.1 Final Design Phase. ENGINEER shall

2.1.1. On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract final drawings (hereinafter called "Drawings") and Specifications to show the character and extent of the Project.

2.1.2. Furnish to OWNER'S REPRESENTATIVE assistance in the preparation of required documents so that OWNER may apply for approvals of governmental authorities having jurisdiction over the Project, and assistance in negotiations with appropriate authorities.

2.1.3. Advise OWNER'S REPRESENTATIVE of any adjustments to the revised opinion of probable Project Cost caused by changes in the Project and furnish a final opinion of probable Project Cost based on the final Drawings and Specifications.

2.1.4. Prepare documents to comprise the contract for construction of the Project (hereinafter the "Contract") for review and approval by OWNER'S REPRESENTATIVE,

including agreement forms, general, special and supplementary conditions, bidding documents, and other related documents. ENGINEER shall use forms provided by OWNER where applicable.

2.1.5. Furnish one (1) copy of the above documents and review them with the OWNER'S REPRESENTATIVE.

2.2 Bidding Phase. ENGINEER shall:

2.2.1. Assist OWNER in obtaining bids for a contract for construction of the Project.

2.2.2. Consult with OWNER'S REPRESENTATIVE as to the acceptability of subcontractors proposed by the prime contractor (hereinafter called "Contractor") when such acceptability is required by the bidding documents.

2.2.3. Consult with OWNER'S REPRESENTATIVE as to the acceptability of substitute materials and equipment proposed by Contractor when substitution prior to the award of the Contract is allowed by the bidding documents.

2.2.4. Assist OWNER'S REPRESENTATIVE in evaluating bids and in assembling and awarding the Contract.

2.3 Construction Phase. ENGINEER shall:

2.3.1. Consult with OWNER and act as its representative as provided in the Construction Contract; act on behalf of the OWNER to the extent provided in the Construction Contract except as otherwise provided herein.

2.3.2. Provide initial staking when necessary to allow Contractor to construct the Project. The ENGINEER shall set vertical and horizontal controls only.

2.3.3. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the Contractor's work and to determine if the work is proceeding in accordance with the plans and specifications. The frequency of such visits shall be as advised by the owner and of a duration sufficient to ensure that the contractor is building the project according to plans and specifications. Such visits to the site shall be carried on in the presence of the City Inspector. ENGINEER shall keep OWNER informed of the progress of the work, and shall endeavor to protect the OWNER against defects and deficiencies in the work. ENGINEER does not guarantee the performance of the Contractor and is not responsible for the actual supervision of construction operations or for safety measures that the Contractor takes or should take. ENGINEER shall inform OWNER'S REPRESENTATIVE of any work failing to conform to the Contract, and shall disapprove or reject any such work and require it to be corrected.

2.3.4. Review and approve or take other appropriate action regarding Shop Drawings and samples, the results of tests and inspections and other data which Contractor is required to

submit, for conformance with the design concept of the Project and compliance with the Contract; determine the acceptability of substitute materials and equipment proposed by Contractor; and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are provided by Contractor in accordance with the plans and specifications.

2.3.5. Assist owner issue instructions to Contractor; issue necessary interpretations and clarifications of the plans and specifications; prepare change orders as required; require special inspection or testing of the work; act as judge of the acceptability of the Contractor's work.

2.3.6. Based on ENGINEER'S on-site observations and on review of Contractor applications for payment, assist owner with determining the amounts owing to Contractor.

2.3.7. Conduct an inspection to determine if the Project is substantially complete, and a final inspection to determine if the Project has been completed in accordance with the plans and specifications. If Contractor has fulfilled all of its obligations, ENGINEER shall recommend, in writing, final payment to Contractor and shall give written notice to OWNER and the Contractor that the work is acceptable and meets plans and specifications as developed by the Engineer (subject to any conditions therein expressed).

2.3.8. Furnish a set of reproducible as-built record prints of the Project to the OWNER'S REPRESENTATIVE upon project completion. At least one set shall be hard copy and one set shall be in a digital format as specified by the OWNER'S REPRESENTATIVE.

2.4 General.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types; these will be paid for by the OWNER as indicated in Section 4:

2.4.1. Preparation of applications for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review of the effect on the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.4.2. Services to make detailed investigation of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER, except as necessary for the proper design and construction of the Project.

2.4.3. Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.

- 2.4.4. Providing renderings or models for OWNER'S use.
- 2.4.5. Providing engineering surveys required to properly design the Project.
- 2.4.6. Furnishing land surveys establishing boundaries and monuments, and related office computations and drafting.
- 2.4.7. Preparation of property or easement descriptions.
- 2.4.8. Preparation of any special reports required for marketing of bonds.
- 2.4.9. Furnishing soil and foundation tests and borings.
- 2.4.10. Providing detailed mill, shop and/or laboratory inspection of materials or equipment.
- 2.4.11. Investigations involving detailed consideration of operation and maintenance expenses; the preparation of feasibility studies and appraisals; and assistance in obtaining financing for the Project.
- 2.4.12. Furnishing the services of special consultants for purposes other than the normal engineering incidental to the Project, and providing data or services of the types described in paragraph 4.3 when OWNER authorizes ENGINEER to provide such data or services in lieu of OWNER furnishing them. For the purposes of this contract, services of a special consultant will be allowed only when the need is confirmed by the OWNER'S REPRESENTATIVES.
- 2.4.13. Apply for permits from all governmental authorities having jurisdiction over the project and furnish such approvals and consents from others as may be necessary for completion of the project.
- 2.4.14. Services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, and services resulting from the arranging for performance by persons other than the Contractor and administering OWNER'S contracts for such services.
- 2.4.15. Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the change in services rendered; services after the award of the contract in evaluating substitutions proposed by the Contractor which require extensive revisions to Drawings and Specifications; and services resulting from significant delays, changes or price increases occurring as a result of material, equipment or energy shortages.
- 2.4.16. Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.
- 2.4.17. Additional or extended services during construction made necessary by (1) work

damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor, (3) prolongation of the contract time of the Contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor.

2.4.18. Services after completion of the Construction Phase, such as inspections during any guarantee period called for in the Contract.

2.4.19. Serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project except as agreed to under Basic Services.

2.4.20. Materials Testing Services during construction phase to include testing of subgrade and base sections.

2.5 Whenever the need for any Additional Services described herein results from any negligence, mistake, oversight or other fault on the part of ENGINEERS, the cost of these services shall be deemed to be included in OWNER'S payments to ENGINEER for basic services. Any such Additional Services not performed by ENGINEER that would otherwise be paid separately by OWNER shall be paid for by ENGINEER.

SECTION 3 - OWNER'S RESPONSIBILITIES OWNER shall:

3.1. Provide full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.

3.2. Arrange for access to property owned or controlled by the City as required for ENGINEER to perform its services.

3.3. Examine studies, reports, Drawings, Specifications, and other documents presented by ENGINEER; provided, that approval of any such documents by OWNER or by OWNER'S REPRESENTATIVE shall not release ENGINEER from responsibility and liability for any negligence, mistake, inaccuracy, or other flaw in such documents, and shall not be deemed an assumption by OWNER or OWNER'S REPRESENTATIVE of any responsibility or liability.

3.4. Provide such auditing service as OWNER may require to ascertain how Contractor has used the monies paid to it under the Contract.

3.5. Give prompt notice to ENGINEER whenever OWNER'S REPRESENTATIVE observes any development that affects the ENGINEER'S services, including defects in the work of Contractor.

3.6. Furnish copies of finalized plans and specifications for use during bidding and construction.

SECTION 4 - PAYMENTS TO ENGINEER

4.1. Methods of Payment for Services and Expenses of ENGINEER.

4.1.1. OWNER shall pay ENGINEER, for Basic Services rendered under Section 1, a total fee of **\$145,000.**

4.1.2. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

4.1.2.1. General. Payment for Additional Services of Engineer rendered under this contract and or referenced under paragraph 2.4.1 through 2.4.20 inclusive shall be paid for at the following rate when supported by invoices or lump sum as shown.

Standard Hourly Rate for Additional Services

Principle Engineer	\$ 238
Senior Engineer/Engineering Manager	\$ 232
Prof. Engineer	\$ 187
EIT	\$ 115
Graduate Engineer	\$ 110
Registered Surveyor	\$ 170
Design Technician	\$ 101
CADD Operator	\$ 98
Senior Survey Technician	\$ 126
Survey Technician	\$ 101
Project Inspector	\$ 108
Clerical	\$96.5
Field Crew - 2 man	\$ 190
3 man	\$ 225

Actual cost of materials required for the job and expenses shall be charged at cost.

Overnight Expense/man — Actual Expenses \$

4.1.3. For Additional Expenses

Engineering surveys as provided by Section 2.4.5	\$ 40,800
Geotechnical Investigations as provided by Section 2.4.9	\$ 26,900

4.1.4. All other additional expenses: actual cost to ENGINEER based on rates referenced above or as previously agreed upon in writing.

Where field parties are used, expenses shall include charges for the use of any special instruments and equipment, including marine equipment, and expendable items such as stakes and monuments.

4.2. Times of Payments

4.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered. For Basic Services, the statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.

4.2.2. Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:

PERCENTAGE OF ENGINEER'S FEE FOR BASIC SERVICES

PHASE	AMOUNT
Total compensation for Basic Services (30% Design) shall be	\$ 145,000
Total fixed compensation for additional services in Section 2.4.5 (Design Survey), Shall be	\$ 40,800
Total fixed compensation for additional services in Section 2.4.9 (Geotechnical Investigations), Shall be	\$ 26,900
Total Contract amount shall be	<u>\$ 212,700</u>

4.3. Other Provisions Concerning Payments.

4.3.1. OWNER agrees to pay a charge of one-half of one percent ($\frac{1}{2}\%$) per month on all invoiced amounts not paid within thirty (30) days of the date of the invoice, calculated from the date of the invoice. In addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until the ENGINEER has been paid in full all amounts due for services and expenses.

4.3.2. In the event of termination by OWNER under paragraph 6.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of Salary Costs times a factor of 1.5 for services rendered during that phase to date of termination by principals and employees

assigned to the Project. In the event of any such termination, ENGINEER will be paid for all requested Additional Services and Reimbursable Expenses.

4.4. Definitions.

4.4.1. Salary Costs shall mean salaries and wages paid to all personnel engaged directly on the Project, and more clearly referenced in Section 4.1.2.1.

SECTION 5 – CONSTRUCTION COST AND OPINIONS OF COST

5.1. Construction Cost.

The construction cost of the Project means the total cost of the Project to OWNER, but it does not include ENGINEER'S compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, nor does it include OWNER'S legal, accounting, insurance counseling or auditing services, or laboratory of testing services, or interest and financing charges incurred in connection with the Project. Construction Cost is one of the items comprising Project Cost which is defined in paragraph 1.2.4.

5.2. Opinions of Cost.

5.2.1. ENGINEER'S opinions of probable Project Cost and Construction Cost represent its best judgment as a professional engineering firm, familiar with the construction industry; but ENGINEER does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from its opinions of probable cost.

5.2.2. If a Construction Cost limit is established between OWNER and ENGINEER, the following will apply:

5.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit.

5.2.2.2. ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.

5.2.2.3. If the OWNER does not solicit bids for the Project within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which bids are sought.

5.2.2.4. If the lowest bona fide bid exceeds the established Construction Cost limit,

OWNER shall (1) give written approval to increase cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or character. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents one time as necessary to bring the Construction Cost within the cost limit; subsequent modifications by the ENGINEER shall be paid for as Additional Services.

SECTION 6 – GENERAL CONSIDERATIONS

6.1. Termination.

OWNER or ENGINEER may terminate the Agreement upon 10 days written notice to the other party with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. ENGINEER shall invoice OWNER for all services completed and shall be compensated in accordance with terms of the Agreement for all services performed by ENGINEER prior to the date specified in such notice.

6.2. Ownership of Documents.

All documents including drawings and specifications prepared by ENGINEER are designed specifically for the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse by Owner without written approval by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability to ENGINEER. Upon acceptance or approval by OWNER, documents and reports prepared and assembled by ENGINEER under this Agreement shall become the sole property of the OWNER and shall be delivered to OWNER without restriction on future use. ENGINEER may make copies of any and all documents for its files.

