



CITY COUNCIL REGULAR MEETING

Monday, March 14, 2022 at 6:30 PM

City Council Chambers | 202 N. Virginia Street, Port Lavaca TX 77979

PUBLIC NOTICE OF MEETING

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).

(All matters listed under the consent agenda item are routine by the city council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.)

AGENDA

Council will consider/discuss the following items and take any action deemed necessary.

COVID-19 MEETING PROCEDURE

Public notice is hereby given that the City Council of the City of Port Lavaca, Texas, will hold a regular meeting Monday, March 14, 2022 beginning at 6:30 p.m., at the regular meeting place in Council Chambers at City Hall, 202 North Virginia Street, Port Lavaca, Texas to consider the following items of business:

Due to COVID-19 concerns, social distancing guidelines will be encouraged for in-person attendance. The meeting will also be available via the video conferencing application "ZOOM".

Join Zoom Meeting:

<https://us02web.zoom.us/j/85293168553?pwd=dXg5SkhzaKViUXZvcE9SdUlwUHVNZz09>

Meeting ID: 852 9316 8553

Passcode: 638363

One Tap Mobile

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Dial by your location

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I. ROLL CALL**II. CALL TO ORDER****III. INVOCATION****IV. PLEDGE OF ALLEGIANCE****V. PRESENTATION(S)****VI. COMMENTS FROM THE PUBLIC** - *Limited to 3 minutes per individual unless permission to speak longer is received in advance. You may make public comments as you would at a meeting on Zoom by logging on with your computer and/or smart phone as described in the zoom invitation below or on Facebook Live through the comment section, which will be monitored and answered. As appropriate.***VII. CONSENT AGENDA** - *Council will consider/discuss the following items and take any action deemed necessary*

A. Minutes of February 14, 2022 Regular Meeting

B. Minutes of February 28, 2022 Special Meeting

C. Review of the Credit Card Statement

D. Receive monthly Financial Highlight Report

E. Ratify Lease for Allied Universal Security Services for Suites 1E and 1F at Nautical Landings Marina Building

VIII. ACTION ITEMS - *Council will consider/discuss the following items and take any action deemed necessary*

1. Receive Update Report from the Calhoun County 911 Emergency Communication District on the American Rescue Plan Grant awarded to Calhoun 911. Presenter is Raquel Morales

2. Conduct Public Hearing for intent of the City of Port Lavaca to establish the Property Assessed Clean Energy (PACE) Program. Presenter is Jody Weaver

3. Consider Resolution No. R-031422-1 of the City of Port Lavaca to Establish the Property Assessed Clean Energy (PACE) Program. Presenter is Jody Weaver

4. Consider a Services Agreement authorizing administration of Texas Property Assessed Clean Energy (PACE) Program for the City of Port Lavaca. Presenter is Jody Weaver

5. Consider certification of City Secretary that all candidates in the May 07, 2022 General Officers Election are unopposed. Presenter is Mandy Grant

6. Consider adopting an order canceling the May 07, 2022 General Officers Election, specifically the Council Members for Mayor, Single Districts #4 , Single District #5 and further declaring the unopposed candidates duly elected. Presenter is Mandy Grant

7. Consider appointment/reappointment of member(s) to Recreation and Parks Board to fill a vacancy and/or start a new term. Presenter is Jody Weaver

8. Consider appointment/reappointment of member(s) to Planning Board to fill a vacancy and/or start a new term. Presenter is Jody Weaver

- [9.](#) Consider City of Port Lavaca's annual optional Homestead Tax exemption within the Calhoun County Appraisal District for the 2022 tax year. Presenter is Susan Lang
- [10.](#) Consider Resolution No. R-031422-2 of the City of Port Lavaca appointing a Chief Appraiser to Calculate Taxes for 2022 tax year. Presenter is Susan Lang
- [11.](#) Consider Resolution No. R-031422-3 of the City of Port Lavaca declaring April as Fair Housing Month. Presenter is Susan Lang
- [12.](#) Consider Second and Final Reading of an Ordinance (G-1-22) of the City of Port Lavaca regulating the speed of vehicles in, along, and upon those streets located within the confines of the listed residential subdivisions; establishing the rate of speed in and upon such streets in such subdivisions; prescribing penalties; repealing all ordinances in conflict herewith; and providing an effective date. Presenter is Jody Weaver
- [13.](#) Consider First Reading of an Ordinance (G-2-22) amending the ordinance codified and described in the City of Port Lavaca Code of Ordinances as Chapter 10 – Animals, Article I – General, Section 10-5 License Required; and providing an effective date. Presenter is Jody Weaver
- [14.](#) Consider First Reading of an Ordinance (G-3-22) amending the ordinance codified and described in the City of Port Lavaca Code of Ordinances as Part II, Appendix A – Fees, Rates and Charges (Chapter 10 – Animals) and providing an effective date. Presenter is Jody Weaver
- [15.](#) Consider purchase of a Remote-Controlled (RC) Mower for the Streets Department. Presenter is Wayne Shaffer
- [16.](#) Consider a Professional Services Agreement with LJA Engineering for various projects that will be set forth separate cost proposals or work authorizations. Presenter is Jody Weaver
- [17.](#) Consider Proposal No. 22-9338 from LJA Engineering for Planning Services to conduct a Downtown Waterfront Master plan for an estimated fee plus reimbursable expenses of \$50,000. Presenter is Jody Weaver
- [18.](#) Consider awarding construction contract to Lester Contracting, Inc. to complete the Voluntary Restoration work at the Harbor of Refuge Tract 16. Presenter is Jody Weaver
- [19.](#) Consider award of a construction contract to Lester Contracting for the Brooks Lift Station reconstruction project. Presenter is Jody Weaver
- [20.](#) Consider Resolution No. R-031422-4 of the City of Port Lavaca suspending the May 2, 2022 effective date of the proposal by CenterPoint Energy Resources Corp., D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division to Implement Interim Grip Rate Adjustments for Gas Utility Investment in 2021 and requiring delivery of this resolution to the Company and Legal Counsel. Presenter is Anne Marie Odefey
- [21.](#) Consider Resolution No. R-031422-5 of the City of Port Lavaca authorizing the Mayor to execute an agreement with KSBR, LLC to administer the Community Development Block Grant Mitigation (CDBG-MIT) Coastal Resiliency Infrastructure Grant Program, Contract #22-087-001-D226, in the amount of \$887,480.00 and declaring an effective date. Presenter is Jody Weaver
- [22.](#) Consider recommendation of the Planning Board for approval of a conceptual Daycare to be located at 511 S. Virginia Street. Presenter is Jody Weaver

23. Announcement by Mayor that City 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). Presenter is Mayor Whitlow

24. Return to Open Session and take any action deemed necessary with regard to matters in closed session. Presenter is Mayor Whitlow

IX. ADJOURNMENT

CERTIFICATION OF POSTING NOTICE

This is to certify that the above notice of a regular meeting of The City Council of The City of Port Lavaca, scheduled for **Monday, March 14, 2022**, beginning at 6:30 p.m., was posted at city hall, easily accessible to the public, as of **5:00 p.m. Thursday, March 10, 2022**.

/s/ Mandy Grant, City Secretary

ADA NOTICE

The Port Lavaca City Hall and Council Chambers are wheelchair accessible. Access to the building is available at the primary north entrance facing Mahan Street. Special parking spaces are located in the Mahan Street parking area. In compliance with the Americans with Disabilities Act, the City of Port Lavaca will provide for reasonable accommodations for persons attending meetings. To better serve you, requests should be received 24 hours prior to the meetings. Please contact City Secretary Mandy Grant at (361) 552-9793 Ext. 230 for assistance.

COMMUNICATION

SUBJECT: Minutes of February 14, 2022 Regular Meeting

INFORMATION:



CITY COUNCIL REGULAR MEETING

Monday, February 14, 2022 at 6:30 PM

City Council Chambers | 202 N. Virginia Street, Port Lavaca TX 77979

MINUTES

STATE OF TEXAS §
COUNTY OF CALHOUN §
CITY OF PORT LAVACA §

On this the 14th day of February, 2022, the City Council of the City of Port Lavaca, Texas, convened in a regular session at 6:30 p.m. at the regular meeting place in Council Chambers at City Hall, 202 North Virginia Street, Port Lavaca, Texas, with the following members in attendance:

I. ROLL CALL

Jack Whitlow	Mayor
Jerry Smith	Councilman, District 1
Tim Dent	Councilman, District 2
Allen Tippit	Councilman, District 3
Rosie G. Padron	Councilwoman, District 4, Mayor Pro Tem
Jim Ward	Councilman, District 5
Ken Barr	Councilman, District 6

And with the following absent:

None

Constituting a quorum for the transaction of business, at which time the following business was transacted:

II. CALL TO ORDER

- Mayor Whitlow called the meeting to order at 6:36p.m. and presided.

III. INVOCATION

- Councilman Ward gave the invocation.

IV. PLEDGE OF ALLEGIANCE

- Mayor Whitlow – Pledge of Allegiance.

V. PRESENTATION(S) BY THE MAYOR None

VI. COMMENTS FROM THE PUBLIC - Limited to 3 minutes per individual unless permission to speak longer is received in advance. You may make public comments as you would at a meeting on Zoom by logging on with your computer and/or smart phone as described in the zoom invitation below or on Facebook Live through the comment section, which will be monitored and answered. As appropriate.

- Mayor asked for comments from the public and the following spoke:
 - Jesse G. Cortez, 1503 eon Dr., Port Lavaca, TX, commented on drainage and speed limit violations in Alamo Heights subdivision (3rd Street, Leon Dr. and Shofner Street)

VII. CONSENT AGENDA - Council will consider/discuss the following items and take any action deemed necessary

- A. Minutes of January 10, 2022 Regular Meeting**
- B. Minutes of January 31, 2022 Special and Workshop**
- C. Payment of Invoices Exceeding \$1,500**
- D. Receive monthly Financial Highlight Report**
- E. Consider 4th Quarterly Investment Report ending December 31, 2021**
- F. Consider Resolution No. R-021422-1 to approve Annual Review of the City of Port Lavaca's Investment Policy and Strategy**
- G. Consider Amendments to the City of Port Lavaca's Purchasing Policy and Procedures proposed by the City Finance and Investment Committee**
- H. Consider Gonzalez final plat located on Henry Barber Way, legal description is A0137 Samuel Shupe, part of tract 1, being 12.449 acres and PIN #14186**

Motion made by Councilman District 6 Barr

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

THAT, in accordance with recommendation of staff, Council hereby approves all consent agenda items as listed:

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

VIII. ACTION ITEMS - (Council will consider/discuss the following items and take any action deemed necessary)

- 1. Consider Resolution No. R-021422-2 of the City of Port Lavaca, Texas for Intent to Establish the Property Assessed Clean Energy (PACE) Program. Presenter is Jessica Carpenter**

Motion made by Councilman District 1 Smith

WHEREAS, The 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a local government, including a City or County, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease water or energy consumption or demand; and

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City will further the goals of energy and water conservation without cost to the public; and

WHEREAS, the City Council finds that financing energy and water conserving projects through contractual assessments (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving water resources; and

WHEREAS, the City Council, subject to the public hearing scheduled as provided below, at which the public may comment on the proposed program and the report issued contemporaneously with this resolution, finds that it is convenient and advantageous to establish a program under the PACE Act and designate the entire geographic area within the City’s jurisdiction as a region within which a designated City authorized representative and the record owners of qualified real property may enter into PACE financing agreements:

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

The Recitals to this Resolution are true and correct and are incorporated into this Order for all purposes. The City hereby adopts this Resolution of Intent and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose.

The City intends to make contractual assessments to repay PACE financing for qualified energy or water conserving projects available to owners of commercial, industrial, and large multifamily residential real property. The program is to be called the City of Port Lavaca Property Assessed Clean Energy Program (“Port Lavaca PACE”).

The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments: Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

The boundaries of the entire geographic area within the City's jurisdiction, including its extraterritorial jurisdiction, are the boundaries of the region where PACE financing and assessments can occur.

Financing for qualified projects under the PACE program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the City's authorized representative to service the assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to contracts executed between the lenders and the owners. The lender contracts will provide that the City will maintain and continue the assessments for the benefit of such lenders and enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City will not, at this time, provide financing of any sort for the PACE program.

The City will contract with Texas PACE Authority, a qualified non-profit organization to be the independent third-party Authorized Representative. The City will consult with the County Tax Assessor/Collector for Calhoun County.

The report on the proposed PACE program prepared as provided by Tex. Local Gov't Code Sec. 399.009, is available for public inspection on the City's Internet website and in the office of the at 202 N. Virginia Street, Port Lavaca, Texas 77979 and is incorporated in this resolution and made a part hereof for all purposes. The City Council will hold a public hearing on the proposed PACE program and report on the 14th day of March, 2022 at 6:30 p.m. in the Council Chambers at City Hall, 202 N. Virginia Street, Port Lavaca, Texas 77979.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

2. Consider agreement between the City of Port Lavaca and the Calhoun County YMCA for operation of the Municipal Swimming Pool from April 01, 2022 to September 30, 2022. Presenter is Jody Weaver

Michele Morales, Executive Director of the Calhoun County YMCA, was in attendance and addressed Council. She advised there was a typo on Exhibit A showing the hours of operation as beginning at 11:00 p.m. and the correct time is at 11:00 a.m. The pool will always close by 6:00 p.m. Morales also advised Council that the rate of pay for the Lifeguards would be raised \$1.00 per hour. She said this is not part of the contract; however, she wanted to keep Council informed.

Motion made by Councilman District 6 Barr

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

THAT, in accordance with recommendation of staff, Council hereby approves agreement between the City of Port Lavaca and the Calhoun County YMCA for operation of the Municipal Swimming Pool from April 01, 2022 to September 30, 2022.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute all instruments necessary to effect such agreement.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

3. **Consider request of Mike Bender from The Cowboy Fellowship of Port Lavaca Church for the use of Bayfront Peninsula Park Pavilion for an Easter Sunday Service on April 17, 2022 from 6:00 a.m. to 12:00 p.m. and waive any fees associated with the event. Presenter is Mandy Grant**

Motion made by Councilman District 5 Ward

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

THAT, in accordance with recommendation of staff, Council hereby approves request of Mike Bender from The Cowboy Fellowship of Port Lavaca Church for the use of Bayfront Peninsula Park Pavilion for an Easter Sunday Service on April 17, 2022 from 6:00 a.m. to 12:00 p.m. and waive any fees associated with the event.

Seconded by Councilman District 6 Barr

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

4. **Receive quarterly report from the Police Department for the newly formed Mental Health Peace Officer position. Presenter is Clinton Wooldridge**

Calvin Wooldridge, Mental Health Peace Officer for the Police Department presented a quarterly report to City Council.

No action necessary and none taken.

5. **Receive annual report from the Police Department for Racial Profiling. Presenter is Colin Rangnow**

Police Chief Rangnow presented the annual Racial Profiling Report to City Council.

No Action necessary and none taken.

6. **Consider request of Our Lady of the Gulf Catholic Church to host a walking procession on “Good Friday”, April 15, 2022, from 10:00 a.m. to 1:00 p.m., assistance with traffic control from the Police Department and waive any fees associated with the event. Presenter is Mandy Grant**

Motion made by Councilman District 1 Smith

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

THAT, in accordance with recommendation of staff, Council hereby approves request of Our Lady of the Gulf Catholic Church to host a walking procession on “Good Friday”, April 15, 2022, from 10:00 a.m. to 1:00 p.m., assistance with traffic control from the Police Department and waive any fees associated with the event.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

7. **Consider purchase of a Remote-Controlled (RC) Mower for the Streets Department. Presenter is Wayne Shaffer**

Motion made by Councilman District 2 Dent

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

THAT, Council hereby tables this agenda item until the next regular scheduled meeting.

Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

8. **Consider amendment to the Professional Services agreement of Rawley McCoy and Associates (RMA), PLLC for the City Hall Renovations Project. Presenter is Jody Weaver**

Interim City Manager Weaver reminded Council that \$280,000.00 was budgeted this year for renovations to City Hall. She said that Rawley McCoy and Associates (RMA), PLLC had been contracted for a fee of 9% of the estimated cost of the scope of work proposed for bid, which was \$275,000.00 resulting in a \$24,750.00 professional services fee.

Generally, the scope items include the following:

- Rework northside storefront for ADA accessibility
- Rework southside storefront for ADA accessibility
- Demolish patio concrete block wall and overhead arbor
- Replace Low windows with architectural panels along south length of west wall
- Paint ground floor exterior plaster areas
- Landscaping and irrigation
- Police Department entry sidewalks
- Pipe Bollards at PD and North entrance

(Some of this proposed scope was included with the intent of them being alternate bid items).

Weaver presented a rendering of a conceptual design of the southwest side of City Hall (Virginia Street and Railroad) which includes 2 new supporting columns for the existing plaster overhang at the Virginia door exit and to complement this overhang, a proposed patio canopy on the north end of the existing "garden area" with two matching support columns. The canopy has a standing seam roof with wood framing, glulam beam and metal soffit panel. With the addition of these two features to the architectural design scope, the estimated construction cost would increase to \$316,100.00 and thus RMA's fee would increase to \$28,449.00. Note there are a few additional fees for surveying, windstorm certification, and ADA inspection that are not covered in the Architectural fee, which is estimated to cost around \$7,000.00.

Some of the design scope will be included as alternate bid items, so don't necessarily need to be awarded. The question at this point is if Council likes the design of the canopy and the 4 masonry-wrapped steel columns and would like to move forward with the design of these elements for bid. This will add \$3,699.00 to the Architectural fee and bring the estimated construction costs of the scope being bid to \$316,100.00.

Staff recommends authorizing the additional architectural fees to design for an estimated scope of \$316,100.00. There is no need to authorize any additional funds at this time until the project is bid. However, with this authorization, it is likely that additional general fund dollars will be needed, particularly if the decision is to award the base bid and alternates.

Motion made by Councilman District 2 Dent

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

THAT, in accordance with recommendation of staff, Council hereby approves amendment to the Professional Services agreement of Rawley McCoy and Associates (RMA), PLLC for the City Hall Renovations Project to include the two (2) columns and exclude the extra canopy. The additional Architectural fee is not to exceed \$3,700.00.

Seconded by Councilman District 3 Tippit

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

9. **Consider first reading of an Ordinance (G-1-22) of the City of Port Lavaca regulating the speed of vehicles in, along, and upon those streets located within the confines of the listed residential subdivisions; establishing the rate of speed in and upon such streets in such subdivisions; prescribing penalties; repealing all ordinances in conflict herewith; and providing an effective date. Presenter is Jody Weaver**

Motion made by Councilman District 2 Dent

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

THAT, in accordance with recommendation of staff, Council hereby approves the first reading of an Ordinance (G-1-22) to include speed limits on Piekert Subdivision, addition of codification and penalty clauses and correct some typos.

Seconded by Councilman District 3 Tippit

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

10. **Consider recommendation of the Planning Board for approval of a conceptual boat storage business to be located on Alcoa Drive. The legal description is A0137 Samuel Shupe, Tract PT 3, being 28.546 acres within the city limits of Port Lavaca, Texas. Presenter is Jessica Carpenter**

Development Services Director Carpenter advised Council that the applicant, Joshua Wagner, is proposing a boat storage business to be located on Alcoa Drive. The site location is currently not platted and is vacant land. This boat storage business may have a maximum of 300 units depending on the level of demand. The boat storage facility will be fenced and gated to provide security and ensure the safety to the customers. The facility will have asphalt and concrete with approved drain systems. There will also be a wash station for the customers to clean their boats.