6.3. Controlling Law.

This Agreement is performable and is to be governed by the law applicable in Calhoun County, Texas. Venue for any action arising under this Agreement shall be in Calhoun County, Texas.

6.4. Successors and Assigns.

6.4.1. Successors, executors, administrators, assigns and legal representatives in respect to all covenants, agreements and obligations of this Agreement.

6.4.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitations, monies that may become due or monies that are due) this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing

contained in this paragraph shall prevent ENGINEER from employing independent consultants, associates and subcontractors to assist it in the performance of services hereunder.

6.4.3. Nothing herein shall be construed to give any rights or benefits to anyone other than OWNER and ENGINEER.

6.5. Independent Contractor.

In performing services under this Agreement, the relationship between OWNER and ENGINEER is that of independent contractor, and OWNER and ENGINEER by the execution of this Agreement do not change the independent status of ENGINEER. No term or provision of this Agreement or act of ENGINEER in the performance of this Agreement shall be construed as making ENGINEER the agent, servant, or employee of OWNER.

6.6. Indemnity and Insurance.

ENGINEER agrees to defend, indemnify, and hold OWNER whole and harmless against any and all claims for damages, costs and expenses to persons or property that may arise out of, or be occasioned by any act or omission, including negligence, of ENGINEER or any officer, agent, servant, employee, or associate of ENGINEER in the execution or performance of this agreement. In additions, the duty to indemnify provided by the previous sentence shall indemnify OWNER against damages caused by acts or omissions, including negligence, of OWNER or OWNER'S officers, agents, or employees, but shall not apply to the negligence of OWNER or its agents or employees if the damage arises from (1) personal injury, (2) death, (3) property injury, or (4) any other expenses that arise from the personal injury, death, or property injury.

ENGINEER further agrees to indemnify OWNER against all claims for damages that may arise from any claim made by an officer, agent, employee, associate, or subcontractor of ENGINEER or as a result of the entry of any of ENGINEER'S officers, agents, employees, associates or subcontractors onto the property of OWNER. The duty to indemnify provided by the previous sentence shall apply regardless of the acts or omissions, including negligence, of OWNER if the damage arises from (1) personal injury, (2) death, (3) property injury or (4) any other expense that arises from the personal injury, death, or property injury.

During the term of this project and one year following its completion, ENGINEER shall maintain errors and omissions insurance in the amount of at least \$500,000 per occurrence and \$500,000 aggregate, and shall provide a copy of the insurance certificate to the OWNER'S REPRESENTATIVE. The insurance certificate shall require the insurer to provide the OWNER with at least 30 days notice of cancellation or change in coverage.

This Agreement, together with referenced attachments, constitutes the entire Agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement and said attachments may only be amended, supplemented, modified or

canceled by a duly executed written instrument.

EXECUTED, this the _____ day of _____, _____.

OWNER:

City of Bay City, Texas

Robert K. Nelson, Mayor

(seal)

ATTEST:


City Secretary

FORM APPROVED:

City Attorney

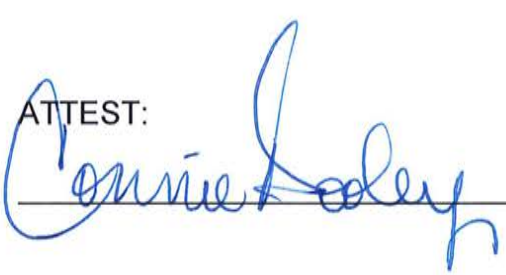
PROFESSIONAL:

CivilCorp, LLC.



Randy Janak, Vice President

ATTEST:



Connie L. Ledy

June 12, 2024

Scotty Jones
City Manager
City of Bay City
1901 Fifth St
Bay City, Texas 77414

**Re: Proposal for 30% Plans
Nile Valley Road Phase 2**

Dear Scotty:

We are pleased to submit this proposal for professional services to assist the City of Bay City with civil engineering and surveying services for the developing 30% Construction Plans for the Nile Valley Road Phase 2 project. The project will involve analysis to construct a new road from the end of the current limit of Nile Valley Road at Avenue F to Nichols Ave, a distance of approximately one mile. This one-mile section will include one new bridge and the replacement of an existing bridge. This scope will include full topographic survey for design purposes, geotechnical investigations for the bridges and roadway, preparing construction plans to a 30% level for the City's use in applying for a grant submittal, and preliminary cost estimate. The scope does not include any environmental investigations.

The Engineering work includes preparing plans and cost estimate to a 30% level for grant submittal. The associated engineering tasks are as follows:

- Identify utility conflicts and project constraints
- Determine horizontal and vertical roadway and bridge alignment/layout based on project and environmental constraints
- Analyze hydrology and hydraulics for two bridge structures
- Determine bridge structure and length for two bridges and prepare bridge layouts
- Analyze hydrology and hydraulics for roadway drainage system
- Prepare 30% plans including cover sheet, bridge layouts and profiles, roadway plan and profiles, drainage plan, and striping/signage plan
- Prepare 30% cost estimate

Proposed Engineering Fee: \$145,000

The survey work includes providing topography in support of the engineering design. The associated survey tasks are as follows:

- Establish/ Confirm Baseline and Benchmarks
- Determine existing City-owned property/ROW for project
- Survey Connecting Streets
- Cross-Sections
- Locate Utilities (underground & overhead)
- Topo Project Area

- Mapping in CADD
- Project Control Monuments
- Aerial Photography of project corridor

Proposed Surveying Fee: \$ 40,800

The Geotech work includes obtaining geotechnical data to support bridge design and to verify pavement design from Phase 1 will be sufficient for Phase 2 area. The associated geotechnical tasks are as follows:

- Review available soil data
- Obtain traffic projections from City of Bay City
- Layout proposed borehole locations
- Obtain borehole soil samples
- Analyze and perform lab testing of borehole samples
- Provide results of testing and recommendations for pavement and bridge design

Proposed Geotechnical Fee: \$ 26,900

Total Project Fee: \$212,700

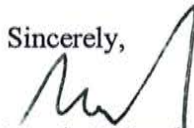
Rates for Additional Services (if requested)

Senior Project Manager / Support Manager	\$238.00
Senior Engineer / Project Manager	\$232.00
Utility Engineer	\$187.00
Project Engineer	\$187.00
Design Engineer	\$156.00
Engineer-In-Training	\$115.00
Senior Engineer Technician	\$121.00
Engineer Technician/Inspector	\$108.00
Senior CADD Operator	\$126.00
CADD Operator	\$98.00
Senior Utilities Coordinator	\$160.00
Utilities Coordinator	\$126.00
Senior GIS Operator	\$129.00
GIS Operator	\$108.00
Admin / Clerical	\$96.50
Registered Professional Land Surveyor Project Manager RPLS-SR	\$212.00
Registered Professional Land Surveyor Task Leader RPLS	\$170.00
Senior Survey Technician or SIT	\$126.00
Survey Technician	\$101.00

Survey Field Crew Coordinator	\$105.00
Abstractor	\$82.00
1-Man Survey Crew	\$135.00
2-Man Survey Crew	\$190.00
3-Man Survey Crew	\$225.00

Please let me know if you need any additional information or if you need anything else. Thank you for the opportunity to submit this proposal. We are looking forward to working with you and City staff on this project.

Sincerely,



Randy P. Janak, P.E.
Vice President – Victoria Office

CITY OF BAY CITY

MINUTES • MAY 14, 2024

COUNCIL
CHAMBERS | 1901
5th Street

City Council Regular Meeting

6:00 PM

1901 5TH STREET
BAY CITY TX, 77414



Mayor

Robert K. Nelson

Mayor Pro Tem

Becca Sitz

Councilman

Jim Folse

Councilman

Bradley Westmoreland

Councilman

Blayne Finlay

Councilman

Benjamin Flores

Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.

CALL TO ORDER AND CERTIFICATION OF QUORUM

The meeting was called to order by Mayor Robert K. Nelson at 6:02 p.m.

PRESENT

Mayor Robert K. Nelson
Mayor Pro Tem Blayne Finlay
Councilman Benjamin Flores
Councilman Jim Folse
Councilman Brad Westmoreland
Councilwoman Becca Sitz

INVOCATION & PLEDGE

Texas State Flag Pledge: *"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."*

Mayor Pro Tem Blayne Finlay

MISSION STATEMENT

The City of Bay City is committed to fostering future economic growth by collaborating with our citizens, employers, current and future businesses, as well as the Community and Economic Development Centers. We strive to deliver superior municipal services and to invest in quality-of-life initiatives such as housing, businesses, jobs and activities for all citizens. We make a concerted effort to respond to resident's concerns in a timely and professional manner in order to achieve customer satisfaction.

Mayor Pro Tem Blayne Finlay

APPROVAL OF AGENDA

Motion made by Councilman Flores to approve the agenda, Seconded by Councilman Westmoreland. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

PUBLIC COMMENTS

Christella Rodriguez, Chief of Police, shared information on special operations with Texas Department of Public Safety Troopers, who helped with enforcement of commercial motor vehicle laws. In 4.5 hours, they found tractor trucks in violation of 114 violation and put out of service 54% of the trucks and 11% of the truckers. Chief Rodriguez added that the department would like to add one officer as a licensed commercial operator enforcer.

AWARDS AND PROCLAMATIONS

Mayor Nelson read and presented the proclamations.

1. **Proclamation ~ Proclamation recognizing May as "Motorcycle Safety and Awareness Month".** Mayor Robert K. Nelson
2. **Proclamation ~ Proclamation recognizing May 21st-27th, 2024 as "National Public Works Week".** Mayor Robert K. Nelson
3. **Proclamation ~ Proclamation recognizing May 14th-20th, 2024 as "National Police Week".** Mayor Robert K. Nelson

ACKNOWLEDGEMENT FROM CITY MANAGER

Scotty Jones, Interim City Manager, recognized Lee Allen and the Utility Billing department for their customer service. Ms. Jones also recognized Councilman Ben Flores who brought flowers to the Police Department for Mother's Day.

ITEMS / COMMENTS FROM THE MAYOR AND COUNCIL MEMBERS

Mayor Pro Tem Finlay thanked Public Works for cleaner streets. Councilman Flores state that our emergency plan is outdated and Dan Shook, Fire Marshal and Emergency Coordinator, replied the it will be ready at the end of the month.

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

4. **Regular Council Meeting minutes of March 26, 2024**

Motion made by Councilman Folse to approve the consent items, Seconded by Councilman Flores. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

PUBLIC HEARING

Opened Public Hearing at 6:20 p.m. and there were no public comments. David Pettit, DPED, reviewed the final plan with Council, providing history and final updates and adding that currently there have been no disbursements of funds.

5. **Public Hearing of the City Council of the City of Bay City to consider the final Project and Financing Plan of Tax Increment Reinvestment Zone Number Three (TIRZ #3), City of Bay City, Texas.**

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

6. **Budget ~ Discuss, consider, and/or approve Budget Amendments for the Bay City Community Development Corporation (BCCDC) as of March 31, 2024.**
Jessica Russell, BCCDC Executive Director

Scotty Jones, Interim City Manager, presented the budget amendment and added that it was recommended by BCCDC Board.

Motion made by Councilman Flores to approve Budget Amendments for the Bay City Community Development Corporation, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

7. **Resolution ~ Discuss, consider, and/or approve a resolution of the City Council of the City of Bay City, Texas authorizing the Bay City Community Development Corporation to enter into an Interlocal Cooperation Agreement with the City of Bay City for a project to obtain a Quiet Zone Study (Second Reading).** Jessica Russell, Executive Director BCCDC

Scotty Jones, Interim City Manager, presented the second reading of the resolution.

Motion made by Councilman Folse to approve the Resolution of the City Council of the City of Bay City, Texas authorizing the Bay City Community Development Corporation to enter into an Interlocal Cooperation Agreement with the City of Bay City for a project to obtain a Quiet Zone Study, Seconded by Mayor Pro Tem Finlay. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Voting Nay: Councilman Flores. Motion carried.

8. **Ordinance ~ Discuss, consider, and/or approve an Ordinance of the Final Project and Financing Plan or Reinvestment Zone Number Three (TIRZ #3) to the City Council.** Scotty Jones, Interim City Manager

Motion made by Councilwoman Sitz to approve an Ordinance of the Final Project and Financing Plan or Reinvestment Zone Number Three (TIRZ #3), Seconded by Councilman Flores. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

9. **Presentation ~ Discuss, consider, and approve the Library Strategic Plan for Fiscal Year 2025-2029.**

Samantha Denbow, Library Director, provided a presentation of the Library Strategic Plan and introduced the consultant Dayna Williams, who is a partner with Library Action Network consultant. Ms. Denbow stated the library is required by State to have a 5 year plan. Mayor Nelson asked if there is an advisory board and Ms. Denbow replied that there is not but they do have Friends Of The Library. Mayor Nelson added that a board could help prioritize and Councilwoman Sitz stated that she thinks there are many benefits to having an advisory board. Scotty Jones, Interim City Manager,

stated that she attended the focus group, stated she focused in on using the Library as the communications hub.

Motion made by Councilman Flores to approve the Library Strategic Plan for Fiscal Year 2025-2029, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

- 10. Ordinance ~ Discuss, consider, and/or approve an Ordinance amending the City Code of Ordinances relating to Chapter 114 Utilities and the City of Bay City Water Conservation Plan and Drought Contingency Plans.** Krystal Mason, Assistant Public Works Director

Motion made by Councilman Flores to approve an Ordinance amending the City Code of Ordinances relating to Chapter 114 Utilities and the City of Bay City Water Conservation Plan and Drought Contingency Plans, Seconded by Mayor Pro Tem Finlay. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

- 11. Budget ~ Discuss and review the City's proposed budget calendar.**

Scotty Jones, Interim City Manager, reviewed the schedule of budget meetings.

CLOSED / EXECUTIVE SESSION - none

ITEMS / COMMENTS FROM THE MAYOR, COUNCIL MEMBERS AND CITY MANAGER

There were none.

ADJOURNMENT

Motion made by Councilman Flores to adjourn, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried and Council adjourned at 7:18 p.m.

PASSED AND APPROVED, this 25th day of June 2024.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

CITY OF BAY CITY

MINUTES • MAY 28, 2024

**COUNCIL
CHAMBERS | 1901
5th Street**

City Council Regular Meeting

6:00 PM

**1901 5TH STREET
BAY CITY TX, 77414**



Mayor

Robert K. Nelson

Mayor Pro Tem

Becca Sitz

Councilman

Jim Folse

Councilman

Bradley Westmoreland

Councilman

Blayne Finlay

Councilman

Benjamin Flores

Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.

CALL TO ORDER AND CERTIFICATION OF QUORUM

The meeting was called to order by Mayor Robert K. Nelson at 6:00 p.m.

PRESENT

Mayor Robert K. Nelson
Mayor Pro Tem Blayne Finlay
Councilman Benjamin Flores
Councilman Jim Folse
Councilman Brad Westmoreland
Councilwoman Becca Sitz

INVOCATION & PLEDGE

Texas State Flag Pledge: *"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."*

Councilman Benjamin Flores

MISSION STATEMENT

The City of Bay City is committed to fostering future economic growth by collaborating with our citizens, employers, current and future businesses, as well as the Community and Economic Development Centers. We strive to deliver superior municipal services and to invest in quality-of-life initiatives such as housing, businesses, jobs and activities for all citizens. We make a concerted effort to respond to resident's concerns in a timely and professional manner in order to achieve customer satisfaction.

Councilman Benjamin Flores

APPROVAL OF AGENDA

Motion made by Mayor Pro Tem Finlay to remove Item #3 and approve the agenda, Seconded by Councilman Westmoreland. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

PUBLIC COMMENTS

There were no public comments.

ACKNOWLEDGEMENT FROM CITY MANAGER

Scotty Jones, Interim City Manager, announced the BMX Park grand opening ceremony will be Saturday, June 1st and Hilliard Pool is closed for renovations.

ITEMS / COMMENTS FROM THE MAYOR & COUNCIL MEMBERS

Councilman Folse gave location of two fire hydrants, one laying on its side and the other leaking. Councilman Flores requested that cost of Nile Valley be tracked before we make a decision. Councilman Flores also asked if more could be done regarding the tall growth obscuring vision on turn from Hamman onto Nichols at the curve. Mayor Pro Tem Finlay commented on the trash left behind on City Fields by the public.

CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

1. **Regular Council Meeting minutes of April 9, 2024**
2. **City Council Special Called Meeting minutes of April 16, 2024**
3. **Bay City Airport Zoning Board of Adjustments Meeting minutes of April 23, 2024**

Motion made by Councilman Ben Flores to approve the consent items #1 and #2, Seconded by Mayor Pro Tem Finlay. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

DEPARTMENT REPORTS

4. **Public Works report and presentation.** Krystal Mason, Assistant Public Works Director

Krystal Mason, Assistant Public Works Director, presented the Public Works reports with stats and project updates. Ms. Mason also updated Council on the new mobile app that they are still working out the bugs and asked the public to be patient. Ms. Mason also presented the new Public Works logo.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

5. **Resolution ~ Discuss, consider, and/or approve the selection of an administrative and construction management service provider for the HOME Investment Partnerships Program (HOME) Homeowner Reconstruction Program, administered by the Texas Department of Housing and Community Affairs.** Gabriel Lopez, Engineering Tech

Gabriel Lopez, Engineering Tech, presented the resolution. Council discussed the 15% match the City must commit to and past funding that had been available. Motion made by Councilman Flores to approve a resolution for the selection of an administrative and construction management service provider for the HOME Investment Partnerships Program (HOME) Homeowner Reconstruction Program,, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilwoman Sitz. Voting Nay: Councilman Westmoreland. Motion carried.

6. **Aquatics ~ Discuss Pool Management option(s) for Valiant Pool and take any action deemed necessary.** Scotty Jones, Interim City Manager

Mayor Nelson summarized discussions of the Pool Task Force meeting to bring recommendations to Council. The committee recommends to shut down the pool but Aqua Cats would like to keep open until the end of July. Recommendation is to keep the pool open next two months with additional support, which Loy Sneary, Wellness Matagorda County, has offered to pay the difference and Bud Oliver, Golden Crescent YMCA, is also supportive.

Motion made by Councilman Folse to keep Valiant Pool open two more months with a caveat that should there be a major failure, the item must come back to Council, Seconded by Councilman Flores. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

7. **Ordinance ~ Discuss, consider, and/or approve an Ordinance of the City of Bay City, Texas adopting a "Budget Amendment #1" to the "Annual Budget of the City of Bay City, Texas, for the Fiscal Year 2024"; providing for supplemental appropriation and/or transfer of certain funds; providing for severability; and providing other matters related to the subject.** Scotty Jones, Interim City Manager

Motion made by Councilwoman Sitz, Seconded by Councilman Folse.
Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz

8. **Agreement ~ Discuss, consider, and/or approve a partnership with CGI to install banners throughout the City.** Robert K. Nelson, Mayor

Mayor Nelson provided a presentation regarding a partnership with CGI to install banners, adding that it is the same as when they did the video. There is no cost to the city.

Motion made by Mayor Pro Tem Finlay to approve a partnership with CGI to install banners throughout the City, Seconded by Councilman Folse. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

9. **Policy ~ Discuss, consider, and/or approve amending the appointment of Council Members as Liaisons and the City Administrative Divisions.** Jeanna Thompson, City Secretary

Motion made by Councilman Folse to approve amending the appointment of Council Members as Liaisons and the City Administrative Divisions, Seconded by Councilman Flores. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried.

10. Appointment ~ Discuss, consider, and/or approve the election of Mayor Pro Tem. Robert K. Nelson

Council selected Councilwoman Becca Sitz as Mayor Pro Tem for 2024-2025 one-year term.

CLOSED / EXECUTIVE SESSION

Council adjourned the regular session and went into executive session at 6:52 p.m.

- 11. Executive Session pursuant to Texas Government Code Section 551.072 (Deliberation regarding Real Property).**
- 12. Executive Session pursuant to Section 551.071(1) of the Texas Government Code (Consultation with Counsel on Legal Matters)**
- 13. Executive Session pursuant to Texas Government Code Section 551.089(3) (Deliberation regarding Critical Infrastructure).**

RECONVENE AND ACTION

Council reconvened back into a regular session at 7:40 and took no action on items in executive session.

ITEMS / COMMENTS FROM THE MAYOR, COUNCIL MEMBERS AND CITY MANAGER

Mayor Pro Tem Sitz asked all to notice the new flags prominently displayed, adding that Councilman Folsie assisted. Councilman Finlay thanked the Mayor for nominating and trusting him to serve as Mayor Pro Tem, adding that the Mayor is a good mentor and doing a good job for the City. Mayor Pro Tem Sitz thanked council for their vote of confidence.

ADJOURNMENT

Motion made by Councilman Flores to adjourn, Seconded by Councilman Westmoreland. Voting Yea: Mayor Nelson, Councilman Finlay, Councilman Flores, Councilman Folsie, Councilman Westmoreland, Mayor Pro Tem Sitz. Motion carried and the meeting adjourned at 7:43 p.m.

PASSED AND APPROVED, this 25th day of June 2024.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

CITY OF BAY CITY

MINUTES • JUNE 11, 2024

COUNCIL
CHAMBERS | 1901
5th Street

City Council Workshop - Strategic Plan

5:00 PM

1901 5TH STREET
BAY CITY TX, 77414



Mayor

Robert K. Nelson

Mayor Pro Tem

Becca Sitz

Councilman

Jim Folse

Councilman

Bradley Westmoreland

Councilman

Blayne Finlay

Councilman

Benjamin Flores

Through a united and collaborative effort, we seek to grow the City of Bay City with a diverse culture that is proud to call Bay City home. We envision a thriving family-centered community where citizens are involved in the future development of our city. We desire our citizens to work, play, worship and shop in the community in which we live. Visitors are welcomed and encouraged to enjoy the friendly environment and amenities the citizens and business owners have created together.

CALL TO ORDER

The meeting was called to order by Mayor Robert K. Nelson at 5:00 p.m.

CERTIFICATION OF QUORUM**PRESENT**

Mayor Robert K. Nelson
Mayor Pro Tem Blayne Finlay
Councilman Benjamin Flores
Councilman Jim Folse
Councilman Brad Westmoreland
Councilwoman Becca Sitz

PUBLIC COMMENTS

There were no public comments.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND / OR APPROVAL**1. Presentation - Fiscal Year 2024 accomplishments of the City's Strategic Plan.**

Scotty Jones, Interim City Manager, opened discussions regarding the Strategic Plan and accomplishments. Various departments presented their accomplishments within the area of emphasis.

ADJOURNMENT

Mayor Nelson thanked everyone for all the hard work and successes.

Motion made by Councilman Flores to adjourn, Seconded by Councilwoman Sitz. Voting Yea: Mayor Nelson, Mayor Pro Tem Finlay, Councilman Flores, Councilman Folse, Councilman Westmoreland, Councilwoman Sitz. Motion carried and council adjourned at 6:08 p.m.

PASSED AND APPROVED, this 25th day of June 2024.

ROBERT K. NELSON, MAYOR
CITY OF BAY CITY, TEXAS

JEANNA THOMPSON
CITY SECRETARY

~ Discuss, consider, and/or approve the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ending September 30, 2023



EXECUTIVE SUMMARY

ANNUAL COMPREHENSIVE FINANCIAL REPORT (ACFR)

BACKGROUND:

The Investment/Audit Committee meets with Harrison, Waldrop, and Uherek, L.L.P. prior to this Council meeting to review the audit. This in-depth review is a recommended practice by the Government Finance Officer's Association.

The City received a clean opinion in all areas of the audit.

The City applies each year for the Government Finance Officers Association ACFR award.

IMPACT ON COMMUNITY SUSTAINABILITY:

It provides financial information to the public and other interested 3rd parties. Audits portray a City's financial strength or weakness and determine whether a City's financial statements are free of any material misstatements to the reader.

RECOMMENDATION:

Staff recommends City Council approve the ACFR for fiscal year ended September 30, 2023.

ATTACHMENTS: Hard copy of audit report will be made available at the meeting. A soft copy will be available online on the City's website after approval. Audit will be emailed out prior to meeting.