The Future Land Use map designates this parcel as Commercial and Multi-family. The proposed boat storage use would be in compliance with the Future Land Use map. The proposed boat storage will support many aspects highlighted as goals and objective in the Comprehensive plan. (Pg. 147 Comprehensive Plan).

The Planning Board and staff recommend approval of this request.

Motion made by Councilman District 2 Dent

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

THAT, in accordance with the recommendation of the Planning Board and staff, Council hereby approves request of Joshua Wagner for a conceptual boat storage business to be located on Alcoa Drive. The legal description is A0137 Samuel Shupe, Tract PT 3, being 28.546 acres within the city limits of Port Lavaca, Texas.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

RECESS:

Mayor Whitlow announced commencement of recess at 8:18 p.m.

Mayor Whitlow announced conclusion of recess at 8:31 p.m.

11. Consider recommendation of the Planning Board for approval of a conceptual high density residential area for multifamily apartment complex development. To be located to the north of Parker Road on Broadway Street to Tiney Browning Boulevard. Presenter is Jessica Carpenter

Development Services Director Carpenter advised Council that the applicant, Jeff Beckler, Assistant VP of Development for Zimmerman Properties, LLC, is proposing a multifamily apartment complex. The general site location is currently not platted and is vacant land. The preliminary density is anticipated to be 60 units. This is contingent upon if the developer is awarded a Texas Department of Housing and Community Affairs (TDHCA) Grant to fund the development of the proposed apartment complex.

The applicant is proposing 60 units of workforce housing for Port Lavaca. It will be a mix of 2- and 3-bedroom units and 50 of the 60 units will be at or below 60% Average Median Income (AMI) for Calhoun County. The remaining 10 will be market rate units. They will hit a number of income bands for the citizens, which really gives flexibility for all employment. All residents will be required to prove income, employment, and credit and criminal background checks. This is not a Section 8 property. Amenities include washer/dryer in each unit, dishwasher in each unit, fitness center, library, computer access, community area, clubhouse, tot lot for kids with a playground, BBQ area, etc.

The Planning Board and staff recommend approval of this request.

Motion made by Councilman District 5 Ward

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

THAT, in accordance with recommendation of the Planning Board and staff, Council hereby approves request of Jeff Beckler, Assistant VP of Development for Zimmerman Properties, LLC, for a conceptual high density residential area for multifamily apartment complex development. To be located to the north of Parker Road on Broadway Street to Tiney Browning Boulevard.

Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

12. Consider Resolution No. R-021422-3 for support for the application of the Lavaca Bay Apartments as an affordable rental housing development.. Presenter is Jessica Carpenter

Motion made by Councilman District 5 Ward

WHEREAS, ZP Lavaca Bay Apartments, LP has proposed a development for affordable rental housing at southwest corner of Tiney Browning Blvd. and Broadway Street named Lavaca Bay Apartments in the City of Port Lavaca and

WHEREAS, ZP Lavaca Bay Apartments, LP has communicated that it intends to submit an application to the Texas Department of Housing and Community Affairs ("TDHCA") for 2022 Housing Tax Credits for Lavaca Bay Apartments

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

THAT, as provided for in 10 TAC §11.3(c), it is expressly acknowledged and confirmed that the City of Port Lavaca has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds and

BE IT FURTHER RESOLVED, that the City of Port Lavaca hereby supports the proposed Lavaca Bay Apartments, and confirms that its governing body has voted specifically to approve the construction or rehabilitation of the Development and to authorize an allocation of Housing Tax Credits for the Development pursuant to Tex. Gov't Code §2306.6703(a)(4), and

BE IT FURTHER RESOLVED that for and on behalf of the City Council, Jack Whitlow, Mayor is hereby authorized, empowered, and directed to certify this resolution to the Texas Department of Housing and Community Affairs (TDHCA).

Seconded by Councilman District 6 Barr

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

13. Consider recommendation of the Planning Board for approval of a conceptual T-Mobile cellular phone store and a Starbucks café with a drive-thru. To be generally located north of Travis Street and south of Tiney Browning Boulevard on SH 35 N. Presenter is Jessica Carpenter

Development Services Director Carpenter advised Council that the applicant is proposing to open a T-Mobile cellular phone store and a Starbucks café with a drive-thru. The site location is adjacent to the White Oak strip mall development, south of Murphy's fuel station, north of the La Quinta hotel, and west of Walmart. The plat for this location to be developed is ready for signatures and recording.

The Future Land Use map designates this parcel as Commercial; therefore, this proposed business is compliant.

The Planning Board and staff recommend approval of this request.

Motion made by Councilman District 6 Barr

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

THAT, in accordance with recommendation of the Planning Board and staff, Council hereby approves a conceptual T-Mobile cellular phone store and a Starbucks café with a drive-thru. To be generally located north of Travis Street and south of Tiney Browning Boulevard on SH 35 N.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

14. Announcement by Mayor that City 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). Presenter is Mayor Whitlow**

Mayor Whitlow announced that Council would retire into closed session at 8:41 p.m.

15. Return to Open Session and take any action deemed necessary with regard to matters in closed session. Presenter is Mayor Whitlow

Mayor Whitlow announced that Council was back in open session at 9:55 p.m.

No action necessary and none taken.

IX. ADJOURNMENT

Mayor asked for motion to adjourn.

Motion made by Councilman District 6 Barr, Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

Meeting adjourned at 9:56 p.m.

These minutes were approved on March 14, 2022.

ATTEST:

Jack Whitlow, Mayor

Mandy Grant, City Secretary

COMMUNICATION

SUBJECT: Minutes of February 28, 2022 Special Meeting

INFORMATION:

**CITY COUNCIL SPECIAL MEETING**

Monday, February 28, 2022 at 5:30 PM

City Hall located at 202 N. Virginia Street in Port Lavaca, Texas 77979

MINUTES

STATE OF TEXAS §
COUNTY OF CALHOUN §
CITY OF PORT LAVACA §

On this the 28th day of February, 2022, the City Council of the City of Port Lavaca, Texas, convened in a special meeting at 5:30 p.m. at the regular meeting place in Council Chambers at City Hall, 202 North Virginia Street, Port Lavaca, Texas, with the following members in attendance:

I. ROLL CALL

Jack Whitlow	Mayor
Allen Tippit	Councilman, District 3
Rosie G. Padron	Councilwoman, District 4, Mayor Pro Tem
Jim Ward	Councilman, District 5
Ken Barr	Councilman, District 6

And with the following absent:

Jerry Smith	Councilman, District 1
Tim Dent	Councilman, District 2

Constituting a quorum for the transaction of business, at which time the following business was transacted:

II. CALL TO ORDER

- Mayor Whitlow called the meeting to order at 5:32 p.m. and presided.

III. COMMENTS FROM THE PUBLIC - *Comments will be limited to three (3) Minutes per individual unless permission to speak longer is received in advance*

- Mayor asked for comments from the public and there were none.

IV. ACTION ITEMS - Council will consider/discuss the following items and take any action deemed necessary

1. **Consider Resolution No. R-022822-1 for support of the adoption and approval of the Teva and Endo/Par Texas State-Wide Opioid settlements as set forth in Exhibits. Presenter is Anne Marie Odefey**

Motion made by Councilman District 6 Barr,

BE IT REMEMBERED, at a regular meeting of the City Council of the City of Port Lavaca, Texas, held on the 13th day of December, 2021, the following Resolution was adopted:

WHEREAS, the City of Port Lavaca previously approved and participated in Agreement entitled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (hereafter, the Texas Term Sheet) approving the allocation of any and all opioid settlement funds within the State of Texas. The Texas Term Sheet is attached hereto as Exhibit "A"; and

WHEREAS, two more Defendants (per the definition in prior Resolution) have negotiated settlements, namely, Teva and Endo/Par;

WHEREAS, Special Counsel and the State of Texas have recommended that the City Council of the City of Port Lavaca support the adoption and approval of the Teva and Endo/Par Settlements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA:

1. Support the adoption and approval the settlements with Teva and Endo/Par; and,
2. Make the same findings made in the adoption of the Texas Term Sheet; and,
3. Authorize the Mayor of the City of Port Lavaca to Sign the Texas Subdivision and Special District Election and Release Form for the Texas Teva and Endo/Par settlements as set forth as Exhibit "A" attached hereto.

Seconded by Councilman District 5 Ward.

Voting Yea:

Councilman District 3 Tippet, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

V. ADJOURN SPECIAL MEETING

Mayor asked for motion to adjourn.

Motion made by Councilman District 5 Ward, Seconded by Councilman District 6 Barr.

Voting Yea:

Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

Meeting adjourned at 8:04 p.m.

These minutes were approved on March 14, 2022.

ATTEST:

Jack Whitlow, Mayor

Lorena Perez-Diaz,
Assistant City Secretary

COMMUNICATION

SUBJECT: Review of the Credit Card Statement

INFORMATION:



CITY OF Section VII. Item #C.

Account Number: XXXX XXXX XXXX 0305

Billing Questions:
800-367-7576Website:
www.cardaccount.netSend Billing Inquiries To:
Card Service Center, PO Box 569120, Dallas, TX 75356FIRST NATIONAL BANK IN PORT LAVACA Credit Card Account Statement
January 8, 2022 to February 4, 2022

SUMMARY OF ACCOUNT ACTIVITY

Previous Balance	\$2,302.14
- Payments	\$2,302.14
- Other Credits	\$23.39
+ Purchases	\$5,741.17
+ Cash Advances	\$0.00
+ Fees Charged	\$0.00
+ Interest Charged	\$0.00
= New Balance	\$5,717.78

Account Number XXXX XXXX XXXX 0305
 Credit Limit \$26,500.00
 Available Credit \$20,701.00
 Statement Closing Date February 4, 2022
 Days in Billing Cycle 28

PAYMENT INFORMATION

New Balance: \$5,717.78
 Minimum Payment Due: \$171.54
 Payment Due Date: March 2, 2022

TRANSACTIONS

An amount followed by a minus sign (-) is a credit unless otherwise indicated.

Tran Date	Post Date	Reference Number	Transaction Description	Amount
01/21	01/21	F112700D500CHGDDA	AUTOMATIC PAYMENT - THANK YOU	\$2,302.14-
			TOTAL XXXXXXXXXXXXXXX0305	\$2,302.14-
01/10	01/11	1527021QS021RZ8TK	SUBWAY 68757 RICHMOND TX	\$10.91
01/11	01/12	5526352QVRBGHFTZS	TEXAS ROADHOUSE #2290 ROSENBERG TX	\$18.38
01/12	01/12	5550629QW2M2WEGV2	MIMI'S NEW ORLEANS CAF RICHMOND TX	\$18.94
01/12	01/13	1527021QW026LR0GH	SUBWAY 68757 RICHMOND TX	\$9.62
01/13	01/14	1527021QX01ZMYHBV	SUBWAY 68757 RICHMOND TX	\$10.91
01/14	01/14	5550629QY2M2YBJ98	MIMI'S NEW ORLEANS CAF RICHMOND TX	\$20.03
01/14	01/16	5543687QZ4BSYJNDP	HAMPTON INNS ROSENBERG TX	\$583.08
		CHECK-IN 01/10/22	FOLIO #189651	

Transactions continued on next page

FIRST NATIONAL BANK IN PORT LAVACA
 1550 N BROWN RD 150
 LAWRENCEVILLE GA 30043



Account Number: XXXX XXXX XXXX 0305
 New Balance: \$5,717.78
 Minimum Payment Due: \$171.54
 Payment Due Date: March 2, 2022

All payments on the account must be made at the address shown on your monthly billing statement and are considered to have been made on the date received at that address.

Amount Enclosed: \$



Make Check Payable to:

CARD SERVICE CENTER
 PO BOX 569100
 DALLAS TX 75356-9100

CITY OF PORT LAVACA
 202 N VIRGINIA ST
 PORT LAVACA TX 77979-3431

11273390700003050001715400005717785



TRANSACTIONS (continued)

An amount followed by a minus sign (-) is a credit unless otherwise indicated.

Tran Date	Post Date	Reference Number	Transaction Description	Amount
01/15	01/16	5550629QZ2M2ZA2HE	MIMI'S NEW ORLEANS CAF RICHMOND TX COLIN RANGNOW	\$20.57
			TOTAL XXXXXXXXXXXX0727	\$692.44
01/23	01/24	5542950D7RSD429JL	PAYPAL *SAGEDYNAMIC 4029357733 GA	\$600.00
01/24	01/25	5543687D93T9W2MKD	BULK MUNITIONS 855-5888918 TN ERIC SALES	\$385.50
			TOTAL XXXXXXXXXXXX0776	\$985.50
01/20	01/21	5542950D4RS7V3D41	PAYPAL *TEXASPOLICE 4029357733 CA	\$37.38
02/04	02/04	5543286DK5SSKHZ0X	NNA SERVICES LLC 800-876-6827 CA KAREN NEAL	\$155.74
			TOTAL XXXXXXXXXXXX0784	\$193.12
01/10	01/11	0541019QS8JPPXEDD	BEST BUY 00006031 VICTORIA TX	\$43.28
01/10	01/11	5548077QV2MHV6BAA	ACADEMY SPORTS #128 VICTORIA TX	\$129.89
01/10	01/11	8271116QS000B0NTP	TACTACAM REVEAL CALEDONIA MN	\$120.00
01/11	01/13	8545093QWWGR3T2VT	OSS ACADEMY SPRING TX	\$25.00
01/11	01/13	8545093QWWGR3T2X2	OSS ACADEMY SPRING TX	\$25.00
01/20	01/21	5548077D52MHV6BV0	ACADEMY SPORTS #128 VICTORIA TX	\$36.79
01/22	01/23	5548077D72MJDA5ZK	ACADEMY SPORTS #128 VICTORIA TX	\$110.38
01/24	01/25	1527021D8DFELYTBH	EBAY O*09-08172-86506 SAN JOSE CA	\$47.67
01/25	01/26	5543286D95V276M34	LOWES #00282* VICTORIA TX	\$40.03
01/25	01/26	5554650D95SSHPTJR	BOSART LOCK & KEY VICTORIA TX	\$6.50
02/01	02/02	5543687DHM85HDS8A	TYLER JC CASHIER WEST 903-5103225 TX JAVIER RAMOS	\$25.00
			TOTAL XXXXXXXXXXXX0867	\$609.54
01/07	01/09	5270487QP12DGNHNE	SHERATON MCKINNEY F&B MCKINNEY TX	\$25.57
01/08	01/09	5270487QR11H0N4GP	SHERATON MCKINNEY MCKINNEY TX CHECK-IN 01/06/22 FOLIO #258056	\$153.93
01/08	01/09	5270487QR11W1XS7J	SHERATON MCKINNEY F&B MCKINNEY TX WAYNE SHAFFER	\$19.24
			TOTAL XXXXXXXXXXXX1212	\$198.74
01/24	01/25	5531020D82D9SE95E	AMZN MKTP US AMZN.COM/ AMZN.COM/B CREDIT	\$23.39-
01/17	01/18	5548077D18B3QV23V	UNT COMMERCE MANAGER 9405652000 TX	\$300.00
01/28	01/30	5550036DQ2DYK69D1	NOTARY PUBLIC TEXAS 8506563028 FL	\$102.02
01/30	01/31	5543286DE5SG7Z8PL	AMZN MKTP US*TO33X2WI3 AMZN.COM/BILL WA	\$71.96
02/03	02/04	7545667DJS66E7F61	KEEP U NEAT DRY CLEANE PORT LAVACA TX MANDY GRANT	\$18.00
			TOTAL XXXXXXXXXXXX1238	\$468.59
01/07	01/09	8230509QP000DBJGR	GREENVELOPE.COM SEATTLE WA	\$20.25
01/11	01/12	5513158QVR3F9ZHE2	APPLE.COM/BILL 1111111111 CA	\$2.99
01/12	01/13	7541823QW40X6PKYW	GPS*CALHOUN COUNTY CLE 888-6047888 TX	\$13.50
01/19	01/20	0514048D3MHDRELWK	H-E-B #434 PORT LAVACA TX	\$15.27
01/28	01/30	7541823DQ41WXKW5Z	GPS*CALHOUN COUNTY CLE 888-6047888 TX	\$13.50
01/31	02/01	5543286DF5SRYLZ5S	SQ *CITY HALL ESSENTIA GOSQ.COM TX JESSICA CARPENTER	\$75.00
			TOTAL XXXXXXXXXXXX1329	\$140.51
01/12	01/14	5543687QY3FWEDWTJ	FORMS FULFILLMENT CENT 914-3456268 NY	\$61.75
01/13	01/14	5543286QX5SNL53RL	AMZN MKTP US*VC3FM2U23 AMZN.COM/BILL WA	\$387.00
01/16	01/16	5543286D05SD5D13L	AMZN MKTP US*BU13264N3 AMZN.COM/BILL WA	\$10.95
01/17	01/18	5548077D18B3QV22H	UNT COMMERCE MANAGER 9405652000 TX	\$150.00
01/17	01/18	5548077D18B3QV23K	UNT COMMERCE MANAGER 9405652000 TX	\$75.00

Transactions continued on next page



CITY OF Section VII. Item #C.

Account Number: XXXX XXXX XXXX 0305

TRANSACTIONS (continued)

An amount followed by a minus sign (-) is a credit unless otherwise indicated.

Tran Date	Post Date	Reference Number	Transaction Description	Amount
01/24	01/25	0230096D88PKKL9X1	GOVERNMENT FINANCE OFF CHICAGO IL	\$150.00
01/27	01/28	5543286DB5SP91DPW	AMZN MKTP US*2V9K048S3 AMZN.COM/BILL WA	\$8.59
01/30	01/31	5531020DE2DK2RP2Q	AMAZON.COM*V53GA5PX3 A AMZN.COM/BILL WA	\$10.19
SUSAN LANG				
TOTAL XXXXXXXXXXXX1345				\$853.48
01/31	02/01	5548872DGBMDH851Z	DSHS REGULATORY PROG 5124587111 TX	\$64.00
JOE REYES JR				
TOTAL XXXXXXXXXXXX0215				\$64.00
01/15	01/16	5543286QZ5SA45365	GOOGLE *GOOGLE STORAGE 650-253-0000 CA	\$2.12
01/17	01/18	5543286D15STLX69H	UPS*BILLING CENTER 800-811-1648 GA	\$36.02
01/18	01/19	7545491D2S66LDSYS	TEXAS TRADITIONS GRILL PORT LAVACA TX	\$21.25
01/19	01/20	5543286D3S5E5K5RG	J2 *EFAX CORPORATE SVC 323-817-1155 CA	\$190.38
01/19	01/20	5550036D32DZELJED	NOTARY PUBLIC FL-ONLIN 8506563028 FL	\$15.00
01/25	01/26	5542950DA0TSX0BLM	DOCUSIGN 8003799973 WA	\$127.92
02/01	02/02	7545491DGS66DQ0QF	TEXAS TRADITIONS GRILL PORT LAVACA TX	\$250.51
02/01	02/03	5520739DH000YH334	AUTHORIZE.NET SAN FRANCISCO CA	\$30.00
JOANNA WEAVER				
TOTAL XXXXXXXXXXXX0249				\$673.20
01/06	01/09	8545093QPWGRKHBJ0	WORKAMPER NEWS HEBER SPRINGS AR	\$39.00
01/06	01/09	8545093QPWGRKHBJ0	WORKAMPER NEWS HEBER SPRINGS AR	\$47.50
01/13	01/14	5548872QY2MQVXZ6N	TCEQ EPAYMENT 5122396261 TX	\$113.75
01/13	01/14	5548872QY2M06L39W	TXDPS CRIME RECS 5124242936 TX	\$9.46
01/17	01/17	5543286D15SMK6G9M	AMZN MKTP US*3H3N05AK3 AMZN.COM/BILL WA	\$92.74
01/19	01/20	5543286D45SHWENK1	INTERSTATE ALL BATTERY VICTORIA TX	\$95.17
01/21	01/23	5548872D62MD3J1Y8	TCEQ EPAYMENT 5122396261 TX	\$113.75
02/03	02/04	5543286DJ5SNPZRD0	AMAZON.COM*UK3XN20P3 AMZN.COM/BILL WA	\$327.29
CYNTHIA HEYSQUIERDO				
TOTAL XXXXXXXXXXXX0264				\$838.66

INTEREST CHARGE CALCULATION

Your Annual Percentage Rate (APR) is the annual interest rate on your account

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Days in Billing Cycle	Interest Charge
Purchases	14.24% (v)	\$0.00	28	\$0.00
Cash Advances	14.24% (v)	\$0.00	28	\$0.00

(v) - variable

To avoid additional interest charges, pay your New Balance in full on or before the Payment Due Date.