CITY OF BAY CITY
 1901 FIFTH STREET
 BAY CITY, TEXAS 77414
 (979) 245-2137
 FAX: (979) 323-1626

AGENDA ITEM SUBMISSION FORM

Any item(s) to be considered for action by the City Council, must be included on this form, and be submitted along with any supporting documentation. Completed Agenda Item Submission forms must be submitted to the City Secretary's Office no later than 4:00 p.m. on the Monday of the week prior to the Regular Council meeting.

Requestor Name: Mason, James **Date Submitted:** 06/17/2024
Last, First *MM/DD/YYYY*

Requestor Type : City Staff **Meeting Date:** 06/25/2024
Citizen/City Staff/Council Member *MM/DD/YYYY*

Position Title Airport Manager
For City Staff Only

Agenda Location: Regular
(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)

Agenda Content:

Discuss, consider, and/or approve: the bid selection for the Bay City Regional Airport AWOS Replacement Project.

Executive Summary of Item:

On June 11, 2024, the bids for the airport AWOS replacement were opened. We received two (2) sealed bids. The bids were certified by the Airport Manager and the winning bid has been selected for approval.

NOTE: This is a 90/10 reimbursement grant through TxDOT Aviation and was approved by council with the approximate cost of \$200,000.



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AGENDA ITEM SUBMISSION FORM

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Requestor Name: Blomquist, Herb **Date Submitted:** 06/18/2024
Last, First *MM/DD/YYYY*

Requestor Type: City Staff **Meeting Date:** 06/25/2024
Citizen/City Staff/Council Member *MM/DD/YYYY*

Position Title Public Works Director
For City Staff Only

Agenda Location: Discussion Item
(e.g.: Consent Agenda/ Discussion Item/ Public Hearing/ Executive Session/ Presentation)

Agenda Content:

Discuss, consider, and/or approve Work Authorization 1 with Urban Engineering for engineering design and construction management services related to the drainage project at the Del Norte subdivision, specifically along Nichols Avenue.

Executive Summary of Item:

BACKGROUND: Urban Engineering is familiar with the Del Norte subdivision's infrastructure needs due to their involvement in previous preliminary engineering work. They were selected from the city's RFQ process based on their qualifications and responsiveness. This authorization will initiate critical engineering design efforts to address flooding at the Nichols-Encino Intersection.

FINANCIAL IMPLICATIONS:

- Engineering, Surveying, and Administration Cost: \$ 77,250

IMPACT ON COMMUNITY SUSTAINABILITY: The implementation of this project will significantly alleviate the flooding issues that have long impacted the Nichols Avenue area, enhancing safety, property protection, and overall quality of life for the affected residents.

RECOMMENDATION: Staff recommends that City Council approve Work Authorization 1, granting Urban Engineering the notice to proceed with the engineering design for the Del Norte Subdivision drainage project. This will allow for the immediate commencement of the critical improvements needed at the Nichols-Encino intersection.

ATTACHMENTS:

1. Work Authorization 1

CERTIFICATE OF INTERESTED PARTIES

FORM 1

ITEM #11.

1 of 1

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1178024

Date Filed:
06/19/2024

Date Acknowledged:

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Victoria Engineering, Inc. dba Urban Engineering
Victoria, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Bay City, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Task Order #1

Engineering Services for City of Bay City - Nichols Avenue Drainage Improvements (UE Job #E26421.00)

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Urban, Larry	Corpus Christi, TX United States	X	
	Schmidt, Thomas	Victoria, TX United States	X	
	Bridges, Ray	Victoria, TX United States	X	
	Glaze, Matt	Victoria, TX United States	X	
	Fromme, Cheyanne	Victoria, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Matt A. Glaze, and my date of birth is 11-2-78.

My address is 2004 N. Commerce St., Victoria, TX, 77901, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Victoria County, State of Texas, on the 19th day of June, 2024.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

This is Task Order No. 1,
consisting of 3 pages.

Task Order

In accordance with paragraph 1.01 of the Standard Form of Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated June 25, 2024 ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

- A. Title: City of Bay City - Nichols Avenue Drainage Improvements
 B. Description: Design plans, specifications and bid documents associated with drainage improvements to a portion of Nichols Avenue serving the Del Norte Subdivision and beginning from an area north of Encino Avenue and continuing southerly to an existing drainage ditch south of La Vista Avenue.

2. **Services of Engineer**

Engineer shall have those responsibilities set forth in Exhibit A.

3. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in Exhibit B.

4. **Times for Rendering Services**

Services will be rendered in a timely manner and in accordance with the schedule determined during the Study and Report Phase of the Project.

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
<i>Topographic Survey w/Aerial</i>	<i>Fixed Fee</i>	<i>\$11,250.00</i>
<i>Preliminary & Final Design</i>	<i>Fixed Fee</i>	<i>\$46,200.00</i>
<i>Bidding & Contract Administration</i>	<i>Fixed Fee</i>	<i>\$19,800.00</i>

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

C. Reimbursable Expenses: Includes fees charged by outside entities have review authority over the project, government agency fees and advertising fees. See Appendix 1 to Exhibit C "Reimbursable Expenses Schedule"

6. **Consultants:** Urban Surveying, Inc.

7. **Other Modifications to Agreement:** None

8. **Attachments:** None

9. **Documents Incorporated By Reference:** Master Agreement Between City of Bay City and Victoria Engineering, Inc. dba Urban Engineering dated June 25, 2024. This includes all Attachments to that Agreement (Attachments A – Attachment I inclusive).

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

By: _____

Name: Robert K. Nelson

Title: Mayor

ENGINEER:

By: 

Name: Matt A. Glaze, P.E.

Title: Vice President

Engineer License or Firm's
Certificate No. TREF# F-160
State of: Texas

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Name: Herb Blomquist

Title: Director of Public Works

Address: 1217 Avenue J
Bay City, TX 77414

E-Mail
Address: hblomquist@cityofbaycity.org

Phone: 979-323-1659

Fax: 979-323-1672

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: Matt A. Glaze, P.E.

Title: Vice President

Address: 2004 N. Commerce St.
Victoria, TX 77901

E-Mail
Address: mglaze@urbanvictoria.com

Phone: 361-578-9836

Fax: N/A

Discuss and take any action to approve proposal of FGM Architects to serve as architect for public safety headquarters and authorize Interim City Manager to enter into contract in accordance with proposal upon City Attorney's approval of form of contract.



EXECUTIVE SUMMARY

BACKGROUND:

This is for professional services phase relating to programing and schematic design services only for the City's future Public Safety Building. This phase lasts approximately 12 weeks.

FGM Architects, Inc. is an employee-owned firm with 200+ professionals in eight offices across five states, has a track record of changemaking leadership in the Texas architectural community. FGMA offers unparalleled public safety expertise. One of their current key regional projects is the new public safety building for the City of Victoria.

FINANCIAL IMPLICATIONS: \$162,000 funded by 2024E Bond Proceeds

RECOMMENDATION: Staff recommend approving the proposal and authorize Interim City Manager to enter into a contract.

ATTACHMENTS: FGM Architects Proposal

FGMA ARCHITECTS

May 15, 2024

Scotty Jones
Interim City Manager
1901 Fifth Street
Bay City, TX 77414
sjones@cityofbaycity.org

Subject: **Bay City Public Safety Headquarters
Fee Proposal for Professional Design Services – Programming and Schematic Design**

Dear Scotty,

FGM Architects Inc. (FGMA) is pleased to submit this proposal for the Bay City Public Safety Headquarters adaptive reuse project. On the following pages we have summarized our understanding of the project, identified our project team, outlined our scope of services, indicated a preliminary project schedule, and proposed a fee for our professional services.

Please review the following information and let me know if you have any questions or concerns. We look forward to teaming with Bay City on this important project.

With warmest regards,



Jaime Palomo, AIA | Principal, Managing Director
jaimepalomo@fgmarchitects.com

cc. Chief Christella Rodriguez – Bay City Police Department
Brian Meade, AIA – FGM Architects

BAY CITY PUBLIC SAFETY HEADQUARTERS: PROGRAMMING AND SCHEMATIC DESIGN SERVICESPROJECT UNDERSTANDING

The City of Bay City, hereinafter referred to as the Owner, is in the process of purchasing the 3.87-acre property at 3701 Avenue F in order to renovate the 40,00sf former Kmart building (c.1978) into their new public safety headquarters over a period of time in a multi-phased approach.

We understand that the Program Verification Phase will include reviewing previous programs and concept layouts from both 2016 and 2021 to determine the appropriate program size that can be realized in multiple phases of construction. The anticipated Phases are described in the Program Verification section below.

We understand that the Schematic Design Phase drawings will be based on the program verification results and from the initial conceptual site plan diagram created on 4/22/24 (See exhibit below).

Exterior features to include:

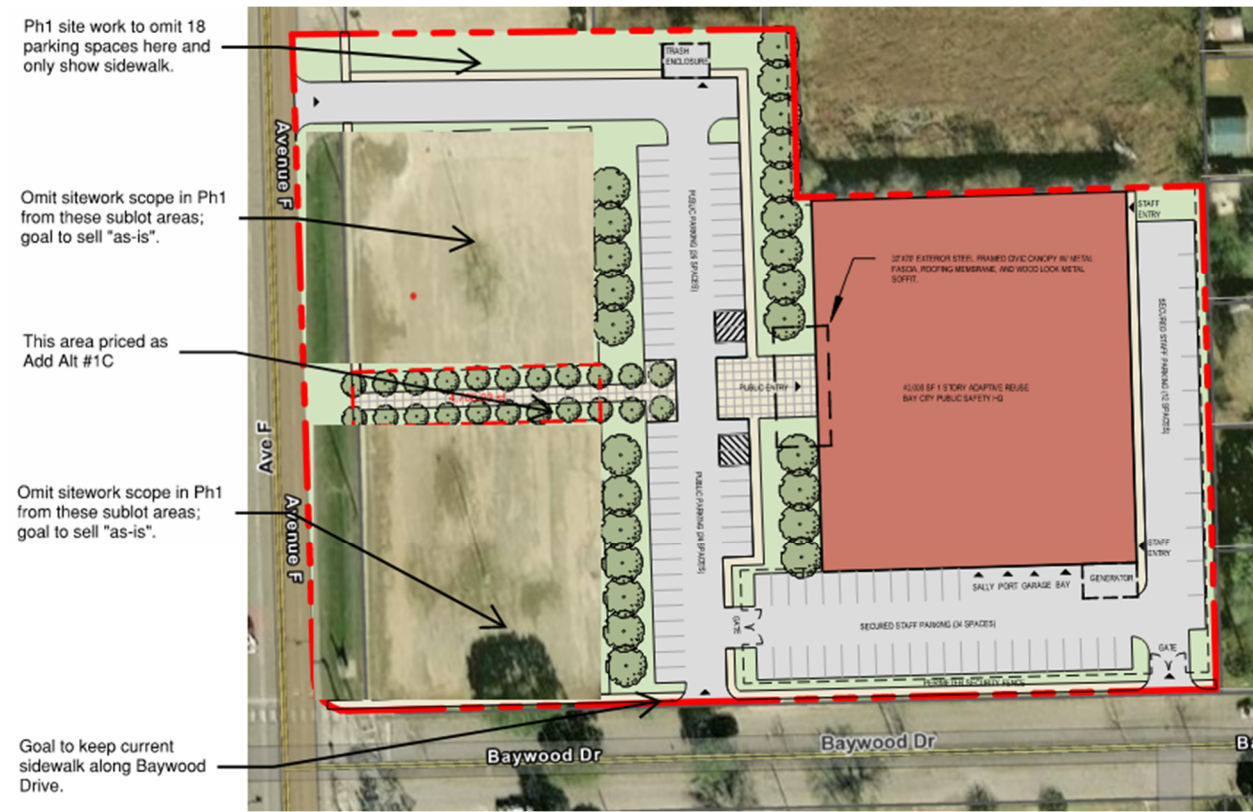
- A fenced in secure staff parking lot for approximately 40 cars (with 2 vehicle gates)
- An unsecured public parking lot for approximately 50 cars
- A new public entry plaza with covered canopy
- A fire lane drive aisle that connects both Avenue F and Baywood Drive.
- An axial landscaped public walk leading from Ave F to the public entry.
- Screen enclosures for both the generator and trash areas.

Interior features to include:

- Approximately 20,000sf – 26,000sf of phase 1 interior build-out space depending on cost estimate update.
- Capable of being designed to a Risk Category IV use.
- Potential cost add alternate to harden parts of building as a rated storm shelter.