Exciting news! Go online today and check out the all-new enhancements to the Card Service Center website. E-statements, additional payment options, links to Preferred Points website, and other helpful sites. Visit us today at www.cardaccount.net to enroll your credit card account(s) on the newly enhanced website.

Thank you for the opportunity to serve your credit card needs. Should your future plans include travel, please contact us at 1-800-367-7576.

COMMUNICATION

SUBJECT: Receive monthly Financial Highlight Report

INFORMATION:



CITY OF
PORT LAVACA

202 N. Virginia, Port Lavaca, Texas 77979-0105 www.portlavaca.org
Main Number: 361-552-9793 Main Facsimile: 361-552-6062

To: Mayor and Members of the City Council
From: Susan Lang, Finance Director 
Subject: FY 21-22 Financial Highlights through **February 28, 2022**
Date: March 4, 2022

Below are the following reports for the period ending **February 28, 2022**, or **42%** of the year:

The major highlights of the Report are as follows:

Property Tax collections as reported by CCAD - are **\$4,059,261** for the year as of January. Collections in FY21-22 are 83.84% of total adjusted tax levy. Total current year Property Taxes Outstanding as of January is **\$782,493**.

In the General Fund, revenues through **2/28/22** are **66.3%** of budget. In addition:

1. *Current Property Tax* collections - are **\$4,014,392** for the year as of February. Collections in FY21-22 are 101.1% of budget.
2. *Sales Tax* collections through February were **\$1,433,048** or 43.5% of budget. Collections through February in FY 20-21 were **\$1,448,919**.
3. *Licenses & Permits* collections are **\$61,840** for the year, or 27.1% of budget. Collections through February in FY 20-21 were **\$75,663**.
4. *Bauer Center Rentals* through February are **\$18,900** or 37.8% of budget. Collections through February in FY 20-21 were **\$20,735**.
5. *Court Fines* are **\$32,736** for the year, or 27.2% of budget. Collections through February in FY 20-21 were **\$36,493**.

Expenditures in the General Fund for the year are **44.2%** of budget.

Target: 42%

In the Utility Fund, revenues as of **2/28/22** are **49%** of budget. In addition:

1. *Metered Water* sales through February are **\$816,429 or 40.6%** of budget.
2. *Residential Sewer* sales through February are **429,192 or 40.4%** of budget.
3. *Garbage Billings* through February are **\$322,241 or 46.3%** of budget.

Expenditures in the Utility Fund for the year are **34%** of budget.

Summary – FY 2021-2022 through 2/28/22

<u>Fund</u>	<u>Revenues</u>	<u>% Budget</u>	<u>Expense</u>	<u>% Budget</u>	<u>Revenues Less Expense</u>
General	\$6,277,598	66.3%	\$4,446,980	44.2%	\$1,830,618
Utility	2,972,817	49.0%	1,830,235	34.0%	1,142,582
HOT	88,110	16.7%	167,454	18.7%	(79,344)
Beach	21,460	12.2%	19,765	45.3%	1,696
Port	255,391	1.7%	230,099	1.8%	25,292
Total					2,502,393

I will be at the City Council meeting, should you have any questions regarding the information provided.



**Port Lavaca
PROPERTY TAX COLLECTION REPORT
January 30, 2022**

TAXES DUE AT CERTIFICATION	4,726,568.66
Adjustments to Date	115,184.99
TOTAL TAX LEVY	4,841,753.65

2021 Tax Collections

	Base	Penalties & Interest	Total
October	2,264,571.55	0.00	2,264,571.55
November	345,300.03	0.00	345,300.03
December	603,580.74	0.00	603,580.74
January	845,808.24	0.00	845,808.24
February			0.00
March			0.00
April			0.00
May			0.00
June			0.00
July (Delinquent as of July 1, 2021)			0.00
August			0.00
September			0.00
TOTAL	4,059,260.56	0.00	4,059,260.56

	% Collected	Last Year % Collected
TRANSFERRED TO DELINQUENT ROLL	83.84%	85.68%
July, Aug, and Sept Payments	0.00	

2021 TAXES OUTSTANDING	782,493.09
-------------------------------	------------

% Current Outstanding	16.16%
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DELINQUENT COLLECTIONS

	Base	Penalties & Interest	Total
October	6,452.35	3,130.88	9,583.23
November	9,728.40	3,612.99	13,341.39
December	7,907.93	3,020.62	10,928.55
January	4,786.11	1,973.51	6,759.62
February			0.00
March			0.00
April			0.00
May			0.00
June			0.00
July			0.00
August			0.00
September			0.00
TOTAL	28,874.79	11,738.00	40,612.79

DELINQUENT TAXES OUTSTANDING	387,483.02
TOTAL TAXES OUTSTANDING	1,169,976.11

[Signature]
2/18/22

COMMUNICATION

SUBJECT: Ratify Lease for Allied Universal Security Services for Suites 1E and 1F at Nautical Landings Marina Building

INFORMATION:

PORT COMMISSION LEASE AGREEMENT

Summary of Lease Terms

DATE March 1, 2022

LANDLORD: City of Port Lavaca, Texas, a Texas home rule municipality
202 N. Virginia
Port Lavaca, TX 77979

TENANT

Company name & address Allied Universal Security Services
5656 South Staples
Corpus Christi, Texas 789411

Home office address same

Contact #s & email Robert Fortune 361-468-5682
William.fortune.aus.com

Local responsible party

Emergency contact any above

PREMISES SUITE 1E and 1F NAUTICAL LANDINGS BUILDING

TERM

Commencement Date	<u>March 1, 2022</u>
Termination Date	<u>February 28, 2023</u>
Monthly Rate	<u>\$600 (includes utilities and access to</u>
<u>break/restrooms)</u>	
Annual Increase	<u>MCI/2%-5% each Oct. 1 - one year 2-way</u>
	<u>option - ref Special Provisions</u>

OFFICE LEASE AGREEMENT**DATE:** March 1, 2022**LANDLORD:** City of Port Lavaca, Texas, a Texas home rule municipality
202 N. Virginia
Port Lavaca, TX 77979**TENANT:**Company name & address: Allied Universal Security Services
5656 South Staples
Corpus Christi, Texas 78411Home office address: SameContact #'s & email: Robert Fortune 361-438-5682
Branch Manager – Security Services
William.fortune@aus.com

Local responsibility:

Emergency contact: any of the above**PREMISES: SUITE 1E and 1F NAUTICAL LANDINGS BUILDING**

Approximate square feet: 160 sf + 160 sf = 320 sf

Name of Building: Nautical Landings

Street address/suite: Suite 1E and 1F

City, state, zip: Port Lavaca, Texas 77979

Term (months): 12**Commencement Date:** March 1, 2022**Termination Date:** February 28, 2023 (ref. Section E – Special Provisions for option to extend 1-yr)**TOTAL Rent (monthly):** \$ 600.00 (INCLUDES utilities and access to Breakroom/restrooms)

Rent shall be adjusted on **October 1st each year** by the increase of the Municipal Cost Index from the Commencement Date to the latest date it is published prior to October 1st with a 2% minimum and a 5% maximum. City may give a courtesy notice of any increase annually, however, failure to give such notice does not relieve Tenant of the obligation to pay such increases.

Permitted Use: Business Office establishment

Tenant's Electric Share: \$50/month (*ref Section B.1.g*)

Tenant's access to Breakroom and Restrooms: \$50/month

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

Tenant's Rebuilding Obligations: If the Premises are damaged by fire or other elements, Tenant will be responsible for repairing or rebuilding the following leasehold improvements: All partitions, walls, ceiling systems, wiring, light fixtures, floors, finishes, wall coverings, floor coverings, signs, doors, hardware, windows, window coverings, plumbing, heating, ventilating, and air-conditioning equipment, and other improvements originally installed in the Premises by Tenant.

A. Definitions

A.1. "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

A.2. "Building Operating Hours" means 8:00 A.M. to 6:00 P.M. Monday through Friday, except holidays.

A.3. "Common Areas" means all facilities and areas of the Building and Parking Facilities and the related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has the exclusive control over and right to manage the Common Areas.

A.4. "Essential Services" means the following services: (a) air-conditioning and heating to the Premises reasonable for the Permitted Use (exclusive of air-conditioning or heating for electronic data-processing or other specialized equipment) during Building Operating Hours and at such other times at such additional cost as Landlord and Tenant may agree on; (b) hot and cold water for lavatory and drinking purposes; (c) electric current for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (d) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

A.5. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.6. "Parking Facility" means the common area parking located on the Premises.

A.7. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

B. Tenant's Obligations

B.1. Tenant agrees to -

B.1.a. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any Common Areas in the Building; (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (iii) any rules and regulations for the Building and Common Areas adopted by Landlord.

B.1.d. Pay monthly, in advance, without demand, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

B.1.e. Pay a late charge of 10 percent of any Rent not received by Landlord by the tenth day after it is due.

B.1.f. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

B.1.g. Tenant shall reimburse Landlord directly for its electric service with a monthly sum of \$50.00, being a mutually agreed upon estimate of the average cost of electricity used monthly, based upon an energy rate of \$0.03883/kWh. Such payment for electricity is due on the first day of the month and is subject to a late charge of 10 percent, if not received by Landlord by the tenth day after its due. This monthly reimbursement amount will be reviewed annually and adjusted per any percentage change in the energy rate being paid by Landlord.

B.1.h. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

B.1.i. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

B.1.j. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

B.1.k. Vacate the Premises and return all keys to the Premises on the last day of the Term.

B.1.l. INDEMNIFY, DEFEND, AND HOLD LANDLORD AND ITS RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING

IN ANY PORTION OF THE PREMISES IF CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF TENANT OR ITS AGENTS, INCLUDING IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF TENANT OR ITS AGENTS. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, LIENHOLDER, OR THEIR RESPECTIVE AGENTS.

B.2. Tenant agrees not to -

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Interfere with any other tenant's normal business operations or Landlord's management of the building.

B.2.d. Permit any waste.

B.2.e. Use the Premises in any way that would increase insurance premiums, or void insurance on the building.

B.2.f. Change Landlord's lock system.

B.2.g. Alter the Premises.

B.2.h. Allow a lien to be placed on the Premises.

B.2.i. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

B.2.j. Smoking, vaping, and/or chewing tobacco products on the Premises or in the common area is strictly prohibited.

C. Landlord's Obligations

C.1. Landlord agrees to -

C.1.a. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

C.1.b. Obey all laws relating to Landlord's operation of the Building and Common Areas.

C.1.c. Provide the Essential Services.

C.1.d. Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, (iv) structural soundness of the exterior walls, doors, corridors, and windows, and (v) other structures or equipment serving the Premises.

C.1.e. TO THE EXTENT ALLOWED BY TEXAS LAW, BUT NOT OTHERWISE, INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE COMMON AREAS. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY IF CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF LANDLORD OR ITS AGENTS, INCLUDING IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF LANDLORD OR ITS AGENTS, EVEN IF AN INJURY IS CAUSED IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF TENANT BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT.

C.2. Landlord agrees not to -

C.2.a. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

C.2.b. Unreasonably withhold consent to a proposed assignment or sublease.

D. General Provisions

Landlord and Tenant agree to the following:

D.1. Alterations. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord and must be ADA compliant. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

D.2. Signage. Landlord shall allow Tenant to place regulatory agency mandated signage (stickers) on or near the front entrance of the Premises.

D.3. Abatement. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant may not abate Rent for any reason.

D.4. Insurance. Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

D.5. Release of Claims/Subrogation. LANDLORD AND TENANT RELEASE EACH OTHER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE INSURED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN INSURED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

D.6. Casualty/Total or Partial Destruction

D.6.a. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

D.6.b. If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.6.a. above.

D.6.c. To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

D.7. Uniform Commercial Code. Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

D.8. Default by Landlord/Events. Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

D.9. Default by Landlord/Tenant's Remedies. Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within thirty days after default, terminate this lease.

D.10. Default by Tenant/Events. Defaults by Tenant are (a) failing to pay Rent timely, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

D.11. Default by Tenant/Landlord's Remedies. Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and either sue for Rent as it accrues or accelerate all rent due under this lease and sue; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

D.12. Default/Waiver. All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provisions of this Lease or its acceptance of late installments of Rent will not be a waiver and will not estop Landlord from enforcing that provision or any other provision of this Lease in the future.

D.13. Holdover. If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.14. Attorney's Fees. If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

D.15. Venue. Exclusive venue is in the county in which the Premises are located.

D.16. Entire Agreement. This lease, its exhibits, addenda and riders, are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

D.17. Amendment of Lease. This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

D.18. Limitation of Warranties. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

D.19. Notices. Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.20. Use of Common Areas. Tenant will have the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.

D.21. Abandoned Property. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Insurance Addendum to Lease

This insurance addendum is part of the lease.

A. Tenant agrees to maintain -

1. Causes of loss - special form insurance on Tenant's leasehold improvements and personal property in the Premises in an amount equal to the full replacement cost.

2. Business income insurance insuring the loss of rent for a period of twelve months. Such insurance shall contain an agreed evaluation provision, and the amount of coverage shall be adjusted annually to reflect the rent payable for the next twelve-month period. Tenant shall be responsible for the deductible amount payable in respect of such insurance.

3. Commercial general liability insurance, including contractual liability insurance coverage, covering Tenant's operations within the Premises, with combined single limits of not less than \$1,000,000 per occurrence for bodily injury or property damage, naming Landlord as additional insured.

4. Worker's compensation insurance in the amount of \$500,000 with a waiver of subrogation in favor of Landlord.

B. Landlord agrees to maintain -

1. Causes of loss - special form insurance upon the building in which the Premises are located in an amount equal to the full replacement cost.

2. Commercial general liability insurance, including contractual liability insurance coverage, covering the property in which the Premises are located and Landlord's operations with combined single limits of not less than \$1,000,000 per occurrence for bodily injury or property damage.

C. Landlord and Tenant agree that -

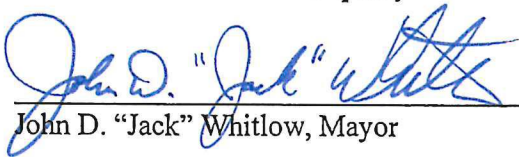
1. The causes of loss - special form insurance policies maintained by them shall contain (a) an agreed evaluation provision in lieu of a co-insurance clause, (b) an increased-cost-of-construction clause, (c) debris removal coverage, and (d) a waiver-of-subrogation clause in favor of the party not carrying the insurance.

2. The commercial general liability insurance shall be primary to the maintaining party and not contributory to any similar insurance carried by the other party and shall contain a severability-of-interest clause.

E. Special Provisions

Tenant shall have the right with ninety (90) days advance written notice to City to exercise a single one (1) year option to extend the lease until February 29, 2024, however City shall have the right with sixty (60) days advance written notice to Tenant to deny any request to extend the lease and to terminate the lease at the end of the current term, being February 28, 2023.

City of Port Lavaca, Texas,
a Texas Home Rule Municipality



John D. "Jack" Whitlow, Mayor

(TENANT)



Printed Name: _____

COMMUNICATION

SUBJECT: Receive Update Report from the Calhoun County 911 Emergency Communication District on the American Rescue Plan Grant awarded to Calhoun 911. Presenter is Raquel Morales

INFORMATION:

COMMUNICATION

SUBJECT: Conduct Public Hearing for intent of the City of Port Lavaca to establish the Property Assessed Clean Energy (PACE) Program. Presenter is Jody Weaver

INFORMATION:

COMMUNICATION

SUBJECT: Consider Resolution No. R-031422-1 of the City of Port Lavaca to Establish the Property Assessed Clean Energy (PACE) Program. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

MEETING: March 14, 2022

DATE: 3.9.2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JESSICA CARPENTER, DEVELOPMENT SERVICES DIRECTOR

SUBJECT: Hold a Public Hearing to consider and discuss Resolution R-021422-1, to establish the City of Port Lavaca Property Assessed Clean Energy Program (Port Lavaca PACE Program).

This is a public hearing for comments and questions from the public regarding the PACE program. The PACE program is being presented with the second resolution, Resolution R-031422-1, to establish the Port Lavaca Pace Program. Pace has been adopted by the state as The Texas PACE Act, Chapter 399 of the Local Government Code.

Resolution No. R-021422-2 of the City’s Intent for PACE was approved by the City Council on February 14, 2022.

Chapter 399 program requirement for adopting the PACE program is to post the PACE report with exhibits on the City website. The city of Port Lavaca has had the PACE report with exhibits on the city website for the last month to ensure our public has the time to review the PACE report to ask any questions or make comments for the public hearing for PACE.

The city has a developer proposing to implement the PACE program for his new residential housing development adjacent to the existing Sea Greens workforce housing development.

This seems like a new opportunity for developers, and staff views this as a positive funding program. The success of this funding for developments that meet the PACE criteria prove to be a progressive improvement to Port Lavaca for infrastructure and energy for our growing community. It is not often new funding streams emerge for developers and investors with a progressive element to incentivize the green energy and efficiency improvements. The green energy, standard energy, and water efficiency improvement criteria seems to be a positive step in development funding elements required under PACE.

A PACE summary and link to the PACE website:



CITY OF PORT LAVACA

<https://www.texaspaceauthority.org/local-governments/>

Texas Property Assessed Clean Energy (TX-PACE) is a voluntary program that creates jobs, improves the environment, and saves Texas companies money on their utility bills. Local governments across the state are taking advantage of the Texas PACE statute and establishing programs to further provide quality and valuable services to their constituencies, stakeholders, and taxpayers.

The Texas PACE Act, Chapter 399 of the Local Government Code, is a local adoption model. The Texas “PACE in a Box” model was created by over 130 PACE stakeholders to facilitate a consistent, user-friendly approach to TX-PACE design and implementation. The model has been unanimously adopted by every local government establishing a TX-PACE program in Texas.

The model plug and play program contains consumer protection underwriting and technical best practices and model documents. “PACE in a Box” has minimal impact on government staff, adds no additional cost to the general taxpayer or burden to the treasury, and is administered by a nonprofit that does not compete with the private sector. Texas PACE Authority administers the uniform “PACE in a Box” model as a public service on behalf of local governments and is funded through user fees and grants.

PACE is 100% financing for energy and water efficiency improvements to industrial, commercial, multi-family residential, and non-profit buildings. PACE is essentially a long-term (typically 10-20 year), low-cost loan for such improvements as:

- HVAC modification or replacement
- Light fixture modifications such as LED
- Solar panels
- High-efficiency windows or doors
- Automated energy control systems
- Insulation, caulking, weather-stripping or air sealing
- Water use efficiency improvements
- Energy- or water-efficient manufacturing processes and/or equipment
- Solar hot water
- Gray water reuse
- Rainwater collection system

Attachments:

- Resolution R-031422-1
- Report Required by Sec. 399.009 for PACE Program

RESOLUTION NO. R-031422-1

A RESOLUTION OF THE CITY OF PORT LAVACA, TEXAS TO ESTABLISH A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; PACE HAS BEEN ADOPTED AS THE TEXAS PACE ACT, IN ACCORDANCE WITH CHAPTER 399 OF THE TEXAS LOCAL GOVERNMENT CODE.

WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a local government, including a City or County, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand;

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Port Lavaca, Texas will further the goals of energy and water conservation without cost to the public;

WHEREAS, the City Council finds that third-party financing of energy and water conserving projects through contractual assessments maintained by the City (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions;

WHEREAS, the City Council adopted a Resolution of Intent to establish a PACE program for City on February 14, 2022, including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the City’s website and for inspection in the City Manager’s office;

WHEREAS, The City Council finds that the administration of the PACE program by a qualified non-profit organization as an independent third-party Authorized Representative contracted by the City and compensated by application and administration fees paid by the participating property owners, will enable the program to be administered without use of City resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to the City;

WHEREAS, the City Council also finds that because no City funds will be expended for PACE financing of the Authorized Representative’s services, the selection of such an independent third-party Authorized Representative is not subject to the Professional Services Procurement Act or other City purchasing requirements; and

WHEREAS, the City Council held a public hearing on March 14, 2022 at 6:30 p.m. in the in the Council Chambers at City Hall, 202 n. Virginia Street, Port Lavaca, Texas 77979, at which the public hearing could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2):

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

1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.
2. Establishment of Program. The City hereby adopts this Resolution Establishing the City of Port Lavaca Property Assessed Clean Energy Program ("Port Lavaca PACE"), herein called "the Program," and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City and its citizens.
3. Contractual Assessments. The City will, at the property owner's request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within the City's jurisdiction, including its extraterritorial jurisdiction, are included in the boundaries of the region where PACE financing and assessments can occur.
6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City will not, at this time, provide financing of any sort for the Port Lavaca PACE program.

7. Authorized Representative. The City Council will designate Texas PACE Authority, a non-profit organization, to act as the Authorized Representative with authority to enter into written contracts with the record owners of real property in the City to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in the real property records of Calhoun County, all on behalf of the City. The Authorized Representative may make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute. The City Manager or her designee will be the liaison with the Authorized Representative.
8. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The final report on the Port Lavaca PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The City will post the resolution and report on the City's website.
10. Amendment of Program. The City Council may amend the Port Lavaca PACE Program by resolution. However, another public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

APPROVED AND ADOPTED by the City Council of the City of Port Lavaca, this 14th day March, 2022.

Jack Whitlow, Mayor

Jerry Smith, Councilman Dist. #1

Tim Dent, Councilman Dist. #2

Allen Tippit, Councilman Dist. #3

Rosie Padron, Councilwoman Dist. #4

Jim Ward, Councilman Dist. #5

Kenneth Barr, Councilman Dist. #6

ATTEST:

Mandy Grant, City Secretary

[INSERT FINAL REPORT]

REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009

FOR PROPOSED PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

This Report is adopted by the City Council for the City of Port Lavaca, Texas (“**Local Government**”) Property Assessed Clean Energy (PACE) Program (**the “Program”**) in accordance with the requirements of the Property Assessed Clean Energy Act (**the “PACE Act”**) as set forth in Texas Local Government Code Chapter 399.

The Local Government and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the Local Government is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The Local Government has chosen to follow the administrative principles, program processes, and model documents of the uniform Texas PACE in a Box model program.¹

Loans made under the PACE Program will be secured by assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the assessment. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

¹ <https://www.keepingpaceintexas.org/pace-in-a-box>

1. Eligible Properties

The Local Government's PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the Local Government's PACE region may participate in PACE financing. ***"Eligible Properties"*** include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential², and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties.

"Qualified Improvements" are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Qualified Improvements.

The following items may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning ("HVAC") systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (indoor and outdoor)
- High efficiency irrigation equipment

3. Benefits of PACE to Property Owners

The PACE program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as unattractive returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment upon sale of the property.

By financing Qualified Improvements through the program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced, and the owner will only be obligated to pay the assessment installments that accrue during its period of ownership of the property. Additionally, by investing in energy efficiency and water conservation with PACE

² This encompasses single family residential and any multi-family properties with fewer than five units.

financing, property owners may also qualify for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities to encourage these types of investments.

4. Benefits of PACE to the Local Government

Among other things, projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility costs,
- Reduce demand on the electricity grid
- Mitigate greenhouse gas emissions associated with energy generation
- Enhance the value and efficiency of existing buildings
- Boost the local economy by creating new job opportunities and new business opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufactures
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property
- Improve productivity through optimized energy usage
- Support the State's water conservation plan
- Better enable the Local Government to meet its water conservation goals

Finally, through the reduction in energy consumption as a result of the PACE program, there will be a decreased demand for power resulting in lower emissions from power plants. EPA regulations have significant impacts on air quality standards in Texas. Being non-attainment for priority pollutants in the Clean Air Act endangers federal transportation funding.

The PACE program requires minimal support from the Local Government. It is designed to be self-sustaining. Furthermore, because the PACE program is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the Local Government's general fund.

The 84th Texas Legislature added a provision that explicitly shields the Local Government and its employees, members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter.³

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist

³ TX. Local Gov't Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

6. The Benefits of PACE to Contractors, Engineers, and Manufacturers

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. As a result, PACE will unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

7. Administration of the Local Government PACE Program

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions.⁴ The PACE Act further authorizes the Local Government to enter into a contract with a third party to provide administrative services for the PACE program (the “*Authorized Representative*”). The Local Government will delegate administration of the PACE program to Texas PACE Authority, a qualified, non-profit organization that can administer the program at no cost to the Local Government.

The Authorized Representative’s role is to serve as an extension of the local government staff to provide oversight of the program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide education and outreach.

The Authorized Representative will be funded by administrative fees paid by the property owners establishing a PACE project, charitable grants or other authorized sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the Local Government.

8. Eligible Lenders

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The Local Government will follow best practices of other PACE programs and the Texas PACE in a Box model program by recommending that lenders be:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million; and

⁴

TX Local Government Code §399.003(b)

- Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
- Can provide independent certification as to availability of funds; and
- All lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any lender can participate in the PACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. The property owner, not the Local Government or the Authorized Representative, selects the lender.

The Authorized Representative will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender; or create any type of express or implied favoritism for any eligible lender.

9. Components of the PACE Program

As required under Section 399.009 of the PACE Act, the following describes all aspects of the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the Local Government limits, including its extraterritorial jurisdiction.
- b. Form Contract with Owner. A form contract between the Local Government and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between the Local Government and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments.

Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien to be filed by the Local Government with the County Clerk is attached to this Report as Exhibit 4.

- d. Qualified Improvement. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial,

industrial or residential real property with five (5) or more dwelling units;⁵ and (b) are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.⁶

A sample list of potential Qualified Improvements appears in Section 2 above.

The PACE program may not be used to finance improvements to undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.⁷

- e. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes the Local Government to delegate administration of the PACE program to a third-party "Authorized Representative." The Local Government may delegate all official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the City Manager or her designee.
- f. Project Review. Track and provide a public overview with savings metrics for all PACE projects
- g. Plans for Insuring Sufficient Capital⁸. Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the owner's financing of the Qualified Improvements. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- h. No Use of Bonds or Public Funds. The Local Government does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- i. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline

⁵ TX. Local Gov't Code §399.002(5).

⁶ TX. Local Gov't Code §399.002(3).

⁷ TX. Local Gov't Code §399.004.

⁸ The Texas PACE Authority's website (www.texaspaceauthority.org) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

conditions and the projected water or energy savings. This review will aid the Authorized Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.

- j. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:
- (1) A description of the specific Qualified Improvements to be installed or modified on the property,
 - (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed, and
 - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, the Authorized Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner will submit the application to the Authorized Representative to obtain preliminary approval. The property owner is expected to produce the following documentation prior to closing on the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project;
 - (2) Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
 - (3) All other information required by the Authorized Representative.
- k. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method⁹ for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including the following:

⁹ TX. Local Gov't Code §399.009(b).

- (1) verification that the person requesting to participate in the program is the legal record owner of the benefitted property,
- (2) the applicant is current on mortgage and property tax payments,
- (3) the applicant is not insolvent or in bankruptcy proceedings,
- (4) the title of the benefitted property is not in dispute; and
- (5) there is an appropriate ratio of the amount of the assessment to the assessed value of the property. The Local Government determines that it will follow the Texas PACE in a Box model program recommendation for determining the appropriate loan to assessed value of the property.

The Local Government determines to be eligible for PACE financing, the projected savings derived from the Qualified Improvement must be greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) should be greater than one, $SIR > 1$). A third-party lender and a for profit-property owner may request a waiver in writing for a project with an $SIR < 1$ and address the interests of tenants and future property owners. The Authorized Representative may consider factors in a variance request including:

- (a). Are there other environmental benefits such as air or water quality or resiliency that are not captured in the SIR analysis;
- (b) Will the proposed qualifying improvements generate environmental marketable credits that can be monetized?
- (c). What is the SIR calculation for the project (how far below 1?);
- (d). If the SIR is < 1 over the term of the assessment, is the $SIR > 1$ over the useful life of the equipment?
- (e). What is the impact of a variance request on affected third parties? and
- (f) Other information the owner and lender wish to submit regarding the impact of the qualified improvements on the company and the community.

- l. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized Representative and the property owner imposing an assessment under the program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the program on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.¹⁰
- m. Imposition of Assessment. The Authorized Representative will enter into a written contract with the property owner, only after:
 - (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
 - (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the program, that the proposed improvements are reasonably likely to decrease energy or water

¹⁰ TX. Local Gov't Code §399.010.

consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and
 (3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Authorized Representative will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 4 in the Official Public Records of the County in which the property is located, as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the property owner, and a reference to the statutory assessment lien provided under the PACE Act.

- n. Collection of Assessments. The execution of the written contract between the Local Government and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and with the lender to repay the financing secured by the assessment. The third-party lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form lender contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.¹¹

With funds from the lender, the property owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized Representative any administrative fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
- (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and

¹¹ The servicer will be responsible for maintaining payment records, account balances, and reporting to the Authorized Representative as required.

(3) The assignee or transferee, by operation of the financing documents or otherwise, written evidence of which shall be provided, assumes lender's obligations under the lender contract.

- o. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.¹² The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.¹³
- p. Marketing and Education Services. The Program Administrator will provide service provider training workshops for contractors, engineers, property managers and other stakeholders, provide outreach and education for all stakeholders including presentations, conference booths and individual meetings, and provide written and electronic materials such as case studies, flyers, and webinars.
- q. The Local Government may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- r. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

¹² TX Local Gov't Code §399.011.

¹³ TX Local Government Code §399.011(a-1)

- s. Delinquency. Under the terms of the form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender will agree to take at least the following steps to collect the delinquent installment:

- (1) Mail to the owner a written notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, and
- (2) Mail to the owner a second notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, at least 30 days after the date of the first notice if the delinquency is continuing.

If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Authorized Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized Representative will initiate steps for the Local Government to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, of the Texas Constitution. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Texas Local Government Code Section 399.014(d), and such statutory penalties and interest will be due to the Local Government to offset the cost of collection.

If the Local Government files suit to enforce collection, the Local Government may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the Local Government will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Authorized Representative the amount of any administrative fees collected but will retain any statutory penalties, interest, and attorney's fees collected.

EXHIBIT 1

MAP OF THE CITY OF PORT LAVACA PACE REGION

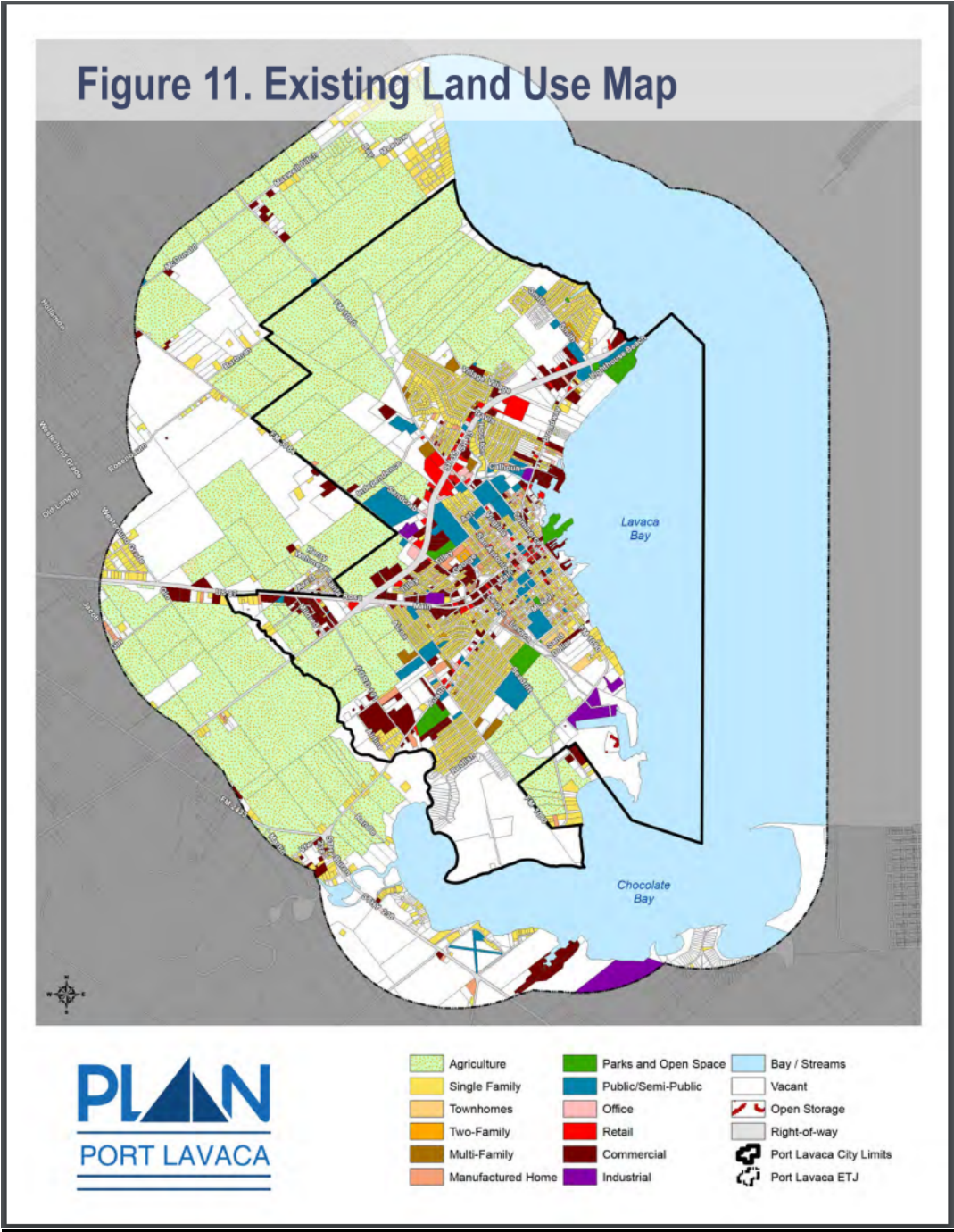


EXHIBIT 2
FORM OWNER CONTRACT

FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT including the attached exhibits (“**PACE Owner Contract**”) is made as of the _____ day of _____, _____ (“**Effective Date**”), by and between the City of Port Lavaca, Texas (“**Local Government**”), and _____ (“**Property Owner**”). Local Government and Property Owner are hereafter referred to collectively as “the parties” or individually as “party.”

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Lavaca, Texas jurisdiction, including its extraterritorial as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, _____, Texas _____ - _____ (the “**Property**”) (the Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A).

D. Pursuant to Project Application Number _____, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property shall be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this PACE Owner Contract pursuant to the

PACE Act and the PACE Program and has requested Local Government to impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of the county in which the Property is located (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached hereto as Exhibit A and made a part hereof. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) shall be provided to Property Owner by _____ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**PACE Lender Contract**”). The financing includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner represents and warrants that it has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the Effective Date of this PACE Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained on or prior to the Effective Date of this PACE Owner Contract and is attached hereto as Exhibit B and made a part hereof.

AGREEMENT

The parties agree as follows:

1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the PACE Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$ _____, as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, as applicable, and Authorized Representative shall record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, attorney’s fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the “**Financing Documents**”) described in or copies of which are attached as Exhibit C attached hereto and made a part hereof by reference. Property Owner shall pay such

amount in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this PACE Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to pay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance Financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney's fees, and costs, due under or authorized by the PACE Act, PACE Program, and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative shall deliver an annual notice of assessment to Property Owner by first-class mail or electronic mail each year until the Assessment is released. If requested by Property Owner by marking the box below, Local Government agrees to also deliver an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released.

☐ Property Owner requests an annual notice of assessment from Local Government.

Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner shall not affect the Assessment or Property's Owner's obligations under this PACE Owner Contract.

3. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments ("**Installments**"), according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to Authorized Representative not later than thirty (30) days after receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender shall, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Property Owner agrees that any such temporary withholding shall not reduce the amount of the administration fees included in the Assessment or due to Authorized Representative. The amounts due to Authorized Representative are identified in Exhibit C hereto. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this PACE Owner Contract shall cease and terminate, except for rights under Sections 18, 20, 21 and 22. Upon notice from Lender that all amounts due have been paid in full, Authorized

Representative on behalf of local government, shall execute a release of the Assessment and this PACE Owner Contract and record the release. As required by Section 399.009(a) (8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Property Owner acknowledges that Lender has the right, without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender as defined in the PACE Lender Contract;

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under the PACE Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that complies with all of the foregoing conditions, the assignor shall be released of all of the rights and obligations of the Lender under such PACE Lender Contract accruing after the effective date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or require enforcement of the Assessment lien that does not comply with all of the foregoing conditions is void. Lender shall retain all of the rights and obligations of Lender under the PACE Lender Contract until such rights and obligations are assigned or transferred according to this section.

5. Lien Priority and Enforcement. Pursuant to Sections 399.014 and 399.015 of the PACE Act:

(a) Delinquent Installments shall incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, pursuant to the statutes in effect at the time of default. Under current statutes, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent.

However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment shall also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph shall be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees that become due pursuant to the Financing Documents, may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by sale or transfer of the Property, or by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Lender, Local Government, or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment shall be enforced by Local Government for the benefit of Lender, in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government shall be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48, as amended from time-to-time, as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This PACE Owner Contract constitutes a written contract for the Assessment between Property Owner and Local Government as required by Section 399.005 of the PACE Act. The Notice of Contractual Assessment Lien shall be recorded in the real property records of the county in which the Property is located as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees and warrants that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this PACE Owner Contract shall be permanently affixed to the Property and shall transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized Representative within 30 days after the completion of the Project a verification by an Independent Third Party Reviewer (“ITPR”) that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 23 below.

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees, on or before January 31st of each year, to report to Authorized Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by Authorized Representative.

9. Construction and Definitions. This PACE Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program or the PACE Act.

10. Binding Effect. This PACE Owner Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, agents, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted by this PACE Owner Contract shall be in writing and delivered by first-class mail or by electronic mail with written confirmation of receipt, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas’ choice of law provisions. Venue for any disputes or suits between the parties arising from

or related to this PACE Owner Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Owner Contract, including its exhibits, constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This PACE Owner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (“**usury limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, the interest payable to Local Government shall be reduced and any interest in excess of the usury limit shall be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Owner Contract.