Based on both client feedback and preliminary ROM (Rough Order of Magnitude) cost estimate efforts by PRC on 4/23/24, we anticipate the Phase 1 construction costs to be in the \$12M-\$15M range. In order to gain an even better understanding of actual construction costs and scope, we propose a two-phase approach to your project. Phase One, as presented in this proposal, includes Program Verification and Schematic Design (SD) drawings to be used in preparation of a Rough Order of Magnitude (ROM) cost estimate. Phase Two, to be part of a subsequent proposal, will include preparation of Design Development (DD) and Construction Document (CD) design documents to be used for bidding, permitting, construction of the approved project along with Construction Administration (CA) services.

FGMA ARCHITECTS



DESIGN TEAM

Design team members and roles are listed below:

FGM Architects Inc.

Agnew Associates, Inc.

Steinman Luevano Structures, LLP

Lynn Engineering

STUDIO 1619, LLC

Project Cost Resources

Architect / Project Management

Mechanical, Electrical, Plumbing, and Fire Protection

Structural Engineer

Civil Engineer

Landscape Architect

Cost Estimating

For the DD and CD phases, an IT consultant would be added to the team.

SCOPE OF PROFESSIONAL SERVICES

The FGMA team will work with Bay City and the Police Department from the Program Verification Phase through the Schematic Design Phase by managing the design process including: facilitating meetings; confirming and clarifying the scope of work; meeting with Department representatives to verify the programmatic requirements / department needs; revise the program including space list, square footages, and counts of staff accommodated; developing design concepts; refining the design concept selected by the Department; preparing Schematic Design documents; developing an Schematic Design level cost estimate.

FGMA ARCHITECTS

The project will begin with a Kick-off Meeting, with an agenda including:

- Project team introductions
- Communication protocols, confirmation of the project schedule and key meeting dates/milestones
- Confirmation of the City & Police Department's project goals and objectives
- Information gathering

The key project phases covered under this agreement are as follows:

- Program Verification Phase
- Schematic Design Phase

Design Development, Construction Documents, Bidding / Permitting, and Construction Administration phases will be covered by a separate agreement after the project scope and Owner budget are established based on the Schematic Design documents and cost estimate.

We have provided a general description below of the tasks and activities that will be undertaken during these phases.

Program Verification Phase

The Program Verification Phase will include reviewing previous programs and concept layouts from both 2016 and 2021 studies to determine the appropriate program size that can be realized in Phase 1 of this project versus Phase 2.

- Anticipated Phase 1 program spaces will look at limited 5-10yr growth for Police Administration, Records, Patrol, CID, Property & Evidence, Temporary Holding, a county wide expandable dispatch center, shared meeting / amenity spaces, limited public lobby space.
- Phase 2 program spaces will also be reviewed in the 10-20yr growth timeframe to make sure that the long-term masterplan fits within the current 40,000sf building shell. These program spaces will include staff growth in all Phase 1 areas plus the addition of municipal courts and other shared amenity spaces.

Representatives from the Design Team will also revisit the current police, dispatch, and courts spaces during this phase, shall visit the site with Department representatives to review the proposed scope of work, and identify any modifications to that scope based on current conditions. FGMA shall document the visit and its findings and shall identify any required changes to the Design Team's scope of work. The information gathered during this phase will be used as design parameters going forward into the next phase.

The following three (3) meetings will be included in the Programming Phase: Project Kickoff Meeting (virtual), Programming Input / User Group Meetings (multiple in-person meetings in one trip), Programming Review Meeting (virtual).

FGMA ARCHITECTS

Schematic Design (SD) Phase

Based on the confirmed scope of work, program verification, and the City / Police Department's Construction Budget, FGMA and its consultants shall prepare Schematic Design documents consisting of drawings and/or narratives and other documents illustrating the scale and relationship of project components. We will review the existing building documents (if available) and undertake a field verification of the existing spaces in order to generally ascertain the accuracy of the existing documents. We will prepare base drawings to use for the project based on the existing building documents. If existing building documents are not available, FGMA can provide an additional service to field measure the existing building and generate a base drawing for use on the Project.

We will propose solutions to the City and Police Department to address the identified programmatic needs and challenges and refine these solutions based on the Department's input.

The following four (4) meetings will be included in the Schematic Design Phase: Initial Conceptual / Schematic Design Meeting (in-person), SD Progress Meeting (virtual), Final Schematic Design Meeting (in-person), Cost Review Meeting (virtual). Additional in-person meetings will require additional services. Bluebeam Sessions will be utilized as needed to facilitate communication.

To conclude the phase, we will finalize and submit Schematic Design documents for the Owner's review and approval. Deliverables will include:

- Concept landscape plan, site plan, floor plans, reflected ceiling plans, finish plans, exterior elevations, and hardened wall location exhibit.
- Up to 4 Schematic Renderings (still images): 1 exterior birdseye view of site; 1 exterior eye level view of building, 1 interior lobby view, and 1 additional space to be determined with the City and Police Department.
- Narratives describing building systems for renovations and construction of new structures. For cost estimating purposes, narratives will be prepared by the following design disciplines:
 - Structural
 - Mechanical, Electrical and Plumbing (MEP)
 - Civil/Site Design
 - Landscape Design
- Rough Order of Magnitude (ROM) schematic design phase cost estimate to refine project scope and budget for subsequent phases of design.

Design Development (DD) Phase

Scope of services during this phase of design to be part of a subsequent proposal.

Construction Documents (CD) Phase

Scope of services during this phase of design to be part of a subsequent proposal.

Bidding/Award and Permitting Phase

Scope of services during this phase of design to be part of a subsequent proposal.

Construction Administration (CA) Phase

Scope of services during this phase of design to be part of a subsequent proposal.

FGMA ARCHITECTS

PRELIMINARY PROJECT SCHEDULE

Based on our current understanding of the City and Police Department's goals and objectives and the scope of professional services described above, we have prepared a Preliminary Project Schedule upon which our Proposal is based. We will review this schedule with the City and Department at the project kick-off meeting in order to clarify and confirm the assumptions made.

<u>Phase/Activities</u>	<u>Duration</u>
Kick-Off meeting	week 1
Information gathering	week 1-2
Programming	week 2-3
Prepare conceptual design	week 4-5
Owner review/approval	week 5
Schematic design drawings	week 6-8
Owner review/approval	week 9
Cost estimating (design team paused)	week 9-10
Cost Review / Minor refinements	week 11
Final packaging / approval	week 12

This schedule assumes no pauses in efforts for extended review periods and that client decisions / directives will be provided in a timely manner to keep efforts on pace. If this phase of the project extends beyond 12 weeks for additional rounds of meetings, redesign, or review, additional fees may be requested. Refer to the Additional Services section below.

ASSUMPTIONS

The FGMA team has made the following assumptions in the preparation of this Proposal:

- FGMA has included the design (SD narratives) of conventional Architectural, Civil, Landscape, Structural, Mechanical, Electrical, and Plumbing Engineering systems as part of this Proposal. Specialty consultation services such as vibration, audio visual, datacom, acoustic, commercial kitchen, signage, security, environmental, and material testing are not included in this Proposal. If these services are required, FGMA will work with the Owner to select an appropriate consultant; consultant fees would be treated as a reimbursable expense.
- LEED documentation is not included in this Proposal.
- Enhanced Energy modeling is not included in this Proposal.
- Geotechnical investigation is not included in this proposal. If it is deemed necessary by the Structural Engineer to obtain a Geotechnical report, depending upon the proposed improvements, FGMA will assist the Owner in soliciting the services of a Geotechnical Engineer and the design team will coordinate as needed.
- Selective demolition work to identify potential issues with existing systems is not included.
- Existing building drawings and any other pertinent documents shall be made available to the FGMA team for its use by the beginning of the Programming Phase. The FGMA team shall perform a visual site survey to verify the existing conditions and will double check key dimensions; however, the creation of detailed, measured drawings of the existing building are not included in the lump sum fee. If existing building drawings are not available, FGMA can provide an additional service to perform scanning / measurements of the existing building and generate base drawings for use with the project.

FGMA ARCHITECTS

COMPENSATION

For the Architectural and Engineering Design Services described above in connection with the Project (Programming through Schematic Design), FGMA and its consultants shall be compensated on the basis of a lump sum fee in the amount of **One Hundred Sixty-Two Thousand Dollars (\$162,000.00)**, which includes customary direct expenses such as local travel and printing for in-house use only. This lump sum fee also includes anticipated expenses for out-of-town travel, fuel, lodging, applicable meals, printing costs, etc, in the amount of \$4,200. If actual expenses exceed this amount due to additional unanticipated meeting trips or otherwise, such additional expenses will be treated as Reimbursable Expenses and will be invoiced at cost plus a 10% handling fee.

ADDITIONAL SERVICES

For any Additional Services authorized by the Owner beyond the scope of this Proposal including: major revisions to previously approved design or construction documents, additional in-person meetings and travel time (beyond the number of meetings included herein), additional renderings, models, and video “walk-throughs” authorized by the City, existing building drawings, or services not customarily furnished in accordance with generally accepted architectural and engineering practice, FGMA and its consultant shall be compensated either on the basis of the hourly rates described in the attached Hourly Rate Schedules for the professional and technical employees engaged on the Project, or on the basis of a negotiated lump sum.

Anticipated additional services include the scanning/measuring of the existing building to develop base drawings for use during design, in the event that such drawings do not exist. The Owner should budget \$4,000 for such additional services. FGMA will not proceed with any Additional Services without prior written authorization from the Owner.

APPROVAL

If the above proposal is acceptable, please sign in the space provided below and return one copy to FGMA, or otherwise notify FGMA of its acceptance. Following approval, we will prepare a Standard Form of Agreement Between Owner and Architect.

ACCEPTED BY:

Signature

Name

Title

Date

FGMA ARCHITECTS

Hourly Rate Schedules

FGMA Hourly Rate Schedule

Principal	\$300.00/hour
Project Manager (Arch IV)	\$260.00/hour
Project Manager (Arch III)	\$220.00/hour
Project Architect (Arch II)	\$180.00/hour
Project Architect (Arch I)	\$140.00/hour
Interior Designer IV	\$240.00/hour
Interior Designer III	\$200.00/hour
Interior Designer II	\$160.00/hour
Interior Designer I	\$120.00/hour
Project Administrator	\$135.00/hour

Agnew Associates, Inc. Hourly Rate Schedule

Principal	\$215.00/hr
Senior Licensed Engineer	\$185.00/hr
Licensed Engineer	\$165.00/hr
Engineer	\$135.00/hr
Design Personnel	\$105.00/hr
Inspector	\$50.00/hr
Support Personnel	\$70.00/hr

Steinman Luevano Structures Hourly Rate Schedule

Principal	\$200.00/hr
Project Engineer (PE)	\$190.00/hr
Graduate Engineer (EIT)	\$180.00/hr
Senior CAD Technician	\$170.00/hr
CAD Technician	\$160.00/hr
Clerical	\$90.00/hr

Lynn Engineering Hourly Rate Schedule

Associate Engineer V	\$210.00/hr
Associate Engineer IV	\$180.00/hr
Associate Engineer III	\$155.00/hr
Associate Engineer II	\$140.00/hr
Associate Engineer I	\$130.00/hr
Engineer in Training II	\$115.00/hr
Engineer in Training I	\$100.00/hr
Engineer Tech IV	\$120.00/hr
Engineer Tech III	\$110.00/hr
Engineer Tech II	\$95.00/hr
CAD Operator III	\$85.00/hr
Administrative	\$65.00/hr

ORDINANCE~ AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2024E; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AND ENACTING OTHER PROVISIONS RELATING THERETO



EXECUTIVE SUMMARY

Authorization to Issue- CO SERIES 2024E

BACKGROUND:

The ordinance attached serves as the authorization to issue debt. The maximum principal amount will not exceed \$17,500,000.

The certificates will fund the following:

- The completion of the Wastewater Treatment Plant Improvements – approximately \$10,000,000
- Design, Improvements, and/or Construction of Public Safety Facilities- approximately \$7,500,000

RECOMMENDATION: Staff recommends City Council approve the ordinance as presented.