17. Costs. No provision of this PACE Owner Contract shall require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

18. Inspection and Audits. Local Government’s representatives may perform, or have performed, (a) audits of Property Owner’s documents, books and records, and (b) inspections of all places where Qualified Improvements are undertaken in connection with this PACE Owner Contract. Property Owner shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Owner Contract terminates. This provision does not affect the applicable statute of limitations.

19. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Owner Contract as may be reasonably necessary or required.

20. Release. PROPERTY OWNER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “RELEASED PERSONS”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR

INCIDENTAL TO PERFORMANCE UNDER THIS PACE OWNER CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE RELEASED PERSON'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE RELEASED PERSON'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AND EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE RELEASED PERSON'S WRONGFUL ACTION OR INACTION.

21. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROPERTY OWNER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN "INDEMNITEE") ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS PACE OWNER CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS PACE OWNER CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT.

22. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of the Authorized Representative are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

23. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender shall withhold _____% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer ("ITPR"), or Property Owner shall pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the PACE Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

PROPERTY OWNER:

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, _____ by _____,
_____, on behalf of _____.

_____ (print name)

NOTARY PUBLIC, STATE OF _____

LOCAL GOVERNMENT:

CITY OF PORT LAVACA, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
 AUTHORIZED REPRESENTATIVE
 Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
 AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

 _____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE OWNER CONTRACT EXHIBIT A
NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT

PACE OWNER CONTRACT EXHIBIT B
MORTGAGE HOLDER(S) CONSENT

PACE OWNER CONTRACT EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:
Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

PACE OWNER CONTRACT EXHIBIT D

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender shall retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.

OR

Property Owner shall pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender shall then provide the report of completion to Authorized Representative.

Additional Construction Terms

Date	Draw down Amount	Purpose

EXHIBIT 3
FORM LENDER CONTRACT

FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) LENDER CONTRACT including the attached exhibit (“**PACE Lender Contract**”) is made as of the _____ day of _____, _____, (“**Effective Date**”) by and between the City of Port Lavaca, Texas (“**Local Government**”) and _____ (“**Lender**”). Local Government and Lender are hereafter referred to collectively as “the parties” or individually as “party.”

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Port Lavaca, Texas jurisdiction, including its extraterritorial jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Project Application Number _____, _____ (“**Property Owner**”), the sole legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, _____, Texas, _____ - _____ (the “**Property**”) (the Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “**PACE Owner Contract**”), in which Property Owner has requested that Local Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of the county in which the Property is located (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) shall be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit C to the PACE Owner Contract attached hereto as Exhibit A and made a part hereof (“**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under Section 399.006 (e) of the PACE Act. This PACE Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing secured by the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the effective date of the PACE Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the effective date of the PACE Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract.

AGREEMENT

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide Financing for the Project in the total principal amount of \$_____, according to the terms set out in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative shall record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this PACE Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Assessment, all contractual interest due to Lender according to the Financing Documents (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, attorney’s fees, and costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment in full. Local

Government shall not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6 below. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to Authorized Representative not later than thirty (30) days after receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender shall, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Lender agrees that any such temporary withholding shall not reduce the amount of administration fees included in the Assessment or due to Authorized Representative. The amounts due to Authorized Representative are identified in Exhibit C to the PACE Owner Contract attached hereto as Exhibit A. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender has the right, without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

- (i) Has a minimum net worth of \$5 million;
- (ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;
- (iii) Can provide independent certification as to availability of funds; and
- (iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this PACE Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents; and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this PACE Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately.

Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that complies with all of the foregoing conditions, the assignor shall be released of all of the rights and obligations of the Lender under this PACE Lender Contract accruing after the effective date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not comply with all of the foregoing conditions is void. Lender shall retain all of the rights and obligations of Lender under this PACE Lender Contract until such rights and obligations are assigned or transferred according to this section.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing, advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder.

In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender shall have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender shall retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property shall be subject to such lien.

5. Lien Priority and Enforcement. As provided in the PACE Owner Contract and Sections 399.014 and 399.015 of the PACE Act:

(a) Delinquent Installments shall incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, pursuant to the statutes in effect at the time of default. Under the current statutes a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment shall also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 17 below, penalties, interest, fees, and costs payable under this paragraph shall be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment shall be enforced

by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government shall be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents shall be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee shall be responsible for all servicing duties other than those specifically undertaken by Local Government in this PACE Lender Contract. Authorized Representative shall deliver an annual notice of assessment to Property Owner by first-class mail or electronic mail each year until the Assessment is released. If requested by Property Owner in the PACE Owner Contract, and subject to consent by the county tax assessor and collector, Local Government agrees to also send an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner shall not affect the Assessment or Property Owner's obligations under the PACE Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this PACE Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

- (1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail; and

(2) Mail a second notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing. A copy of the second notice of delinquency shall also be mailed to the holder of any mortgage lien on the property.

The holder of any mortgage lien on the Property shall have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent Installment. If the Property Owner fails to cure the delinquency on or before the 30th day after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative shall certify the default to Local Government, which will enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government shall notify Authorized Representative and shall file a proof of claim for the balance of the Assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative shall notify Lender of the filing of the proof of claim. Lender shall not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender shall reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. Pursuant to Sec. 399.014(a)(2) of the PACE Act, if the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the Assessment balance and any interest or penalties on the Assessment shall have the same priority status as a lien for any other ad valorem tax.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney fees, or costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the PACE Owner Contract shall cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative on behalf of Local Government, shall execute a release of the Assessment and the PACE Owner Contract and record the release.

(f) Limitations on Local Government's Actions. Local Government shall not enter into any amendment or modification of or deviation from the PACE Owner Contract without the prior written consent of Lender. Local Government or Authorized Representative shall not institute any legal action with respect to the PACE Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

(g) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this PACE Lender Contract, and no implied duties on the part of Local Government are to be read into this PACE Lender Contract. Local Government shall not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government shall have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

(h) Costs. No provisions of this PACE Lender Contract shall require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7. Lender's Warranties and Representations. With respect to this PACE Lender Contract, Lender hereby warrants and represents that on the Effective Date of this PACE Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this PACE Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the PACE Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government or Authorized Representative, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This PACE Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act.

9. Construction and Definitions. This PACE Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program, or the PACE Act.

10. Binding Effect. This PACE Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective representatives, agents, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class

mail or by electronic mail with written confirmation of receipt, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas' choice of law provisions. Venue for any disputes or suits between the parties arising from or related to this PACE Lender Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Lender Contract, including its exhibit, constitutes the entire agreement between Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

14. Further Assurances. Lender further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Lender Contract as may be reasonably necessary or required.

15. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

16. Counterparts. This PACE Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

17. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the "**usury limit**"). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, interest payable to Local Government shall be reduced and any interest in excess of the usury limit shall be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Lender Contract.

18. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the Effective Date of this PACE Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a "qualified project" as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

19. Inspection and Audits. Local Government's representatives may perform, or have performed, audits of Lender's documents, books and records. Lender shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Lender Contract terminates. This provision does not affect the applicable statute of limitations.

20. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Lender acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of the Authorized Representative are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

21. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender shall withhold _____% of the Financing until verification is provided to Authorized Representative by an Independent Third Party Reviewer ("ITPR") that the Project was properly completed and is operating as intended, or Property Owner shall pay liquidated damages to Lender of \$ _____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner on or before the 30th day after completion of the Project, such verification shall be submitted by Lender. If this PACE Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D of the PACE Owner Contract attached hereto as Exhibit A and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

LENDER:

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by _____, _____, on behalf of _____.

(print name)

NOTARY PUBLIC, STATE OF _____

LOCAL GOVERNMENT:

CITY OF PORT LAVACA, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
 AUTHORIZED REPRESENTATIVE
 Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

 _____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE LENDER CONTRACT EXHIBIT A

PACE OWNER CONTRACT

EXHIBIT 4
FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT**

STATE OF TEXAS §
 §
COUNTY OF CALHOUN §

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. The City of Port Lavaca, Texas (“**Local Government**”) has established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, as the representative of Local Government (“**Authorized Representative**”) authorized to enter into and enforce the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Port Lavaca, Texas jurisdiction, including its extraterritorial jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. _____ (“**Property Owner**”) is the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, _____, Texas _____ - _____ and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

D. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has entered into a written contract (the “**PACE Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements will be provided to Property Owner by _____ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by PACE Program and Section 399.006(c) of the PACE Act (the “**PACE Lender Contract**”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the PACE Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the principal amount of \$_____ (the “**Assessment**”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Local Government, Property Owner, and Lender will execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (“**Contractual Interest**”) are due and payable in installments (“**Installments**”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “**Financing Documents**”).

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment, including any interest, costs, fees, attorney fees, or penalties accrued thereon,
 - (i) are a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, until the Assessment, interest, or penalty is paid; and
 - (ii) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.
2. Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative.

As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on _____, _____

LOCAL GOVERNMENT:

CITY OF PORT LAVACA, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
 AUTHORIZED REPRESENTATIVE
 Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

 _____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE NOTICE OF LIEN EXHIBIT A
PROPERTY DESCRIPTION

PACE NOTICE OF LIEN EXHIBIT B
QUALIFIED IMPROVEMENTS

PACE NOTICE OF LIEN EXHIBIT C
FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:
Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

INDEXING INSTRUCTION:

Grantor: _____, Property Owner
Grantees: City of Port Lavaca, Texas, Local Government
_____, Lender

After recording, return to- Texas PACE Authority
Charlene Heydinger
PO Box 200368
Austin, TX 78720-0368

COMMUNICATION

SUBJECT: Consider a Services Agreement authorizing administration of Texas Property Assessed Clean Energy (PACE) Program for the City of Port Lavaca. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

MEETING: March 14, 2022

DATE: 3.9.2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JESSICA CARPENTER, DEVELOPMENT SERVICES DIRECTOR

SUBJECT: Consider and discuss the PACE service agreement to establish the City of Port Lavaca Property Assessed Clean Energy Program (Port Lavaca PACE Program).

This is a public hearing for comments and questions from the public regarding the PACE program. The PACE program is being presented with the second resolution, Resolution R-031422-1 establish the Port Lavaca Pace Program. Pace has been adopted by the state as, The Texas PACE Act, Chapter 399 of the Local Government Code.

Resolution No. R-021422-2 of the City’s Intent for PACE was approved by the City Council on February 14, 2022.

The city is proposing to enter into a service agreement with the Texas Property Assessed Clean Energy Authority as a part of establishing PACE for the development community funding option for energy and water efficiency improvements for the developments within the city of Port Lavaca.

The city has a developer proposing to implement the PACE program for his new residential housing development adjacent to the existing Sea Greens workforce housing development.

This seems like a new opportunity for developers, and staff views this as a positive funding program. The success of this funding for developments that meet the PACE criteria prove to be a progressive improvement to Port Lavaca for infrastructure and energy for our growing community. It is not often new funding streams emerge for developers and investors with a progressive element to incentivize the green energy and efficiency improvements. The green energy, standard energy, and water efficiency improvement criteria seems to be a positive step in development funding elements required under PACE.

A PACE summary and link to the PACE website:



<https://www.texaspaceauthority.org/local-governments/>

CITY OF PORT LAVACA

Texas Property Assessed Clean Energy (TX-PACE) is a voluntary program that creates jobs, improves the environment, and saves Texas companies money on their utility bills. Local governments across the state are taking advantage of the Texas PACE statute and establishing programs to further provide quality and valuable services to their constituencies, stakeholders, and taxpayers.

The Texas PACE Act, Chapter 399 of the Local Government Code, is a local adoption model. The Texas “PACE in a Box” model was created by over 130 PACE stakeholders to facilitate a consistent, user-friendly approach to TX-PACE design and implementation. The model has been unanimously adopted by every local government establishing a TX-PACE program in Texas.

The model plug and play program contains consumer protection underwriting and technical best practices and model documents. “PACE in a Box” has minimal impact on government staff, adds no additional cost to the general taxpayer or burden to the treasury, and is administered by a nonprofit that does not compete with the private sector. Texas PACE Authority administers the uniform “PACE in a Box” model as a public service on behalf of local governments and is funded through user fees and grants.

PACE is 100% financing for energy and water efficiency improvements to industrial, commercial, multi-family residential, and non-profit buildings. PACE is essentially a long-term (typically 10-20 year), low-cost loan for such improvements as:

- HVAC modification or replacement
- Light fixture modifications such as LED
- Solar panels
- High-efficiency windows or doors
- Automated energy control systems
- Insulation, caulking, weather-stripping or air sealing
- Water use efficiency improvements
- Energy- or water-efficient manufacturing processes and/or equipment
- Solar hot water
- Gray water reuse
- Rainwater collection system

Attachments:

- PACE Service Agreement

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PORT LAVACA, TEXAS AND
TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered by and between the **City of Port Lavaca, Texas**, hereinafter referred to as "**Local Government**", and **TEXAS PROPERTY ASSESSED CLEAN ENERGY (PACE) AUTHORITY (d/b/a Texas PACE Authority)**, a Texas non-profit business association, hereinafter referred to as "**Services Provider**" to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City Council of **Local Government** desires to engage the services of a qualified professional to administer a Texas Property Assessed Clean Energy program for **Local Government** pursuant to the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 ("**PACE Act**"), and serve as Authorized Representative pursuant to Tex. Local Gov't Code §399.006(b), hereinafter referred to as the "**Program**"; and

WHEREAS, **Services Provider** desires to render such services for **Local Government** upon the terms and conditions provided herein –

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

Local Government hereby agrees to retain **Services Provider** to serve as administrator of **Local Government's Program** and **Services Provider** agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

The parties agree that **Services Provider** shall perform such services as are further described in **Exhibit "A"** (collectively "**Scope of Services**"). The parties understand and agree that deviations or modifications in the **Scope of Services** may be authorized from time to time by **Local Government** but said authorization must be made in writing and mutually agreed to by both parties.

Prior to commencing Services under this Agreement, Services Provider agrees to deliver the following to Local Government:

- (a) A PACE Program Guidelines, in English and Spanish, that describes the program requirements and project process and fees; and

- (b) Certification the Services Provider will adhere to the PACE in a Box underwriting and technical standards as updated from time-to-time.

III. TERM OF AGREEMENT

The initial term of this Agreement shall commence on the date both Local Government and Services Provider have executed this Agreement.

Notwithstanding the termination of this Agreement, **Services Provider** shall be permitted to continue administration of any third-party agreements under the **Program** commenced prior to termination of this Agreement, and to continue recovering any compensation due **Services Provider** for services performed prior to termination in accordance with Section IV of this Agreement.

IV. COMPENSATION AND EXPENSES

Services Provider shall be paid for performance of the **Scope of Services** set forth in Exhibit "A", in accordance with the compensation schedule set forth in Exhibit "B" hereto. . All payments to **Services Provider** shall be made by participants in the **Program** in accordance with the PACE Act, and **Local Government** shall have no obligation to pay **Services Provider** for performance of the **Scope of Services**.

V. INSURANCE

Services Provider agrees to meet all insurance requirements, and to require all consultants who perform work for **Services Provider** to meet all insurance requirements, as set forth in **Exhibit "C"** to this Agreement.

VI. INDEMNIFICATION

SERVICES PROVIDER AGREES TO INDEMNIFY AND HOLD LOCAL GOVERNMENT AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM LOCAL GOVERNMENT ARISING OUT OF OR OCCASIONED BY SERVICES PROVIDER 'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY SERVICES PROVIDER, OR BY, GROSSLY NEGLIGENT, OR STRICTLY LIABLE ACT OR OMISSION OF THE SERVICES PROVIDER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE CONCURRENT NEGLIGENCE OF LOCAL GOVERNMENT, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. LOCAL GOVERNMENT DOES NOT WAIVE ANY

GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. NO PARTY SHALL BE LIABLE FOR ANY NON-DIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. EACH PARTY AGREES TO BE RESPONSIBLE FOR ITS OWN ATTORNEY FEES AND LEGAL COSTS. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VII. INDEPENDENT CONTRACTOR

Services Provider covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **Local Government**; that it shall have exclusive control of and exclusive right to control the details of the services performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between **Local Government** and **Services Provider**, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between **Local Government** and **Services Provider**.

VIII. ASSIGNMENT AND SUBLETTING

Services Provider agrees that this Agreement shall not be assigned without the prior written consent of **Local Government**, except to an Affiliate of **Services Provider**. Affiliate shall mean (1) any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) **Services Provider**, including, without limitation, any parent corporation controlling **Services Provider** or any subsidiary that **Services Provider** controls; (2) the surviving corporation resulting from the merger or consolidation of **Services Provider**; or (3) any person or entity which acquires all of the assets of **Services Provider** as a going concern. **Services Provider** shall be permitted to enter into subcontracts for performance of portions of the **Scope of Services**; however, **Services Provider** shall not subcontract the entirety of the **Scope of Services** to a single subcontractor without **Local Government's** consent. **Services Provider** further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the **Services Provider** from its full obligations to **Local Government** as provided by this Agreement.

IX. AUDITS AND RECORDS

Services Provider agrees that **Local Government** or its duly authorized representatives shall, until the expiration of three (3) years after termination under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of **Services Provider** which are directly pertinent to the

services performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Services Provider** agrees that **Local Government** shall have access during normal business hours and days to all necessary **Services Provider's** facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. **Local Government** shall give **Services Provider** reasonable advance notice of intended audits.

X. CONTRACT TERMINATION

The parties agree that **Local Government** and **Services Provider** shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party. In the event of such termination, **Services Provider** shall deliver to **Local Government** upon request all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by **Services Provider** in connection with this Agreement. In the event of termination, **Services Provider** shall be compensated in accordance with Section III of this Agreement with respect to any third-party agreements under administration by **Services Provider** at the time of termination.

XI. COMPLETE AGREEMENT

This Agreement, including the Exhibits lettered "A" through "C", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XII. AMENDMENTS

Amendments to this agreement may be made at any time upon mutual agreement by **Local Government** and **Services Provider**.

XIII. MAILING OF NOTICES

Unless instructed otherwise in writing, **Services Provider** agrees that all notices or communications to **Local Government** permitted or required under this Agreement shall be addressed to **Local Government** at the following address:

City of Port Lavaca
Jody Weaver, Interim City Manager
202 N. Virginia Street
Port Lavaca, Texas 77979

Local Government agrees that all notices or communications to **Services Provider** permitted or required under this Agreement shall be addressed to **Services Provider** at the following address:

Texas Property Assessed Clean Energy Authority
Attn: Charlene Heydinger
PO Box 200368

Austin TX 78720-0368

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XIV. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties represent and warrant they are the legally authorized officials and have the necessary authority to execute this Agreement on behalf of the parties and to bind them to this Agreement.

XV. MISCELLANEOUS

A. This is a contract for the purchase of personal or professional services and is therefore exempt from any competitive bidding requirements of **Local Government**.

B. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

D. Venue and Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, without regard to any choice of law statutes, and that it is performable in Calhoun County, Texas. The parties consent to exclusive venue shall lie in Calhoun County, Texas.

E. Successors and Assigns:

Local Government and **Services Provider** and their partners, successors, and lawful assigns are hereby bound to the terms and conditions of this Agreement.

F. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

G. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

SIGNED on the date indicated below.

CITY OF PORT LAVACA, TEXAS

DATE: _____
Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

APPROVED AS TO FORM:

Anne Marie Odefey, City Attorney

**TEXAS PROPERTY ASSESSED
CLEAN ENERGY AUTHORITY**

DATE: _____

BY: _____
Name: Charlene Heydinger
Title: President

Exhibit “A”

Scope of Services

The **Services Provider** will perform the following services in the administration of the **Program**:

Community Outreach

In furtherance of community outreach efforts, Services Provider will:

Maintain a website with a page specific to the Program that tallies the cumulative economic and environmental impact of PACE projects closed under the Program;

Maintain a project database;

Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;

Publish the Service Provider’s PACE Program Guide in English and Spanish on the Program website;

Publish the most current version of the PACE in a Box Technical Standards Manual on the **Program** website;

List interested, qualified lenders on the **Program** website to enable property owners to identify potential sources of private third-party financing;

Arrange for training of contractors, independent third-party reviewers (“ITPR”), and other stakeholders on how to apply for PACE financing and comply with the PACE in a Box Technical Standards Manual;

List interested trained service providers on the Program website to enable property owners to identify potential contractors, architects, engineers, and other consultants and advisors; and

Establish quality assurance measures.