ATTACHMENTS: Ordinance authorizing issuance of CO

ORDINANCE NO. 1732

AUTHORIZING THE
ISSUANCE OF

CITY OF BAY CITY, TEXAS
TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2024E

Adopted: June 25, 2024

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ORDINANCE NO. 1732

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2024E; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AND ENACTING OTHER PROVISIONS RELATING THERETO

THE STATE OF TEXAS	§
COUNTY OF MATAGORDA	§
CITY OF BAY CITY	§

WHEREAS, under the provisions of Subchapter C, Chapter 271, Texas Local Government Code, as amended (the “Act”), the City of Bay City, Texas (the “City”), is authorized to issue certificates of obligation for the purposes specified in this Ordinance and for the payment of all or a portion of the contractual obligations for professional services, including that of engineers, attorneys, and financial advisors in connection therewith, and to sell the same for cash as herein provided; and

WHEREAS, the City is authorized to provide that such obligations will be payable from and secured by a direct and continuing annual ad valorem tax levied, within the limits prescribed by law, on all taxable property within the City, in combination with a limited pledge of a subordinate lien on the Surplus Revenues (as defined herein) of the City’s water and sewer system (the “System”) in an amount not to exceed \$1,000 as authorized by the Act and Chapter 1502, Texas Government Code, as amended; and

WHEREAS, pursuant to a resolution heretofore passed by this governing body, notice of intention to issue certificates of obligation of the City payable as provided in this Ordinance was published in a newspaper of general circulation in the City and posted on the City’s website in accordance with the laws of the State of Texas, which notice provided that the principal amount of such certificates of obligation would not exceed \$17,500,000 and the proceeds would be used for the costs associated with the (i) the design, construction, acquisition and equipment of water and sewer system improvements, including the rehabilitation of the City’s wastewater treatment plant, (ii) design, construction, acquisition and equipment of public safety facilities, including a new police station, and (iii) the costs of professional services incurred in connection therewith; and

WHEREAS, the City Council of the City (the “City Council”) hereby finds and determines that it is necessary and in the best interests of the City and its citizens that it issue such certificates of obligation authorized by this Ordinance; and

WHEREAS, the City Council hereby finds and determines that the projects described in Section 3.1 of this Ordinance constitute “public works” as such term is defined in Section 271.043 (7-a) of the Texas Local Government Code, as amended, and such projects are eligible to be financed through the issuance of certificates of obligation; and

WHEREAS, such notice provided that the City tentatively planned to consider the passage of an ordinance authorizing the issuance of the Certificates on June 11, 2024; and

WHEREAS, at its meeting on June 11, 2024, the City Council postponed the consideration of the ordinance authorizing the Certificates until June 25, 2024; and

WHEREAS, no petition of any kind has been filed with the City Secretary, any member of the City Council or any other official of the City, protesting the issuance of such certificates of obligation; and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of said certificates of obligation and to sell the same for cash; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and public notice of the time, place, and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS:

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.1. Definitions.

Unless otherwise expressly provided in this Ordinance or unless the context clearly requires otherwise, the following terms shall have the meanings specified below:

“Act” means Subchapter C, Chapter 271, Texas Local Government Code, as amended.

“Bond Counsel” means Bracewell LLP.

“Business Day” means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

“Certificate” or “Certificates” means the City’s certificates of obligation entitled, “City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2024E” authorized to be issued by Section 3.1 of this Ordinance.

“City” means the City of Bay City, Texas.

“City Council” means the City Council of the City.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated

under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Dated Date” means July 1, 2024.

“Debt Service Fund” means the debt service fund established by Section 2.2 of this Ordinance.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named in this Ordinance, the Designated Payment/Transfer Office as designated in the Paying Agent/Registrar Agreement, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

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

“Fiscal Year” means such fiscal year as shall from time to time be set by the City Council.

“Initial Certificate” means the initial certificate authorized by Section 3.4 of this Ordinance.

“Initial Purchaser” means the initial purchaser of the Certificates identified in Section 7.1 of this Ordinance.

[“Insurer” means [____].]

“Interest Payment Date” means the date or dates upon which interest on the principal of the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being March 1 and September 1 of each year, commencing on March 1, 2025.

“Maturity” means the date on which the principal of the Certificates becomes due and payable according to the terms thereof, or by proceedings for prior redemption.

“MSRB” means the Municipal Securities Rulemaking Board.

“Ordinance” as used herein and in the Certificates means this ordinance authorizing the Certificates.

“Owner” means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

“Paying Agent/Registrar” means initially Zions Bancorporation, National Association, or any successor thereto as provided in this Ordinance.

“Paying Agent/Registrar Agreement” means the Paying Agent/Registrar Agreement between the Paying Agent/Registrar and the City relating to the Certificates.

“Record Date” means the fifteenth day of the month next preceding an Interest Payment Date.

“Register” means the certificate register specified in Section 3.6(a) of this Ordinance.

“Regulations” means the applicable, proposed, temporary or final Treasury Regulations promulgated under the Code, or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Representation Letter” means the Blanket Letter of Representations between the City and DTC.

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

“SEC” means the United States Securities and Exchange Commission.

“State” means the State of Texas.

“Surplus Revenues” means the revenues available after the payment of operation and maintenance expenses of the System and the debt service payable from gross revenues or net revenues of the System, if any.

“System” as used in this Ordinance means the City’s water and sewer system.

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Certificates as the same becomes due and payable or money set aside for the payment of Certificates duly called for redemption prior to maturity and remaining unclaimed by the Owners of such Certificates for 90 days after the applicable payment or redemption date.

Section 1.2. Findings.

The declarations, determinations, and findings declared, made, and found in the preamble to this Ordinance are hereby adopted, restated, and made a part of the operative provisions hereof.

Section 1.3. Table of Contents, Titles, and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Any action required to be taken on a date which is not a Business Day shall be taken on the next succeeding Business Day and have the same effect as if taken on the date so required.

(c) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Ordinance.

(d) Article and section references shall mean references to articles and sections of this Ordinance unless otherwise designated.

(e) The findings and determinations contained in the recitals to this Ordinance are incorporated herein for all purposes.

ARTICLE II

TAX LEVY; DEBT SERVICE FUND; PLEDGE OF REVENUES

Section 2.1. Tax Levy.

(a) Pursuant to the authority granted by the Texas Constitution and the laws of the State, there shall be levied and there is hereby levied for the current year and for each succeeding year hereafter while any of the Certificates or any interest thereon is outstanding and unpaid, an ad valorem tax on each one hundred dollars valuation of taxable property within the City, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Certificates, being (i) the interest on the Certificates, and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% per annum (whichever amount is greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all property appearing on the tax rolls of the City most recently approved in accordance with law and the money thus collected shall be deposited as collected to the Debt Service Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Debt Service Fund are hereby pledged and committed

irrevocably to the payment of the principal of and interest on the Certificates when and as due and payable in accordance with their terms and this Ordinance and associated expenses.

Section 2.2. Debt Service Fund.

(a) The City hereby establishes a special fund or account to be designated the “City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2024E, Debt Service Fund” (the “Debt Service Fund”) with said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

(b) Money on deposit in, or required by this Ordinance to be deposited to, the Debt Service Fund shall be used solely for the purpose of paying the interest on and principal of the Certificates when and as due and payable and associated costs in accordance with their terms and this Ordinance.

(c) To pay debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

Section 2.3. Pledge of Revenues.

The Surplus Revenues to be derived from the operation of the System in an amount not to exceed \$1,000 are hereby pledged to the payment of the principal of and interest on the Certificates as the same come due; provided, however, that such pledge is and shall be junior and subordinate in all respects to the pledge of the revenues of the System to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, that the City designates as having a pledge senior to the pledge of the Surplus Revenues to the payment of the Certificates. The City also reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the revenues of the System, secured by a pledge of the revenues of the System that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of Surplus Revenues securing the Certificates. The revenues of the System available after the payment of all operation and maintenance expenses of the System, any debt service payable from gross revenues, net revenues, or Surplus Revenues of the System, if any, as well as other payments, costs or expenses designated in an ordinance authorizing the issuance of System revenue obligations may be used for any lawful purpose of the City.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.1. Authorization.

The City's "City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2024E" are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State, including particularly, the Act. The Certificates shall be issued in the aggregate principal amount of \$[] for the costs associated with the (i) the design, construction, acquisition and equipment of water and sewer system improvements, including the rehabilitation of the City's wastewater treatment plant, (ii) design, construction, acquisition and equipment of public safety facilities, including a new police station, and (iii) the costs of professional services incurred in connection therewith.

Section 3.2. Date, Denomination, Maturities, and Interest.

(a) The Certificates shall be dated the Dated Date. The Certificates shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from R-1 upward, except the Initial Certificate, which shall be numbered I-1.

(b) The Certificates shall mature on September 1 in the years and in the principal amounts set forth in the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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		
2039			2054		

(c) Interest shall accrue and be paid on each Certificate, respectively, until the principal amount thereof has been paid or provision for such payment has been made, from the later of the Closing Date or the most recent Interest Payment Date to which interest has been paid or provided

for at the rate per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on each Interest Payment Date, computed on the basis of a 360-day year composed of twelve 30-day months.

Section 3.3. Medium, Method, and Place of Payment.

(a) The principal of and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) Interest on the Certificates shall be paid by check dated as of the Interest Payment Date, and sent by United States mail, first class, postage prepaid, by the Paying Agent/Registrar to each Owner, as shown in the Register at the close of business on the Record Date, at the address of each such Owner as such appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expense of such other customary banking arrangements.

(c) The principal of each Certificate shall be paid to the Owner thereof at Maturity or upon prior redemption upon presentation and surrender of such Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(d) If the date for the payment of the principal of or interest on the Certificates is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

(e) In the event of a nonpayment 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 City. Notice of the Special Record Date and of the special payment date of the past due interest (the "Special Payment Date"), which shall be fifteen (15) days after the Special Record Date, 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 Owner of a Certificate appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

(f) Unclaimed Payments shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Certificates to which the Unclaimed Payments pertain. Subject to Title 6, Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Certificates thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Certificates, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any holders of such Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to Title 6, Texas Property Code.

Section 3.4. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the City by the Mayor or Mayor Pro Tem and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until the Certificate of Paying Agent/Registrar, substantially in the form provided herein, has been duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State, or by his duly authorized agent, which certificate shall be evidence that the Initial Certificate has been duly approved by the Attorney General of the State, and that it is a valid and binding obligation of the City and has been registered by the Comptroller of Public Accounts of the State.

(d) On the Closing Date, one initial Certificate (the "Initial Certificate"), representing the entire principal amount of the Certificates, payable in stated installments to the Initial Purchaser or its designee, executed by manual or facsimile signatures of the Mayor or Mayor Pro Tem and the City Secretary of the City, approved by the Attorney General of the State, and registered and manually signed by the Comptroller of Public Accounts of the State, will be delivered to the Initial Purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel the Initial Certificate and deliver registered definitive Certificates to DTC in accordance with Section 3.9 hereof. To the extent the Paying Agent/Registrar is eligible to participate in DTC's FAST System, as evidenced by an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Certificates in safekeeping for DTC.

Section 3.5. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the Owner as the absolute owner of such Certificate for the purpose of making and receiving payment of the principal thereof, for the purpose of making and receiving payment of the interest thereon (subject to the provisions herein that the interest is to be paid to the person in whose name the Certificate is registered on the Record Date or Special Record Date, as applicable), and for all other purposes,

whether or not such Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

Section 3.6. Registration, Transfer, and Exchange.

(a) So long as any Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) The ownership of a Certificate may be transferred only upon the presentation and surrender of the Certificate to the Paying Agent/Registrar at the Designated Payment/Transfer Office with such endorsement or other instrument of transfer and assignment as is acceptable to the Paying Agent/Registrar. No transfer of any Certificate shall be effective until entered in the Register.

(c) The Certificates shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Certificate or Certificates of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000, and in an aggregate principal amount equal to the unpaid principal amount of the Certificates presented for exchange.

(d) The Paying Agent/Registrar is hereby authorized to authenticate and deliver Certificates transferred or exchanged in accordance with this Section. A new Certificate or Certificates will be delivered by the Paying Agent/Registrar, in lieu of the Certificate being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each Certificate delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such Certificate is delivered.

(e) No service charge shall be made to the Owner for the initial registration, any subsequent transfer, or exchange for a different denomination of any of the Certificates. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Certificate.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Certificate called for redemption, in whole or in part, within 45 days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a Certificate.