Services Provider will also maintain uniform documents, forms, and contracts. Periodic updates to the standard form documents are necessary as the program evolves, incorporating best practices and standardizing the PACE documents across various PACE programs. The Authorized Representative is authorized to, and is tasked with maintaining the form documents and making technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the Texas PACE Act.

Application and Approval Process

Publish a preliminary application form on the Program website.

Provide a Project Application Form based on PACE-in-a-Box model application form upon request to interested parties.

Review submitted Application forms for administrative completeness and notify the applicants of any missing information.

Maintain the confidentiality of confidential owner information.

Maintain the PACE application process, including:

Accept and review the property owner's completed application. When the project meets eligibility requirements, provide written indication that the project meets PACE standards at this stage (subject to verification of all requirements at closing).

Inform the property owner of his or her responsibilities in the process, including hiring a third-party reviewer, obtaining a lender, determining final project scope and completing and submitting a closing verification package.

Conduct a Pre-Closing Verification, which will confirm the statutorily required eligibility requirements of the owner including that the property owner:

- Is the legal property owner of the benefited property;
- Is current on mortgage and tax payments;
- Is not insolvent or the subject of bankruptcy proceedings;
- Holds clear title to the property and it is not in dispute; and
- Has written consent of any pre-existing mortgage lien holder to the proposed PACE assessment.

Require independent third-party verification of expected energy or water savings resulting from a project (provided by ITPR retained by applicant), according to the PACE-in-a-Box Technical Standards Manual. This review will include a:

- Site visit,
- Report stating the savings (energy, demand, and/or water) and expected project life are reasonable and in compliance with PACE in a Box program guidelines; and
- Letter from the ITPR certifying that he/she has no financial interest in the project and is an independent reviewer.

Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, that the period of an assessment does not exceed the expected life of the improvements or thoroughly review waiver application and justification (provided by ITPR retained by applicant);

Require lender to confirm in writing its determination, based on underwriting factors established by the lender, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment.

Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the **Program** not less than 30 days before closing and obtain the lienholder's written consent prior to the imposition of the PACE assessment;

Review and finalize the terms of every Owner Contract and Lender Contract prior to execution; The Contract must contain:

- Amount of the assessment;

- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Collect and retain owner application fees as compensation for administrative services.

Perform closing verification reviews and schedule assessment transaction closings when all requirements are met. Such closing verification must include:

- The report conducted by a qualified independent third-party reviewer of water or energy baseline conditions and the projected water or energy savings attributable to the project;
- Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
- All other information required by the **Services Provider**.

Coordinate and take part in assessment transaction closings.

Execute contracts under the **Program** as authorized on behalf of **Local Government**.

Arrange for recordation of a Notice of Contractual Assessment Lien for each approved project in the Official Public Records of the county where the project is located; The Notice must contain:

- Amount of the assessment;
- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Require independent post-closing third-party verification (by ITPR retained by Applicant or Lender) that each project was properly completed and is operating as intended.

Collect and retain administration fees collected by lenders from owners that receive PACE financing.

Management and Reporting

Manage communications with lenders regarding assessment servicing, payment, and default.

Upon notification by a lender of an owner's default in payment of an assessment and the lender's compliance with the requirements of the Lender Contract on collection after default, notify the **Local Government** to enforce the assessment lien in accordance with law and the agreements between the parties.

Receive and store owner reports on energy and water savings.

Maintain the form contracts and make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute.

At the request of property owners, prepare annual notices of assessment to be issued by **Local Government** to the owners, stating the total amount of the payments due on each assessment in the coming calendar year according to the owner contract and the financing documents.

Determine the amounts of the application and administration fees to be paid by owners.

Produce annual report on Texas PACE financing usage and the resulting energy and water savings enabled through PACE Assessments. The annual report shall also document how obligations under this Scope of Services were fulfilled during the prior year. For example, list training, outreach, education, efforts to reach underserved communities and stakeholders.

Exhibit "B"
Compensation and Fees

Service Provider shall determine the amounts of the uniform application and administration fees to be paid by property Owners participating in the **Program**. Such fees will not exceed the fees below:

- An Application Fee of the greater of:
 - \$2,000.00; or
 - Amounting to
 - 1% of the total project cost of the first \$5 million,
 - plus 0.5% of the marginal amount above \$5 million and \$20 million, and
 - 0.25% of the marginal amount above \$20 million.

To be paid as follows:

 - \$500.00 per project at the time of application submittal; and
 - the balance of the full remaining application fee paid at closing.
- A recurring Administration Fee of 0.08% of the outstanding principal balance, which amount shall be collected by lender and paid to the **Services Provider** as provided in the Owner Contract and the financing documents. This fee can also be capitalized and paid at closing. If paid under a negotiated regular schedule to the lender by the property owner, the lender shall pay this fee to **Services Provider** at the time of each payment by the property owner in accordance with the financing documents. This recurring Administration Fee is earned at closing and survives termination of this Agreement. In the event a lender, property owner, or other party pays the Local Government in error, the Local Government agrees to forward the fee, without deduction, to Services Provider within ten days of receipt.
- When an existing PACE Assessment is amended, the above Application Fee will be calculated on the difference between the original project cost and updated project cost, or \$2,000, whichever is larger. An initial \$500 will be paid with the amendment application. When applicable, the recurring Administration Fee will be reset accordingly.
- No amounts shall be due by **Local Government** to **Services Provider**.

- **Exhibit “C”**

Insurance Requirements

COVERAGE	LIMIT OF LIABILITY
Employer's Liability	\$500,000 per occurrence
General Liability	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate

COMMUNICATION

SUBJECT: Consider certification of City Secretary that all candidates in the May 07, 2022 General Officers Election are unopposed. Presenter is Mandy Grant


INFORMATION:

CITY OF PORT LAVACA

CC MEETING: March 14, 2022

DATE: 02-22-22

TO: Jody Weaver, Interim City Manager
cc: Honorable Mayor and City Council Members

FROM: Mandy Grant, City Secretary 

SUBJECT: Certification by City Secretary that all Candidates for the City of Port Lavaca General Officers Election held on the uniform date of May 07, 2022 are Unopposed

BACKGROUND:

Candidates for the City of Port Lavaca General Officers Election held on the uniform date of May 07, 2022 are Unopposed to-wit:

- One Mayor, At-Large Position, for a term of two (2) years; and
- One Council Member, Single District Four (4), for a term of 3 years; and
- One Council Member, Single District Five (5), for a term of 3 years; and

In order to cancel an election, the governing body must first receive and accept the certification that candidates in an election are unopposed and that no other issues or propositions are being presented at the election for consideration. The certification must come from the authority responsible for preparing the ballot and in a city election, that authority is the City Secretary.

After Council receives and formally accepts the certification, it must adopt an Order cancelling the election. The order must be adopted in an open session. Copies of the order must be posted on Election Day at each polling place that would have been used had the election not been cancelled.

Certificates of Election should be prepared for each unopposed candidate, however, the certificates should not be issued until on or after Election Day. Candidates must wait until on or after Election Day to take the Oath of Office. Statement of Elected Officer may be signed prior to Election Day but is normally executed at the same time the Oath is administered.

RECOMMENDATION:

Accept letter of certification by the City Secretary.

ATTACHMENTS:

Letter of certification by the City Secretary.

CERTIFICATION OF UNOPPOSED CANDIDATES
THE CITY OF PORT LAVACA, TEXAS
(CERTIFICACIÓN DE CANDIDATOS SIN OPOSICIÓN
LA CIUDAD DE PORT LAVACA, TEXAS)

To: Mayor and Members of the City Council
 City of Port Lavaca, Texas
 (Para: Alcalde y miembros del Consejo
 de la ciudad de Port Lavaca, Tejas)


I, Mandy Grant, certify that I am the City Secretary of the City of Port Lavaca, Texas and the authority responsible for preparing the ballot for the May 07, 2022 general city election.
 (Yo, Mandy Grant, certifica que soy la secretaria de la ciudad de Port Lavaca, Texas y la autoridad responsable de preparar la balota para la elección general de la ciudad del 7 de Mayo de 2022).

I further certify that no proposition is to appear on the ballot for the May 07, 2022 election, no person has made a declaration of write-in candidacy, and all of the following candidates are unopposed:
 (Certifico más lejos que no hay asunto aparecer en la balota para la elección del 7 de Mayo de 2022, ninguna persona he hecho un declaración de candidatura inscrita, y todos los candidatos siguientes son sin oposición):

OFFICE (CARGO)	CANDIDATE (CANDIDATO)
Council Member, Mayor (Miembro de Consejo, Alcalde)	Jack Whitlow
Council Member, District #4 (Miembro de Consejo, Distrito #4)	Rosie Padron
Council Member, District #5 (Miembro de Consejo, Distrito #5)	Jim Ward

DATED this the 14th day of March, 2022 (FECHÓ esto el 14 día de Marzo de 2022)




 Mandy Grant, City Secretary
 (Mandy Grant, Secretaria de la ciudad)
 City of Port Lavaca, Texas (Ciudad de Port Lavaca, Texas)

NOTE: Copies Posted at Following Locations:
 (NOTA): (Copias fijadas en las localizaciones siguientes):

City of Port Lavaca City Hall	202 N. Virginia St.	Port Lavaca, Texas
Calhoun County Courthouse Lobby	211 S. Ann Street	Port Lavaca, Texas
Calhoun County Clerk's Office	211 S. Ann Street	Port Lavaca, Texas

COMMUNICATION

SUBJECT: Consider adopting an order canceling the May 07, 2022 General Officers Election, specifically the Council Members for Mayor, Single Districts #4 , Single District #5 and further declaring the unopposed candidates duly elected. Presenter is Mandy Grant

INFORMATION:

**ORDER OF CANCELLATION
(ORDEN DE CANCELACIÓN)**

Section VIII. Item #6.

The City Council of the City of Port Lavaca, Texas hereby cancels the election scheduled to be held on May 07, 2022 in accordance with Section 2.053(a) of the Texas Election Code. The named candidates have been certified as unopposed and are hereby declared elected:

(El consejo de la ciudad de Port Lavaca, Texas cancela por este medio la elección programar para ser sostenido el 7 de Mayo de 2022 de acuerdo con la sección 2.053 (a) del código de la elección de Texas. Han certificado como sin oposición y por este medio se declaran a los candidatos nombrados elegidos):

CANDIDATE (CANDIDATO)	OFFICE (OFICINA)	TERM (TÉRMINO)
Jack Whitlow	Council Member, Mayor <i>(Miembro de consejo, Alcalde)</i>	2 years <i>2 años</i>
Rosie Padron	Council Member, District #4 <i>(Miembro de consejo, distrito #4)</i>	3 years <i>3 años</i>
Jim Ward	Council Member, District #5 <i>(Miembro de consejo, distrito #5)</i>	3 years <i>3 años</i>

A copy of this order will be posted on Election Day at each polling place that would have been used in the election.

(Una copia de esta orden será fijada el día de elección en cada lugar de la interrogación que habría sido utilizado en la elección).

DATED this the 14th day of March, 2022 (FECHÓ esto el 14 día de Marzo de 2022)

Jack Whitlow,
Mayor, City of Port Lavaca, Texas
(Alcalde, Ciudad de Port Lavaca, Tejas)

SEAL (SELLO)

ATTEST: (ATESTIGÜE):

Mandy Grant,
City Secretary
(Secretaria de la ciudad)

COMMUNICATION

SUBJECT: Consider appointment/reappointment of member(s) to Recreation and Parks Board to fill a vacancy and/or start a new term. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

CC MEETING: **MARCH 14, 2022** **AGENDA ITEM #** _____

DATE: 3/8/2022

TO: HONORABLE JACK WHITLOW AND CITY COUNCIL MEMBERS

FROM: JOANNA WEAVER, INTERIM CITY MANAGER

SUBJECT: APPOINTMENT OF RECREATION AND PARKS BOARD MEMBER

BACKGROUND:

Current Board Member Melinda (Lindy) Cain's term is expiring. She will be transitioning over to the Planning Board. William Mark Howell, resident of District 1, has expressed interest in a full-term appointment with the Parks Board. He is currently a Planning Board Member and will be resigning because the meeting time for the Parks Board better suites his schedule. He is a dedicated resident and would like to continue serving our community as a board member. There are no term limits established and the full term is for a period of two (2) years.

FINANCIAL IMPLICATIONS:

IMPACT ON COMMUNITY SUSTAINABILITY:

RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

Idiaz@portlavaca.org

From: Lindy Cain <lindycain14@gmail.com>
Sent: Wednesday, March 9, 2022 10:17 AM
To: Idiaz@portlavaca.org
Subject: City of Port Lavaca Planning Board and Parks Board Change

Lorena,

I currently serve on the Port Lavaca Parks Board of Directors and my brother Mark Howell serves on the planning Board of Directors. Due to his new duties for the Republican Club, he is unable to attend the Planning Board meetings. We are both very passionate about the future of the City of Port Lavaca and would like to remain active in the improvements of the city we both love.. Therefore, we would like to switch board member positions. I am more readily available on the first Monday of each month and he is more readily available to meet the third Wednesday of each month. We request that the Port Lavaca City Council approve this move.

Sincerely,
Lindy Cain

COMMUNICATION

SUBJECT: Consider appointment/reappointment of member(s) to Planning Board to fill a vacancy and/or start a new term. Presenter is Jody Weaver

INFORMATION:

ldiaz@portlavaca.org

From: Lindy Cain <lindycain14@gmail.com>
Sent: Wednesday, March 9, 2022 10:17 AM
To: ldiaz@portlavaca.org
Subject: City of Port Lavaca Planning Board and Parks Board Change

Lorena,

I currently serve on the Port Lavaca Parks Board of Directors and my brother Mark Howell serves on the planning Board of Directors. Due to his new duties for the Republican Club, he is unable to attend the Planning Board meetings. We are both very passionate about the future of the City of Port Lavaca and would like to remain active in the improvements of the city we both love.. Therefore, we would like to switch board member positions. I am more readily available on the first Monday of each month and he is more readily available to meet the third Wednesday of each month. We request that the Port Lavaca City Council approve this move.

Sincerely,
Lindy Cain

COMMUNICATION

SUBJECT: Consider City of Port Lavaca's annual optional Homestead Tax exemption within the Calhoun County Appraisal District for the 2022 tax year. Presenter is Susan Lang

INFORMATION:

CITY OF PORT LAVACA

CITY COUNCIL MEETING: MARCH 14, 2022**AGENDA ITEM _____****DATE:** 9/24/21**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS**FROM:** SUSAN LANG, FINANCE DIRECTOR **SUBJECT:** CONSIDER ACTION ON OPTIONAL HOMESTEAD EXEMPTION FOR 2022

Each year, the governing bodies are asked to review their Optional Homestead, 65 and Over, and Disable Person exemptions for the coming tax year. Calhoun County's appraisal district has asked that we notify the appraisal district no later than April 1, 2022, if any changes are to be made for the 2022 tax year.

The appraisal district has provided a comparison of 2021 Tax Rates and Entity Exemptions of surrounding jurisdictions for your review, and staff has created some additional information from which you may find helpful.

Local Optional Homestead Exemption

Just as the title says, this exemption is *optional*, and is up to the local jurisdiction to determine (within the guidelines of the State Legislature) the amount of exemption granted. Fiscal Year 2021-22 is the second year for the City to grant this optional exemption on a principal residence at the rate of 10%. Sixty-one percent (61%) of Single Family residences in the City take advantage of this generous exemption. This exemption affords homeowners, collectively, with \$27,547,535 in reduced value against their property taxes, which amounts to 5% of the City's total taxable property values.

For the average homestead, the reduction amounts to a savings of \$88.50 per year in property taxes. For the City, this exemption reduces the property tax revenue by over \$200,000 each year.

The City has the option to grant the Homestead exemption up to a maximum of 20%, but the minimum exemption cannot be less than \$5,000, if granted. Meaning, if the value of a Homestead is such that the current 10% exemption only grants \$3,500 in exempt value, the exemption, by default, will amount to \$5,000 as a minimum.

Local Optional 65 and Over Exemption

This optional exemption may be increased or decreased with little oversight from the State Legislature. The City currently grants \$10,000 for individuals over 65 as an additional exemption, which matches the required mandatory exemption imposed on school districts. Approximately 25% of the City's single family residential properties receive the exemption, which amounts to a total of almost \$70,000 in reduced property tax revenue to the City each year. The optional 65 and Over exemption reduces the taxable property values by two percent (2%) each year. Individuals receiving this exemption receive a \$79 reduction in property taxes each year.

We have provided seven (7) years of trending information for each option for your review, and we hope this information will be useful for this year's decision-making effort.

CITY OF PORT LAVACA

Section VIII. Item #9.

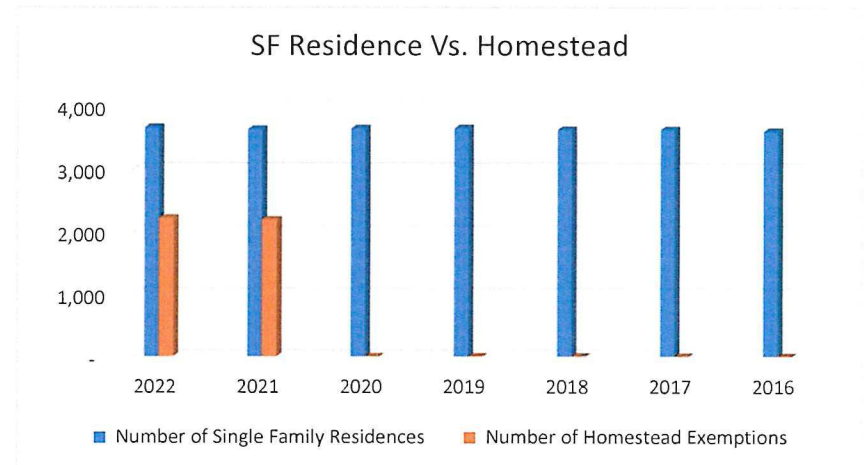
Annual Optional Homestead Exemption Review

Local Option Percentage Homestead - Current = 10%, Maximum = 20%

Fiscal Year	2022	2021	2020	2019	2018	2017	2016
Tax Year	2021	2020	2019	2018	2017	2016	2015
Taxable Value @ Certification	\$ 516,349,180	\$ 497,537,849	\$ 499,475,356	\$ 479,192,798	\$ 457,808,670	\$ 465,366,791	\$ 450,181,039
% Increase/Decrease from Prior Year	4%	0%	4%	5%	-2%	3%	
Total Exemptions	\$ 130,770,389	\$ 127,300,534	\$ 96,445,808	\$ 94,441,820	\$ 93,308,827	\$ 92,303,463	\$ 88,939,173
% Increase/(Decrease) from Prior Year	3%	32%	2%	1%	1%	4%	
CURRENT - Optional							
Value of Homestead Exemption @ 10%	\$ 27,547,535	\$ 26,158,894	\$ -	\$ -	\$ -	\$ -	\$ -
% Increase/Decrease from Prior Year	5%	100%					
Number of Homestead Exemptions	2,224	2,200	-	-	-	-	-
% Increase/Decrease from Prior Year	1%	100%	0%	0%	0%	0%	0%
Homestead % of Total Exemptions	21%	21%					
Homestead % of Total Taxable	5%	5%					
Number of Single Family Residences	3,670	3,642	3,655	3,658	3,637	3,637	3,613
% Increase/Decrease from Prior Year	1%	0%	0%	1%	0%	1%	
% of SF w/ Homestead	61%	60%	0%	0%	0%	0%	0%
Average Taxable Value of SF Residence	111,444	105,999	85,992	80,676	80,197	77,496	75,313

Tax Revenue Reduction for Homestead @ 10%	(218,838)	(207,806)
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MAXIMUM ALLOWABLE - Optional	
Homestead Exemption @ 20%	\$ 55,095,070
% of Total Exemptions	42%
% of Total Taxable	11%
Tax Revenue Reduction for Homestead @ 20%	(437,675)



CITY OF PORT LAVACA

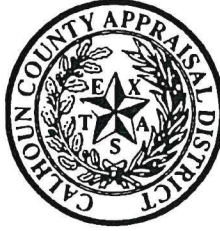
Section VIII. Item #9.