Section 3.7. Cancellation.

All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall dispose of such cancelled Certificates in the manner required by the Securities Exchange Act of 1934, as amended.

Section 3.8. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction, or theft of such Certificate;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar, and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its

discretion, instead of issuing a replacement Certificate, may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.9. Book-Entry-Only System.

(a) The definitive Certificates shall be initially issued in the form of a separate single fully registered Certificate for each maturity. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.10 hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City 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 an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute Owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on the Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Certificates only to or upon the order of the respective Owners, as shown in the Register 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 City's obligations with respect to payment of principal of, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due 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 or drafts being mailed to the registered Owner at the close of business on the Record Date, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Representation Letter previously executed and delivered by the City, and applicable to the City's obligations delivered in book entry only form to DTC as securities depository, is hereby ratified and approved for the Certificates.

Section 3.10. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the City determines that it is in the best interest of the City and the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities 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 certificated Certificates and cause the Paying Agent/Registrar to transfer one or more separate registered Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register 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 Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.11. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as the Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Certificates, and all notices with respect to such Certificates shall be made and given, respectively, in the manner provided in the Representation Letter of the City to DTC.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.1. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.2. Optional Redemption.

(a) The City has reserved the right to redeem at its option the Certificates maturing on and after September 1, 2034, in whole or from time to time in part, before their respective scheduled maturity dates, on September 1, 2033, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption.

(b) The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption and of the principal amount of Certificates to be redeemed.

Section 4.3. Mandatory Sinking Fund Redemption.

(a) The Certificates designated as “Term Certificates” in the form of Certificate contained in Section 6.2(a) (“Term Certificates”), are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Debt Service Fund, on the dates and in the respective principal amounts as set forth in the form of Certificate contained in Section 6.2(a).

(b) Prior to each scheduled mandatory redemption date, the Paying Agent/Registrar shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Term Certificates equal to the aggregate principal amount of such Term Certificates to be redeemed, shall call such Term Certificates for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 4.5.

(c) The principal amount of the Term Certificates required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.3 shall be reduced, at the option of the City, by the principal amount of any Term Certificates which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

Section 4.4. Partial Redemption.

(a) If less than all of the Certificates are to be redeemed pursuant to Section 4.2 hereof, the City shall determine the maturity or maturities [(or mandatory sinking fund payment with respect to Term Certificates)] and the principal amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot, or other customary method that results in random selection, the Certificates, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(b) A portion of a single Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(c) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.6 of this Ordinance, shall authenticate and deliver an exchange Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered, such exchange being without charge.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section 4.5. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice by United States mail, first class postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Certificate (or part thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and if less than all Certificates outstanding are to be redeemed and subject to Section 4.4 hereof, an identification of the Certificates or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Certificates under Section 4.2 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption where redemption has been rescinded shall remain outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and or authorized securities available in whole or in part on or before the redemption date shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice. Notice having been so given and due provision for the payment of the same having been made, the Certificate called of redemption shall become due and payable on the specified redemption date, and notwithstanding that any Certificate or portion thereof has not been surrendered for payment, interest on such Certificate or portion thereof shall cease to accrue.

Section 4.6. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Certificates being redeemed.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Certificate to the date of redemption from the money set aside for such purpose.

Section 4.7. Effect of Redemption.

(a) When Certificates have been called for redemption in whole or in part and due provision has been made to redeem same as herein provided, the Certificates or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Certificate or portion thereof called for redemption shall terminate on the date fixed for redemption. If the City shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to bear interest at the rate stated on the Certificate until due provision is made for the payment of same.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to bear interest at the rate stated on the Certificate until due provision is made for the payment of same by the City.

Section 4.8. Lapse of Payment. Money set aside for the redemption of the Certificates and remaining unclaimed by the Owners thereof shall be subject to the provisions of Section 3.3(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.1. Appointment of Initial Paying Agent/Registrar.

(a) Zions Bancorporation, National Association, Houston Texas, is hereby appointed as the initial Paying Agent/Registrar for the Certificates.

(b) The Paying Agent/Registrar shall keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each Certificate to which payments with respect to the Certificates shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Register confidential and, unless otherwise required by law, shall not permit its inspection by any other entity.

(c) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect

to the Certificates, and of all conversions, exchanges and replacements of such Certificates, as provided in this Ordinance.

(d) The form of Paying Agent/Registrar Agreement is hereby approved. The Mayor or Mayor Pro Tem and the City Secretary of the City are hereby authorized to execute and deliver a Paying Agent/Registrar Agreement.

Section 5.2. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank or trust company organized under the laws of the State, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Certificates.

Section 5.3. Maintaining Paying Agent/Registrar.

(a) At all times while any Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.2 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement, provided no such resignation shall be effective until a successor Paying Agent/Registrar has accepted the duties of Paying Agent/Registrar for the Certificates.

Section 5.4. Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated (i) 45 days written notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar; provided, that, no such termination shall be effective until a successor Paying Agent/Registrar has assumed the duties of Paying Agent/Registrar for the Certificates.

Section 5.5. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.6. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby and under the Paying Agent/Registrar Agreement.

Section 5.7. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.1. Form Generally.

(a) The Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State, the Certificate of the Paying Agent/Registrar, the Assignment form and the Statement of Insurance, to appear on each of the Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures (CUSIP) of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Certificates.

(c) The definitive Certificates shall be typed, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State may be typed and photocopied or otherwise reproduced.

Section 6.2. Form of the Certificates.

The form of the Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Certificates, shall be substantially as follows:

(a) Form of Certificate.REGISTERED
NO. _____REGISTERED
\$ _____UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF MATAGORDACITY OF BAY CITY, TEXAS
TAX AND REVENUE CERTIFICATE OF OBLIGATION
SERIES 2024E

<u>INTEREST RATE:</u>	<u>MATURITY DATE:</u>	<u>CLOSING DATE:</u>	<u>CUSIP NUMBER:</u>
_____ %	September 1, 20__	July 17, 2024	_____

The City of Bay City (the "City"), in the County of Matagorda, State of Texas, for value received, hereby promises to pay to

or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

and to pay interest on such principal amount from the later of the Closing Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing on March 1, 2025.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the corporate trust office of Zions Bancorporation, National Association, Houston, Texas, or such other location designated by the Paying Agent/Registrar (the "Designated Payment/Transfer Office"), of the Paying Agent/Registrar or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Certificate is payable by check dated as of the interest payment date, and will be mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expenses of such customary banking arrangement. For the purpose of the payment of interest on this Certificate, the registered owner shall be the person in whose name this Certificate is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month next preceding such interest payment date. In the event of a nonpayment 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 City. Notice of the Special Record Date and of the special payment date of the past due interest (the “Special Payment Date,” which date 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 books of the Paying Agent/Registrar at the close of business on the last day next preceding the date of mailing of such notice.

If the date for the payment of the principal of or interest on this Certificate is not a Business Day, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday, or day on which banking institutions in the State of Texas or the city in which the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are generally authorized or obligated by law or executive order to close (a “Business Day”), and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

This Certificate is dated July 1, 2024 and is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$[_____] (herein referred to as the “Certificates”), issued pursuant to a certain ordinance of the City (the “Ordinance”) for the costs associated with the (i) the design, construction, acquisition and equipment of water and sewer system improvements, including the rehabilitation of the City’s wastewater treatment plant, (ii) design, construction, acquisition and equipment of public safety facilities, including a new police station, and (iii) the costs of professional services incurred in connection therewith.

The City has reserved the right to redeem the Certificates maturing on and after September 1, 2034, in whole or from time to time in part, before their respective scheduled maturity dates, on September 1, 2033, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption. If less than all of the Certificates are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

[Certificates maturing on September 1, [_____] and September 1, [_____] (the “Term Certificates”) are subject to mandatory sinking fund redemption prior to their scheduled maturity, and will be redeemed by the City, in part at a redemption price equal to the principal amount thereof, without premium, plus interest accrued to the redemption date, on the dates and in the principal amounts shown in the following schedule:

<u>\$ Term Certificates Maturing September 1, 20</u>	
<u>Mandatory Redemption Date</u>	<u>Principal Amount</u>
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__ (maturity)	\$

\$ Term Certificates Maturing September 1, 20

<u>Mandatory Redemption Date</u>	<u>Principal Amount</u>
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__	\$
September 1, 20__ (maturity)	\$

The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Certificates [(or with respect to Term Certificates having a denomination in excess of \$5,000, each \$5,000 portion thereof)] to be redeemed by mandatory redemption. The principal amount of Term Certificates required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Certificates which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

Not less than 30 days prior to a redemption date for the Certificates, the City shall cause a notice of redemption to be sent by United States mail, first class, postage prepaid, to the Owners of the Certificates to be redeemed at the address of the Owner appearing on the registration books of the Paying Agent/Registrar at the close of business on the business day next preceding the date of mailing such notice.

The City reserves the right to give notice of its election or direction to redeem Certificates pursuant to an optional redemption conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the City retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption and such redemption has been rescinded shall remain outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

Any notice so mailed shall be conclusively presumed to have been duly given, whether or not the registered owner receives such notice. Notice having been so given and subject, in the case of an optional redemption, to any rights or conditions reserved by the City in the notice, the Certificates called for redemption shall become due and payable on the specified redemption date, and notwithstanding that any Certificate or portion thereof has not been surrendered for payment, interest on such Certificates or portions thereof shall cease to accrue.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the designated office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Certificate is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Certificate is registered on the Record Date) and for all other purposes, whether or not this Certificate be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Certificate have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes, within the limits prescribed by law, 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 City.

IT IS FURTHER certified, recited and represented that the Surplus Revenues (as defined in the Ordinance) of the City's water and sewer system are pledged to the payment of the principal of and interest on the Certificates in an amount not to exceed \$1,000; provided, however, that such pledge is junior and subordinate in all respects to the pledge of the revenues of the System to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, which the City designates as having a pledge senior to the pledge of the Surplus Revenues to the payment of the Certificates. The City also reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the revenues of the System, secured by a pledge of the Surplus Revenues that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of the Surplus Revenues securing the Certificates.

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

 Jeanna Thompson, City Secretary
 City of Bay City, Texas

 Robert K. Nelson, Mayor
 City of Bay City, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

REGISTRATION CERTIFICATE OF
 COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
 OF PUBLIC ACCOUNTS § REGISTER NO. _____
 THE STATE OF TEXAS §

I HEREBY CERTIFY THAT this Certificate has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and that this Certificate has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this _____.

[SEAL]

 Comptroller of Public Accounts
 of the State of Texas

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Certificate if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificate of this series of certificates of obligation was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within-mentioned Ordinance.

ZIONS BANCORPORATION, NATIONAL
ASSOCIATION,
as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and zip code of transferee): _____

(Social Security or other identifying number: _____) the within Certificate and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) [Form of Statement of Insurance.]

The Certificates shall bear a Statement of Insurance in the following form:

STATEMENT OF INSURANCE

[_____]

(f) The Initial Certificate shall be in the form set forth in paragraphs (a), (b), (d) and [(e)] of this Section, except for the following alterations:

(i) immediately under the name of the Certificate the headings “INTEREST RATE” and “MATURITY DATE” shall both be completed with the expression “As Shown Below” and “CUSIP NUMBER _____” deleted; and

(ii) in the first paragraph of the Certificate, the words “on the Maturity Date specified above, the sum of _____DOLLARS” shall be deleted and the following will be inserted: “on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:”

(Information to be inserted from schedule in Section 3.2 of the Ordinance)

(iii) the Initial Certificate shall be numbered I-1.

Section 6.3. CUSIP Registration.

The City may secure identification numbers through CUSIP Global Services, or another entity that provides securities identification numbers for municipal securities and may print such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates or any errors or omissions in the printing of such number shall be of no significance or effect in regard to the legality thereof and neither the City nor Bond Counsel to the City are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section 6.4. Legal Opinion.

The approving legal opinion of Bond Counsel may be attached to or printed on the reverse side of each Certificate over the certification of the City Secretary of the City, which may be executed in facsimile.

Section 6.5. [Bond Insurance.

The Initial Purchaser has obtained bond insurance from the Insurer and the Certificates may bear an appropriate legend as provided by the Insurer. The premium for any bond insurance obtained by the Initial Purchaser shall be the responsibility of the Initial Purchaser.]

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS; OFFICIAL STATEMENT

Section 7.1. Sale of Certificates.

(a) The sale and delivery of the Certificates, having been duly advertised and offered for sale at competitive bid, are hereby sold and awarded to [_____] (the “Initial Purchaser”) for a purchase price equal to the principal amount thereof plus a cash premium of \$[_____] , being the bid which produced the lowest true interest cost, subject to the approving opinion as to the legality of the Certificates of the Attorney General of the Texas and the opinion of Bond Counsel. The Initial Certificate shall be registered in the name of the Initial Purchaser or its designee. The Mayor or Mayor Pro Tem and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions to and to provide for the issuance and delivery of the Certificates.

Section 7.2. Deposit of Proceeds.

Proceeds from the sale of the Certificates shall, promptly upon receipt by the City, be applied as follows:

(a) The amount of \$[_____] , consisting of \$[_____] principal amount of Certificate proceeds plus premium received from the sale of the Certificates in the amount of \$[_____] , shall be used for the purposes set forth in Section 3.1.

(b) Premium received from the sale of the Certificates in the amount of \$[_____] shall be used to pay the costs of issuance.

(c) Any amounts remaining after accomplishing such purposes and paying costs of issuance in subsection (b) [shall be used for the purposes described in Section 3.1 or] deposited in the Debt Service Fund.

Section 7.3. Control and Delivery of Certificates.

(a) The Mayor or Mayor Pro Tem of the City is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval of the Attorney General of the State, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the Initial Purchaser under and subject to the general supervision and direction of the Mayor or Mayor Pro Tem, against receipt by the City of all amounts due to the City under the terms of sale.

(c) All officers of the City are authorized to execute such documents, certificates and receipts and to make such elections with respect to the tax-exempt status of the Certificates, as they may deem necessary to consummate the delivery of the Certificates.

Section 7.4. Official Statement.

The form and substance of the Preliminary Official Statement and any addenda, supplement or amendment thereto, is hereby ratified and approved, and has been deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of the Rule. The City hereby authorizes and approves the preparation of a final Official Statement to add the terms of the Initial Purchaser's bid and other relevant information. The use of such final Official Statement in the reoffering of the Certificates by the Initial Purchaser is hereby approved and authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Certificates.

ARTICLE VIII

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 8.1. Payment of the Certificates.

On or before each Interest Payment Date while any of the Certificates are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Debt Service Fund, money sufficient to pay such interest on and principal of, redemption premium, if any, and interest on the Certificates as will accrue or mature on the applicable Interest Payment Date or date of prior redemption.

Section 8.2. Other Representations and Covenants.

(a) The City will faithfully perform, at all times, any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Certificate; the City will promptly pay or cause to be paid the principal of, redemption premium, if any, and interest on each Certificate on the dates and at the places and manner prescribed in such Certificate; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State to issue the Certificates; all action on its part for the creation and issuance of the Certificates has been duly and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

(c) It is hereby found and determined that the projects described in Section 3.1 of this Ordinance constitute public works as such term is defined under Section 271.043(7-a) of the Texas Local Government Code and are eligible to be financed through the issuance of the Certificates.

Section 8.3. Provisions Concerning Federal Income Tax Matters.

(a) General. The City covenants not to take any action or omit to take any action that, if taken or omitted, would cause the interest on the Certificates to be includable in gross income for federal income tax purposes. In furtherance thereof, the City covenants to comply with sections 103 and 141 through 150 of the Code and the provisions set forth in the Federal Tax Certificate executed by the City in connection with the Certificates.

(b) No Private Activity Bonds. The City covenants that it will use the proceeds of the Certificates (including investment income) and the property financed, directly or indirectly, with such proceeds so that the Certificates will not be “private activity bonds” within the meaning of section 141 of the Code. Furthermore, the City will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes the Certificates to be a “private activity bond” unless it takes a remedial action permitted by section 1.141-12 of the Regulations.

(c) No Federal Guarantee. The City covenants not to take any action or omit to take any action that, if taken or omitted, would cause the Certificates to be “federally guaranteed” within the meaning of section 149(b) of the Code, except as permitted by section 149(b)(3) of the Code.

(d) No Hedge Bonds. The City covenants not to take any action or omit to take action that, if taken or omitted, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code.

(e) No Arbitrage Bonds. The City covenants that it will make such use of the proceeds of the Certificates (including investment income) and regulate the investment of such proceeds of the Certificates so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code.

(f) Required Rebate. The City covenants that, if the City does not qualify for an exception to the requirements of section 148(f) of the Code, the City will comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Certificates, be rebated to the United States.

(g) Information Reporting. The City covenants to file or cause to be filed with the Secretary of the Treasury an information statement concerning the Certificates in accordance with section 149(e) of the Code.

(h) Record Retention. The City covenants to retain all material records relating to the expenditure of the proceeds (including investment income) of the Certificates and the use of the property financed, directly or indirectly, thereby until three years after the last Certificate is redeemed or paid at maturity (or such other period as provided by subsequent guidance issued by the Department of the Treasury) in a manner that ensures their complete access throughout such retention period.

(i) Registration. If the Certificates are “registration-required bonds” under section 149(a)(2) of the Code, the Certificates will be issued in registered form.

(j) Favorable Opinion of Bond Counsel. Notwithstanding the foregoing, the City will not be required to comply with any of the federal tax covenants set forth above if the City has received an opinion of nationally recognized bond counsel that such noncompliance will not adversely affect the excludability of interest on the Certificates from gross income for federal income tax purposes.

(k) Continuing Compliance. Notwithstanding any other provision of this Ordinance, the City's obligations under the federal tax covenants set forth above will survive the defeasance and discharge of the Certificates for as long as such matters are relevant to the excludability of interest on the Certificates from gross income for federal income tax purposes.

(l) Official Intent. For purposes of section 1.150-2(d) of the Regulations, to the extent that an official intent to reimburse by the City has not been adopted for a particular project, this Ordinance serves as the City's official declaration of intent to use proceeds of the Certificates to reimburse itself from proceeds of the Certificates issued in the maximum amount authorized by this Ordinance for certain expenditures paid in connection with the projects set forth herein. Any such reimbursement will only be made (i) for an original expenditure paid no earlier than 60 days prior to the date hereof and (ii) not later than 18 months after the later of (A) the date the original expenditure is paid or (B) the date of which the project to which such expenditure relates is placed in service or abandoned, but in no event more than three years after the original expenditure is paid.

ARTICLE IX

DISCHARGE

Section 9.1. Discharge.

The Certificates may be defeased, discharged or refunded in any manner now or hereafter permitted by applicable law.

ARTICLE X

CONTINUING DISCLOSURE UNDERTAKING

Section 10.1. Annual Reports.

(a) The City shall provide annually to the MSRB, in an electronic format, accompanied by identifying information as prescribed by the MSRB (i) within six (6) months after the end of each Fiscal Year of the City ending in and after 2024, financial information and operating data with respect to the City of the general type included in the Official Statement under the Schedules in Appendix A numbered 1 through 4, 6 through 9, and 11 through 14 and including financial statements of the City if audited financial statements of the City are then available, and (ii) if not provided as part of such financial information and operating data, audited financial statements when, and if, they become available. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in the notes to the financial statements for the most recently concluded Fiscal Year, or such other accounting principles as the City may be required to employ, from time to time, by State law or regulation, and (ii) audited, if

the City 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 12 months after any such fiscal year end, then the City shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such financial statements becomes available.

(b) If the City 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 City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) 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.

Section 10.2. Event Notices.

(a) The City shall provide the following to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten (10) business days after the occurrence of the event, notice of any of the following events with respect to the Certificates:

- (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 Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of the 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 City;

Note to paragraph 12: For the purposes of the event identified in paragraph 12 of this section, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. 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 City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers 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 City.

- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into 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 City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, 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 City, any of which reflect financial difficulties.

Note to paragraphs (15) and (16): For purposes of the events identified in paragraphs (15) and (16) of this section and in the definition of Financial Obligation in Section 1.1, the City intends the words used in such paragraphs to have the meanings ascribed to them in SEC Release No. 34-83885 dated August 20, 2018 (the “2018 Release”) and any further written guidance provided by the SEC or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 10.1 of this Ordinance. All documents provided to the MSRB pursuant to this section shall be accompanied by identifying information as prescribed by the MSRB.

Section 10.3. Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give notice of any redemption calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City 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.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE 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 CITY, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, 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.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City 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 City, but only if (i) the provisions of this Article, 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 to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions 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 City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. The provisions of this Article may also be amended from time to time or repealed by

the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent the Initial Purchaser of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 10.1 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Changes to Ordinance.

Bond Counsel is hereby authorized to make any changes to the terms of this Ordinance if necessary or desirable to carry out the purposes hereof or in connection with the approval of the issuance of the Certificates by the Attorney General of the State.

Section 11.2. Partial Invalidity.

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 11.3. Repealer.

All ordinances or resolutions, or parts thereof, heretofore adopted by the City and inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 11.4. Individuals Not Liable.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member of City Council or agent or employee of City Council or of the City in his or her individual capacity and neither the members of City Council nor any officer thereof, nor any agent or employee of City Council or of the City, shall be liable personally on the Certificates, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 11.5. Related Matters.

To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor or Mayor Pro Tem, the Interim City Manager, the City Secretary and all other appropriate officers and agents of the City are hereby authorized and directed to do any and all things necessary and/or convenient in order to consummate the delivery of the Certificates, pay the costs of issuance on the Certificates, and effectuate the terms and purposes of this Ordinance.

Section 11.6. Force and Effect.

This Ordinance shall be in full force and effect from and after its final passage, and it is so ordained.

[Signature Page Follows]

PASSED, APPROVED AND EFFECTIVE this 25th day of June, 2024.

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Robert K. Nelson	<hr/>	<hr/>	<hr/>
Benjamin Flores	<hr/>	<hr/>	<hr/>
James Folse	<hr/>	<hr/>	<hr/>
Brad Westmoreland	<hr/>	<hr/>	<hr/>
Becca Sitz	<hr/>	<hr/>	<hr/>
Blayne Finlay	<hr/>	<hr/>	<hr/>

Robert K. Nelson, Mayor
City of Bay City

ATTEST:

[SEAL]

Jeanna Thompson, City Secretary
City of Bay City

APPROVED AS TO FORM:

Anne Marie Odefey, City Attorney
City of Bay City

CERTIFICATE FOR ORDINANCE

THE STATE OF TEXAS §
COUNTY OF MATAGORDA §

I, the undersigned officer of the City Council of the City of Bay City, Texas, hereby certify as follows:

1. The City Council of the City of Bay City, Texas, convened in a regular meeting on the 25th day of June, 2024, at the regular meeting place thereof, within said City, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Robert K. Nelson	Mayor
Benjamin Flores	Council Member, Position No. 1
James Folse	Council Member, Position No. 2
Brad Westmoreland	Council Member, Position No. 3
Becca Sitz	Mayor Pro Tem and Council Member, Position No. 4
Blayne Finlay	Council Member, Position No. 5

and all of said persons were present, except the following absentee(s): _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written

ORDINANCE NO. 1732

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2024E; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AND ENACTING OTHER PROVISIONS RELATING THERETO

was duly introduced for the consideration of said City Council. It was then duly moved and seconded that said ordinance be adopted; and, after due discussion, said motion, carrying with it the adoption of said ordinance, prevailed and carried by the following vote:

_____ Member(s) of City Council shown present voted "Aye."

_____ Member(s) of City Council shown present voted "No."

_____ Member(s) of City Council shown present abstained from voting.

2. A true, full and correct copy of the aforesaid ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said ordinance has been duly recorded in the City Council's minutes of said meeting; that the above and foregoing paragraph is a true, full and correct excerpt from the City Council's minutes of said meeting pertaining to the adoption of said ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the City Council as indicated therein; that each of the officers and members of the City Council was duly and sufficiently notified officially and personally, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said ordinance would be introduced and considered for adoption at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose; that said meeting was open to the public as required by law; and that public notice of the date, hour, place and subject of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

SIGNED AND SEALED this 25th day of June, 2024.

[SEAL]

Jeanna Thompson
City Secretary
City of Bay City, Texas