Annual Optional 65 and Over Exemption Review

Local Option 65 and Over Exemption (May be increased or decreased) Current = \$10,000

Fiscal Year	2022	2021	2020	2019	2018	2017	2016
Tax Year	2021	2020	2019	2018	2017	2016	2015
Taxable Value @ Certification	\$ 516,349,180	\$ 497,537,849	\$ 499,475,356	\$ 479,192,798	\$ 457,808,670	\$ 465,366,791	\$ 450,181,039
% Increase/Decrease from Prior Year	4%	0%	4%	5%	-2%	3%	
Total Exemptions	\$ 130,770,389	\$ 127,300,534	\$ 96,445,808	\$ 94,441,820	\$ 93,308,827	\$ 92,303,463	\$ 88,939,173
% Increase/(Decrease) from Prior Year	3%	32%	2%	1%	1%	4%	
CURRENT - Optional							
Value of 65 and Over Exemption @ 10,000	\$ 8,763,218	\$ 8,608,532	\$ 8,627,981	\$ 8,592,853	\$ 8,564,790	\$ 8,777,573	\$ 8,570,780
% Increase/Decrease from Prior Year	2%	0%	0%	0%	-2%	2%	
Number of 65 and Over Exemptions	923	879	906	901	896	916	889
% Increase/Decrease from Prior Year	5%	-3%	1%	1%	-2%	3%	
65 and Over % of Total Exemptions	7%	7%	9%	9%	9%	10%	10%
65 and Over % of Total Taxable	2%	2%	2%	2%	2%	2%	2%
Number of Single Family Residences	3,670	3,642	3,655	3,658	3,637	3,637	3,613
% Increase/Decrease from Prior Year	1%	0%	0%	1%	0%	1%	
% of SF w/ 65 and Over	25%	24%	25%	25%	25%	25%	25%
Average Taxable Value of SF Residence	111,444	105,999	85,992	80,676	80,197	77,496	75,313
Tax Revenue Reduction for 65 and Over @ \$10,000	(69,615)	(68,386)	(68,541)	(68,262)	(68,039)	(69,729)	(68,086)

CALHOUN COUNTY APPRAISAL DISTRICT
426 West Main Street * P.O. Box 49
Port Lavaca, Texas 77979
Appraisal: (361) 552-8808
Collections: (361) 552-4560
Fax: (361) 552-4787
Website: www.calhouncad.org



Section VIII. Item #9.

Board of Directors

William Swope, Chairman
William Bauer, Vice Chairman
Jessie Rodriguez, Secretary
Vern Lyssy, Board Member
Kevin Hill, Board Member

Chief Appraiser

Jesse W. Hubbell

2/25/2022

To: All Governing Bodies of the Taxing Units within the Calhoun County Appraisal District

FROM: Jesse Hubbell, Chief Appraiser

RE: Agenda Action Item: Optional Homestead Exemption for 2022

Please add the above item to your agenda for action at your next board, council or commissioners' court meeting. This should be an annual agenda item.

I have enclosed a listing of homestead exemptions currently granted for each taxing unit in Calhoun County. Please review your exemptions and notify the appraisal district no later than April 1, 2022, if any changes are to be made for the 2022 tax year.

All taxing units, *except counties, schools and cities*, currently granting the maximum *optional* 20% homestead exemption may reduce the percentage of the exemption, but cannot increase the percentage. A city, county or school that has not granted an *optional* percentage homestead exemption may do so, but only up to 20%. The *optional 65 and over and disabled person exemption* may be increased or decreased. Taxing units cannot change any veteran's exemptions.

Should you have any questions or concerns please let me know.

Respectfully,

A handwritten signature in blue ink that reads 'Jesse W. Hubbell'.
Jesse W. Hubbell
Chief Appraiser

2021 Tax Rates & Entity Exemptions

JURISDICTION	CODE	DISCOUNT	65 AND OVER TAX CEILING	M&O RATE	I&S RATE	TOTAL RATE	GENERAL HOMESTEAD (Mandatory)	LOCAL-OPTION PERCENTAGE HOMESTEAD	65 AND OVER (Mandatory)	65 AND OVER (Optional)	DISABLED (Optional) (Mandatory)	DISABLED VETERANS*
COUNTY												
Calhoun County	GO5	Yes	Yes	0.5780	0.0321	0.6101		20%		64,000	(O) 64,000	5,000 to 12,000
CITIES												
Seadrift	CO2	No	Yes	0.5522	0.0000	0.5522		20%		5,000	(O) 3,000	5,000 to 12,000
Point Comfort	CO3	No	No	1.249	0.0000	1.249		20%		3,750		5,000 to 12,000
Port Lavaca	CO4	No	Yes	0.7308	0.0636	0.7944		10%		10,000		5,000 to 12,000
SCHOOL DISTRICTS												
CCISD	SO1	No	Yes	0.9578	0.1385	1.0963	25,000	20%	10,000	10,000	(M) 10,000	5,000 to 12,000
SPECIAL DISTRICTS												
Calhoun Port Authority	NV6	Yes	NA	0.0009	0.0000	0.0009		20%		125,000	(O) 125,000	5,000 to 12,000
Water Control & Improvement District #1	WO7	Yes	NA	0.0406	0.0000	0.0406		20%		20,000		5,000 to 12,000
LaSalle Water Control & Improvement District #1A	W08	Yes	NA	0.5700	0.0000	0.5700		20%		64,000	(O) 64,000	5,000 to 12,000
Groundwater Conservation District	GWD	No	NA	0.0080	0.0000	0.0080		20%		64,000	(O) 64,000	5,000 to 12,000
Drainage District #6	DD6	Yes	NA	0.0420	0.0000	0.0420				20,000		5,000 to 12,000
Drainage District #8	DD8	Yes	NA	0.2646	0.0000	0.2646						5,000 to 12,000
Drainage District #10	DD10	Yes	NA	0.1727	0.0000	0.1727						5,000 to 12,000
Drainage District #11	DD11	Yes	NA	0.1756	0.0000	0.1756						5,000 to 12,000
Port O'Connor Improvement District	MUD	Yes	NA	0.2531	0.2659	0.5190		20%		100,000	(O) 100,000	5,000 to 12,000
Port O'Connor Improvement District Defined Area #1	DA1MU	No	NA	0.4810	0.0000	0.4810		20%		100,000	(O) 100,000	5,000 to 12,000

*Disabled Veteran Exemption is variable 10% to 29% = \$5,000; 30% to 49% = \$7,500; 50% to 69% = \$10,000; 70% to 100% = \$12,000

COMMUNICATION

SUBJECT: Consider Resolution No. R-031422-2 of the City of Port Lavaca appointing a Chief Appraiser to Calculate Taxes for 2022 tax year. Presenter is Susan Lang

INFORMATION:

RESOLUTION NO. R-031422-2

WHEREAS, the City of Port Lavaca has a tax assessor-collector who assesses and collects taxes for the City of Port Lavaca through an agreement dated November 9, 2015;

AND WHEREAS, according to Section 26.04(c) of the Texas Property Tax Code, it is required to have a certified tax assessor-collector to calculate the tax rates for the City of Port Lavaca;

AND WHEREAS, it is time to have such no-new-revenue tax rate and voter-approval tax rate calculated;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Port Lavaca to appoint the Chief Appraiser of the Calhoun County Appraisal District or his/her designee, being duly registered and qualified to perform such calculations for the City of Port Lavaca for the 2022 tax roll.

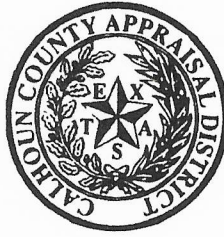
DULY ENACTED by unanimous vote by the City Council at its regular meeting held on the 14th day of March, 2022, as same appears in its official minutes.

Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

CALHOUN COUNTY APPRAISAL DISTRICT
426 West Main Street * P.O. Box 49
Port Lavaca, Texas 77979
Appraisal: (361) 552-8808
Collections: (361) 552-4560
Fax: (361) 552-4787
Website: www.calhouncad.org



Board of Directors

William Swope, Chairman
William Bauer, Vice Chairman
Jessie Rodriguez, Secretary
Vern Lyssy, Board Member
Kevin Hill, Board Member

Chief Appraiser

Jesse W. Hubbell

2/23/2022

TO: The Governing Bodies of All Taxing Units within the Calhoun County Appraisal District

FROM: Jesse W. Hubbell, Chief Appraiser

RE: Action Item by the Governing Body

The Texas Property Tax Code, Section 26.04(c), states that after the assessor submits the appraisal roll to the governing body, an officer or employee designated by the governing body shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the taxing unit.

As the Calhoun County Appraisal District is contractually obligated to perform the assessing and collecting functions for your district, I have attached a sample resolution designating the Chief Appraiser or his/her designee, being duly registered and qualified to calculate the 2022 no-new-revenue tax rate and the voter-approval tax rate for your taxing unit.

Please have your governing body pass a Resolution or Order regarding this designation to calculate the 2022 tax rates at the next scheduled meeting.

If you have any questions, please feel free to call or come by my office.

Sincerely,

A handwritten signature in blue ink that reads 'Jesse W. Hubbell'.

Jesse W. Hubbell
Chief Appraiser, RPA, CCA, RTA, CTA

COMMUNICATION

SUBJECT: Consider Resolution No. R-031422-3 of the City of Port Lavaca declaring April as Fair Housing Month. Presenter is Susan Lang

INFORMATION:

RESOLUTION NO. R-031422-3

A RESOLUTION OF THE CITY OF PORT LAVACA, CALHOUN COUNTY, TEXAS, PROCLAIMING THE MONTH OF APRIL AS FAIR HOUSING MONTH.

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

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

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

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

THAT, WE, do proclaim April as Fair Housing Month in City of Port Lavaca and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing law.

PASSED AND APPROVED on this 14th day of March 2022.

ATTEST:

Mandy Grant, City Secretary

Jack Whitlow, Mayor

COMMUNICATION

SUBJECT: Consider Second and Final Reading of an Ordinance (G-1-22) of the City of Port Lavaca regulating the speed of vehicles in, along, and upon those streets located within the confines of the listed residential subdivisions; establishing the rate of speed in and upon such streets in such subdivisions; prescribing penalties; repealing all ordinances in conflict herewith; and providing an effective date. Presenter is Jody Weaver

INFORMATION:

COUNCIL MEETING: MARCH 14, 2022

DATE: 3.07.2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: 25 MPH SPEED LIMIT ORDINANCE – 2ND READING

The edits for the second reading of the ordinance are:

Under Yancey Subdivision, W. MAHAN was corrected to indicate (FROM SANCHEZ AVENUE TO N. BENAVIDES STREET)

The following was added:

“Peikert Subdivision:

PEIKERT STREET; AIRLINE DRIVE (FROM SH 238 TO PEIKERT LANE)”

ORDINANCE NO. G-1-22

AN ORDINANCE OF THE CITY OF PORT LAVACA REGULATING THE SPEED OF VEHICLES IN, ALONG, AND UPON THOSE STREETS LOCATED WITHIN THE CONFINES OF THE LISTED RESIDENTIAL SUBDIVISIONS; ESTABLISHING THE RATE OF SPEED IN AND UPON SUCH STREETS IN SUCH SUBDIVISIONS; PRESCRIBING PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE

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

SECTION 1: That Section 48-10 of the Code of Ordinances be created and shall be titled: Regulation of Prima Facie Speed Limit to 25 m.p.h. on Certain Streets located within the Confines of Certain Residential Subdivisions and Section 48-11 shall be created to provide for penalties for violation of Section 48.10.

SECTION 2: Section 48-10 shall read as follows: The prima facie speed limit, in, along and upon those parts of the following streets as identified below, for all motor vehicles in and along said portion of said streets shall hence forth be as follows:

TWENTY-FIVE (25) MILES PER HOUR AT ALL TIMES OF THE DAY.

Brookhollow Estates Subdivision:

EL CAMINO REAL STREET, SALURIA PLACE, CHEVY CHASE STREET, LINNVILLE DRIVE, ROYALE DRIVE, SEASCAPE DRIVE, PARK PLACE, LAS BRISAS PLACE, HARBOR DRIVE EAST, HARBOR DRIVE WEST, LASALLE BOULEVARD, SPYGLASS HILL STREET, DEL MAR DRIVE, TIMBERLINE DRIVE

Bay Vista Subdivision:

TEXANA DRIVE, BAFFIN STREET, BISCAYNE STREET, BILOXI STREET, BOSTON STREET

Jade Bay Subdivision:

JADE WAY, JASPER WAY, OPAL WAY, AGATE WAY

La Salle's Landing:

CAVALIER DRIVE, BELLE COURT, BELLE LANE, AIMABLE STREET, ROUEN DRIVE, ST. FRANCOIS AVE.

Claret Crossing:

AIMABLE STREET, CARDINAL DRIVE, CLARET DRIVE, CRIMSON AVENUE, CARMINE AVENUE, ST. FRANCOIS AVE.

Brookhollow Subdivision:

OAKGLEN DRIVE, BROOKHOLLOW DRIVE, WILLOWICK DRIVE, TRAVIS STREET, ELMUHURST DRIVE, WESTWOOD DRIVE, FAIRMONT DRIVE, RIDGECREST DRIVE, WESTWOOD DRIVE, LAZY LANE, CANDLELIGHT LANE, SUNNYDALE DRIVE, GLENBROOK LANE, BERWICK PLACE, CHANTILLY LANE, BLACKSTONE PLACE, BRENTWOOD PLACE, BEACHMONT LANE

Lou Davis Subdivision:

DAVIS AVENUE, CHEEVES DRIVE, DAN AVENUE, OAK DRIVE

Chatterton Subdivision:

JENNINGS AVENUE, OAK DRIVE

Lynnhaven Subdivision:

MASSANET STREET, BURNET STREET, BONHAM STREET, CROCKETT STREET, BOWIE STREET, HOUSTON STREET, TRAVIS STREET, CALHOUN STREET, SAN BERNARDO STREET

Oak Grove Subdivision:

WILLOWBEND DRIVE, OAK GROVE LANE, PECANWOOD PLACE

Bonorden Subdivision:

TILLEY STREET (FROM HALF LEAGUE ROAD TO ARTHUR ST.), KNIPLING STREET, ARTHUR STREET, BONORDEN STREET, ELLA STREET

Western Heights Subdivision:

BORDER STREET (FROM GEORGE STREET TO S.H. 35). CENTRAL AVENUE, SHORT STREET

Bowman #1 Subdivision:

SCHOOLEY STREET, HENRY STREET, BONORDEN STREET

Brooks Subdivision:

SCHOOLEY STREET, W. MAHAN STREET (FROM HALF LEAGUE ROAD TO RAILROAD)

DeShazor Park:

TOMMY DRIVE, CHARLOTTE DRIVE, N. BAUER DRIVE, DESHAZOR STREET, OREN STREET

Ezzell Subdivision:

EZZELL STREET

Calhoun Subdivision:

JOHNNY DRIVE, MARY STREET, DALE STREET, ABNER STREET, OREN STREET

Seagull Subdivision:

MEADOWVIEW DRIVE, BAUER DRIVE

Marshall Meadows:

BAUER DRIVE, SUNCREST DRIVE, AVALON STREET

Burkeshire Subdivision:

SUNCREST DRIVE, AVALON DRIVE, MEADOWVIEW DRIVE, BURKEDALE DRIVE, SPRINGWOOD LANE, ELIZABETH STREET

Tangerine Subdivision:

TANGERINE DRIVE

Alamo Heights Subdivision:

HOLLOMAN DRIVE, SHOFNER DRIVE, ALGEE STREET, JUSTICE DRIVE, LEON DRIVE, JACKSON STREET, 1ST STREET, 2ND STREET, 3RD STREET, 4TH STREET, 5TH STREET, 6TH STREET, 7TH STREET

Mariemont Subdivision:

LARRY DRIVE, MCPHERSON DRIVE, VAIL DRIVE, JACKSON STREET, PURPLE SAGE DRIVE, OLEANDER DRIVE

Hillside Terrace:

LEON DRIVE, OLEANDER DRIVE

Diedrich Subdivision:

W. MAHAN STREET (FROM RAILROAD TO SANCHEZ AVENUE), SANCHEZ AVENUE

Yancey Subdivision:

W. MAHAN STREET (FROM SANCHEZ AVENUE TO N. BENAVIDES STREET); W. WILSON (FROM BROOKS AVENUE TO N. BENAVIDES STREET), N. SAN ANTONIO (FROM GEORGE STREET TO MAHAN STREET)

Satcher Subdivision:

W. WILSON STREET (FROM RAILROAD TO BROOKS AVE), BROOKS AVE.

Georgetown Subdivision

W. RAILROAD (FROM DEAD END TO N. BENAVIDES STREET), N. SAN ANTONIO STREET (FROM W. MAHAN STREET TO MAIN STREET)

Bonaire Terrace Subdivision:

SAM FAUBIAN DRIVE, N. SAN ANTONIO (FROM W. ASH STREET TO DEAD END), N. BENAVIDES STREET (FROM W. ASH STREET TO DEAD END), N. ANN STREET (FROM W. ASH STREET TO DEAD END)

Peikert Subdivision:

PEIKERT STREET; AIRLINE DRIVE (FROM SH 238 TO PEIKERT LANE)

SECTION 3. Penalties

THAT the penalty for violations of Section 48-10 shall be the penalty designated under 1-8 of this Code of Ordinances.

SECTION 4. Ordinances in Conflict

THAT All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. Effective Date

THAT this ordinance shall become effective on the date of its passage.

First Reading this the 14th day of February, 2022.

Jack Whitlow, Mayor

Second Reading this the 14th day of March, 2022.

Jack Whitlow, Mayor

PASSED AND APPROVED this the 14th day of March, 2022.

Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

APPROVED AS TO FORM AND CONTENT:

Anne Marie Odefey, City Attorney

RECORD OF VOTE

	First Reading	Second Reading	Approved/ Adopted
Councilman Smith	Aye	Aye	Aye
Councilman Dent	Aye	Aye	Aye
Councilman Tippet	Aye	Aye	Aye
Councilwoman Padron	Aye	Aye	Aye
Councilman Ward	Aye	Aye	Aye
Councilman Barr	Aye	Aye	Aye

Record of approval by City Council: City Council Minute Records, Volume 3H, Page ____.

COMMUNICATION

SUBJECT: Consider First Reading of an Ordinance (G-2-22) amending the ordinance codified and described in the City of Port Lavaca Code of Ordinances as Chapter 10 – Animals, Article I – General, Section 10-5 License Required; and providing an effective date. Presenter is Jody Weaver

INFORMATION:

COUNCIL MEETING: MARCH 14, 2021**AGENDA ITEM:****DATE:** 3.07.2022**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS**FROM:** JODY WEAVER, INTERIM CITY MANAGER**SUBJECT:** Proposed Amendments to the Animal Control Ordinance

Historically, the number of pets that are licensed in the City of Port Lavaca is a small fraction of the actual number of pets in town. In an effort to increase public awareness of the requirement to license and the advantages of registering pets, I am proposing to identify April as Pet Licensing Month, in conjunction with when the local veterinarians historically conduct a Rabies Drive and offer discounts to encourage people to register their pets.

Discussions we had during the preparation of the attached flier, which is scheduled to go out with the March Utility Bills, prompted this recommendation of a few changes to our Animal Control Ordinance as follows. These changes will allow the validity of the pet license to depend upon the validity of the rabies vaccine and not our fiscal year. With the software system used to collect and store this data, there is no need for all licenses to expire at the same time.

The underlined red text is proposed new text and the double strikeout is proposed for deletion from the existing text.

- (a) All dogs and cats three months of age or older which are kept, harbored or maintained within the city limits shall be licensed. Cat and dog licenses shall be issued by the city or its agent upon payment of the required fee for each dog and cat. Prior to the issuance of a city license, the owner of the dog or cat must present a certificate from a licensed veterinarian showing the dog or cat has an active vaccination ~~been vaccinated~~ for rabies ~~within the preceding three years~~. The owner shall state its name, address, and telephone number along with the breed, color, age, name, and sex of the dog or cat to be licensed. Said license shall ~~be good until September 30 from the date of issuance~~ expire with the expiration of the vaccination certificate, or one year from the date of issuance in the case of a one-year license.
- (b) Upon payment of the license fee, the city shall issue to the owner a license certificate and a metallic tag for each animal so licensed. The tag shall have stamped thereon, ~~the year of issuance~~ and the number corresponding to the number on the certificate.

Recommendation: Staff recommends approval of the first reading of the proposed ordinance which reflects these changes.



April is Pet Licensing Month!

Purchasing a license and attaching it to your pet's collar is one of the MOST IMPORTANT things you can do as a responsible pet owner.

Displaying a current license tag on your pet's collar makes it easy for Animal Control officers to quickly locate a lost pet's owner information.

It's Easy to register your pet!

- ✓ Get your pet vaccinated at one of our local Veterinarians.
- ✓ Take your Rabies Vaccine Certificate to City Hall—Permits
- ✓ Pay the registration Fee and receive a metal tag

\$10— one year \$20—3 years

During April fees are discounted 40%

\$6— one year \$12—3 years

If your pet has a **MICROCHIP**, you pay 1/2 of the discounted rates in April—a 70% savings !!

Bayfront Animal Hospital

402 Henry Barber Way 361-552-2602

Calhoun County Animal Hospital

1015 N. SH 35 361-552-4526

Port Lavaca Veterinary Clinic

820 Porter Rd. 361-552-6959



**40% OFF
during the
month of
April.**



Join us at —Boujee on the Bay—
April 24 **FARMERS MARKET & BRUNCH**
with DEPOT DAYS
10 am-3 pm



*on Railroad St.
@ the Depot*

The City will have a booth set up to register your pets and get their photo all at the same time!



Why License your pet?

- ☑ It's the law (all pets 3 mos and older)
- ☑ Proves your pet is properly vaccinated
- ☑ Proves ownership if your pet is stolen
- ☑ With City License your fur babies will be reunited quicker if lost
- ☑ Your information/photo is securely stored in the cloud
- ☑ Registration numbers can be used to secure funding for animal welfare projects.



For more information on licensing requirements in the City of Port Lavaca or to report animal abuse or neglect, please contact Animal Control Officer Tracy Horejsi at 361-552-5726 or visit the shelter at 201 Stringham Drive.

ORDINANCE #G-2-22

AN ORDINANCE OF THE CITY OF PORT LAVACA AMENDING THE ORDINANCE CODIFIED AND DESCRIBED IN THE CITY OF PORT LAVACA CODE OF ORDINANCES AS CHAPTER 10, ANIMALS, ARTICLE I. GENERAL, SECTION 10-5, LICENSE REQUIRED; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Purpose.

The following amendments are to be made to the following Section of Chapter 10 of the Code of Ordinances. All insertions are made with colored letters and all deletions are shown as bold text-strikethroughs.

Chapter 10 - Animals, Article I. General, Sec. 10-5. - License required.

- a) All dogs and cats three months of age or older which are kept, harbored or maintained within the city limits shall be licensed. Cat and dog licenses shall be issued by the city or its agent upon payment of the required fee for each dog and cat. Prior to the issuance of a city license, the owner of the dog or cat must present a certificate from a licensed veterinarian showing the dog or cat has an active vaccination ~~been vaccinated~~ for rabies ~~within the preceding three years~~. The owner shall state its name, address, and telephone number along with the breed, color, age, name, and sex of the dog or cat to be licensed. Said license shall ~~be good until September 30 from the date of issuance~~ expire with the expiration of the vaccination certificate, or one (1) year from the date of issuance in the case of a one-year license.
- b) Upon payment of the license fee, the city shall issue to the owner a license certificate and a metallic tag for each animal so licensed. The tag shall have stamped thereon, ~~the year of issuance and~~ the number corresponding to the number on the certificate.

Section 2. Severability.

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

Section 3. Effective Date

THAT this ordinance shall become effective on the date of its passage.

First Reading this the 14th day of March, 2022.

Jack Whitlow, Mayor

Second Reading this the 11th day of April, 2022.

Jack Whitlow, Mayor

PASSED AND APPROVED this the 11th day of April, 2022.

Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

APPROVED AS TO FORM AND CONTENT:

Anne Marie Odefey, City Attorney

RECORD OF VOTE

	First Reading	Second Reading	Approved/ Adopted
Councilman Smith			
Councilman Dent			
Councilman Tippit			
Councilwoman Padron			
Councilman Ward			
Councilman Barr			

Record of approval by City Council: City Council Minute Records, Volume 3H, Page ____.

COMMUNICATION

SUBJECT: Consider First Reading of an Ordinance (G-3-22) amending the ordinance codified and described in the City of Port Lavaca Code of Ordinances as Part II, Appendix A – Fees, Rates and Charges (Chapter 10 – Animals) and providing an effective date. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

COUNCIL MEETING: MARCH 14, 2021

AGENDA ITEM:

DATE: 3.07.2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: Proposed Amendments to Appendix A – Fees for the Animal Control Ordinance

The following recommended changes to the fee schedule provide some clarity to the fees being charges and add a 50% discount for microchipped pets to further encourage pet owners to have their pets fitted with a microchip.

Language is added that allows the City Manager to approve other discounts for limited periods of time for special events like what we are proposing for the month of April.

I am proposing a 40% discount for the month of April for all fees and if microchipped, the fee is 50% of the discounted rates. The local veterinarians are also working on discounts for rabies vaccines during April. With providing this discount in April annually, we are hoping that pet owners will learn to not only get their pets vaccinated in April, but registered as well.

Recommendation: Staff recommends approval of the first reading of the proposed ordinance of the fee schedule which reflects these changes.

Appendix A

10-2 Registration fee:

~~The city registration fee (first year only)~~One Year – applicable only for one-year vaccinations \$10.00Up to Three Years (expires with the expiration of the vaccination certificate) \$20.00Discount for Microchipped pets 50% of prescribed feeOther discounts may be approved by the City Manager for limited periods of time for special events.

ORDINANCE #G-3-22

AN ORDINANCE AMENDING THE ORDINANCE CODIFIED AND DESCRIBED IN THE CITY OF PORT LAVACA CODE OF ORDINANCES AS PART II, APPENDIX A – FEES, RATES AND CHARGES; AND PROVIDING AN EFFECTIVE DATE

ARTICLE I. - GENERAL.

WHEREAS, the City Council on March 12, 2012 approved and adopted Ordinance Number G-1-12 which is codified and described in the City of Port Lavaca Code of Ordinances as Part II, Appendix A – Fees, Rates and Charges; and

WHEREAS, the City of Port Lavaca staff has evaluated current fees, rates and charges and find the need to make some amendments and changes.

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

ARTICLE II. - FEES TO BE AMENDED.

The fees, rates and charges to be amended are in the Chapter(s) listed below and described in full in the attached appendix marked in red or blue and highlighted in yellow:

Chapter 10: Animals
Sec. 10-2 Registration Fee

ARTICLE III. - EFFECTIVE DATE.

This ordinance shall become effective upon adoption by City Council.

First Reading this the 14th day of March, 2022.

Jack Whitlow, Mayor

Second Reading this the 11th day of April, 2022.

Jack Whitlow, Mayor

PASSED AND APPROVED this the 11th day of April, 2022.

Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

APPROVED AS TO FORM AND CONTENT:

Anne Marie Odefey, City Attorney

RECORD OF VOTE

	First Reading	Second Reading	Approved/ Adopted
Councilman Smith			
Councilman Dent			
Councilman Tippet			
Councilwoman Padron			
Councilman Ward			
Councilman Barr			

Record of approval by City Council: City Council Minute Records, Volume 3h, Page ____.

EXHIBIT ACHAPTER 10—ANIMALS

Section Number	Subject	Fee Amount
10-2	<i>Pickup fee:</i>	
	Unaltered, unvaccinated, or expired vaccination, or no city registration	\$50.00 per dog/cat
	Altered, currently vaccinated, current city registration	\$25.00 per dog/cat
10-2 10-125	<i>Daily accessed kenneling fee:</i>	
	Charge per day for holding an animal	\$25.00 per day
	Ten-day observation fee	\$250.00 total
10-2	<i>Registration fee:</i>	
	The city registration fee (first year only)	\$10.00
	One-Year – applicable only for one-year vaccinations	\$10.00
	Three years	\$20.00
	Up to Three Years (expires with the expiration of the vaccination certificate)	\$20.00
	Discount for Microchipped Pets	50% of prescribed fee
	Other discounts may be approved by the City Manager for limited periods of time for special events	
10-53(b)	Kennel/pet shop license	\$100.00
10-101(d)	Impoundment, boarding and veterinarian	\$250.00 plus cost

COMMUNICATION

SUBJECT: Consider purchase of a Remote-Controlled (RC) Mower for the Streets Department. Presenter is Wayne Shaffer

INFORMATION:

COMMUNICATION

SUBJECT: Consider a Professional Services Agreement with LJA Engineering for various projects that will be set forth separate cost proposals or work authorizations. Presenter is Jody Weaver

INFORMATION:

COUNCIL MEETING: MARCH 14, 2021**AGENDA ITEM:****DATE:** 3.07.2022**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS**FROM:** JODY WEAVER, INTERIM CITY MANAGER**SUBJECT:** PROFESSIONAL SERVICES AGREEMENT FOR LJA ENGINEERING

As you recall at the January meeting, Council selected LJA Engineering, from 5 respondents to an RFQ are aware, to negotiate a contract with for a Downtown Waterfront Master Plan. On February 7, the Selection committee met with representatives of LJA at the Nautical Landings meeting room to review a proposed scope for the study and allow LJA to get a first-hand view of our waterfront assets. We provided them additional information regarding recently completed and on-going improvement projects along the waterfront.

They have provided the attached Professional Services Agreement for Council approval. This is a master agreement where the compensation for assigned projects will be included in a separate proposal or work authorization. The contractual terms of the attached Agreement has been reviewed and approved by Anne Marie.

The next agenda item will consider approval of the proposal/work authorization for the Downtown Waterfront Master Plan.

Recommendation: Approve the Professional Services Agreement with LJA Engineering prepared on February 25, 2022.



3600 W Sam Houston Pkwy S, Suite 600, Houston, Texas 77042
t 713.953.5200 LJA.com TBPE F-1386 TBPLS 10110501

PROFESSIONAL SERVICES AGREEMENT

This Agreement prepared on **February 25, 2022** is by and between the **City of Port Lavaca** with address at **202 N. Virginia Street, Port Lavaca, Texas 77979** ("Client") and LJA Engineering, Inc. ("LJA"), who agree as follows:

Client engages LJA to perform professional services (the "Services") for the compensation set forth in one or more proposals or work authorizations (the "Proposal(s)") for one or more projects (the "Project(s)"). LJA shall be authorized to commence the Services upon execution of the Proposal(s) by the Client. Client and LJA agree that this Agreement, the Proposal(s), and any attachments herein incorporated by reference (the "Agreement") constitute the entire agreement between them.

I. LJA'S RESPONSIBILITIES: LJA shall perform or furnish the Services described in the Proposals, which shall be combined and attached as part of this Agreement. Where the terms or conditions of any Proposal conflict with those of Parts I-III contained herein, the Proposal shall control for the Services performed under that Proposal only.

II. CLIENT'S RESPONSIBILITIES: Client, at its expense, shall do the following in a timely manner so as not to delay the Services:

1. INFORMATION/REPORTS: Furnish LJA with all information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project.

2. REPRESENTATIVE / ACCESS: Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define Client's policies, and make decisions with respect to the Services, and provide LJA safe access to any premises necessary for LJA to provide the Services.

3. DECISIONS: Provide all criteria and full information as to requirements for the Project, obtain (with LJA's assistance, if applicable) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and participate in the Project to the extent necessary to allow LJA to perform the Services.

III. COMPENSATION, BILLING, & PAYMENT: Client shall pay LJA for Services as denoted in the applicable Proposal and in accordance with the standard rate schedule – Attachment B.

IV. STANDARD TERMS AND CONDITIONS: Attachment A.

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing and each of the undersigned parties has caused this Agreement to be duly executed. This Agreement contains a limitation of liability clause and the Client has read and consents to all terms.

APPROVED FOR "CLIENT"
CITY OF PORT LAVACA

APPROVED FOR "LJA"
LJA ENGINEERING, INC.

By: _____

By: _____

Printed Name: Jack Whitlow

Printed Name: Alan B. McKee

Title: Mayor

Title: Senior Vice President

Effective Date: 03-14-2022

Attachments:

A – Standard Terms and Conditions
B – Standard Rate Schedule

ATTACHMENT A STANDARD TERMS AND CONDITIONS

1. STANDARD OF CARE. Services shall be performed with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Professional services are not subject to, and LJA cannot provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code, work authorization, requisition, or notice, except as provided herein.

2. CHANGE OF SCOPE. The scope of Services set forth in any Proposal is based on facts known at the time of execution of the Proposal, including, if applicable, Client Data (defined below). As the Project progresses, facts discovered, including, but not limited to, site conditions or the existence of differing subsurface or physical conditions, may indicate that the scope, pricing, or other terms must be redefined, and the parties shall reasonably cooperate to equitably adjust the scope, pricing, or terms of this Agreement accordingly.

3. SAFETY. LJA has established and maintains corporate programs and procedures for the safety of its employees. Unless included as part of the Services, LJA specifically disclaims any authority or responsibility for general job site safety and safety of persons other than LJA employees.

4. DELAYS. The Services shall be performed expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Where LJA is prevented from completing any part of the Services within the schedule provided under the Agreement due to delay beyond its reasonable control, the schedule will be extended in an amount of time equal to the time lost due to such delay so long as LJA provides written explanation of the delay to Client. Except with regard to payment of any amounts due LJA from any Services, neither party shall be liable to the other for any delays or failure to act, due to unforeseeable causes reasonably beyond the control of the party claiming such circumstances.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of termination, Client shall pay LJA for all Services rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may suspend performance under this Agreement. In the event of a suspension of Services, LJA shall have no liability to the Client for delay or damage caused the Client because of such suspension of Services. Before resuming Services,

LJA shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of LJA's Services. LJA's fees for the remaining Services and the time schedules shall be equitably adjusted. Obligations under this Agreement, which by their nature would continue beyond the suspension or termination of this Agreement (e.g., indemnification), shall survive such suspension or termination.

6. RELATIONSHIP WITH CONTRACTORS / REVIEW. LJA shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but LJA specifically disclaims any authority to direct or supervise the means, methods, techniques, security or safety activities, personnel, compliance, sequences, or procedures of construction selected by Client's contractors. For Projects involving bid preparation, LJA may supply standard contract forms, templates, or other documents that will be executed between the Client and contractor(s). It is the Client's responsibility to review those documents and to obtain legal advice thereto. For Projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the Project permits errors or omissions to be identified and corrected at comparatively low cost. Evaluations of Client's budget for construction and estimates prepared by LJA represent LJA's judgment as a design professional. It is recognized, however, that neither LJA nor Client have control over the cost of labor, materials, or equipment, the contractor's methods of determining bid prices, or competitive bidding, market, or negotiating conditions. Accordingly, LJA cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget or from any estimate of costs prepared or agreed to by LJA. Client agrees to hold LJA harmless from any claims resulting from performance of construction-related services by persons other than LJA and LJA shall not be responsible for the contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. In fulfilling its duties pursuant to the Agreement, Client permits LJA to elect to subcontract to others certain tasks in its scope of Services.

7. INSURANCE. LJA will maintain insurance coverage for Professional Liability, Commercial Liability, Auto, and Workers' Compensation in amounts in accordance with legal and business requirements. Certificates evidencing such coverage will be provided to Client upon request. For Projects involving construction, Client agrees to require its construction contractor, if any, to

include LJA as an additional insured on its policies relating to the Project. LJA's coverages referenced above shall, in such case, be excess over any contractor's primary coverage. Client shall require its construction contractor to include LJA as an indemnitee under any indemnification obligation of contractor to Client to the fullest extent allowed by law.

8. PROJECTS WITH MULTIPLE CLIENTS. When LJA undertakes a Project for multiple Clients, each Client on the Project is jointly and severally liable for payments for LJA's Services. If any Client fails to make timely payment to LJA, and the remaining Clients wish to continue the Project, the remaining Clients will promptly notify LJA in writing to continue the Project and their joint and several obligations shall remain the same. LJA, at its option, may suspend the remaining performance under this Agreement until all past due payments are made, and authorization to proceed and pay from all non-defaulting Clients is received, or continue work on the Project and invoice and collect from the remaining Clients any payment (including damages) of amounts past due and that become due.

9. SITE CONDITIONS. Hazardous, archaeological, paleontological, cultural, biological, or other materials, protected resources, unknown underground facilities, or other conditions ("Conditions") may exist at a site where there is no reason to believe they could or should be present. LJA and Client agree that the discovery of unanticipated Conditions constitutes a changed condition that may mandate a renegotiation of the scope of Services. LJA will notify Client should unanticipated Conditions be encountered. Client acknowledges and agrees that it retains title to all Conditions existing on the site and shall report to the appropriate public agencies, as required, any Conditions at the site that may present a potential danger to the public health, safety, or the environment. Client shall execute any manifests in connection with avoidance, containment, transportation, storage, or disposal of Conditions resulting from the site.

10. INDEMNITY. LJA shall indemnify Client from and against liability for damage to the extent that the damage is actually caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by LJA, LJA's agent, or another entity over which LJA exercises control.

11. LIMITATION OF LIABILITY. No employee or agent of LJA shall have individual liability to Client. Client agrees that, to the fullest extent permitted by law, LJA's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, LJA's negligence, errors, omissions, strict liability, or breach of contract, and whether claimed directly or by way of contribution, shall not exceed the applicable proceeds of insurance required by this Agreement. If Client desires a limit of liability greater than that provided above, Client and LJA shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to LJA for assumption

of such additional risk.

12. CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST REVENUES, LOSS OF USE, LOSS OF FINANCING, LOSS OF REPUTATION, LOST PROFITS, DELAYS, OR OTHER ECONOMIC LOSS ARISING FROM ANY CAUSE INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER CAUSE WHATSOEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY. REGARDLESS OF LEGAL THEORY, LJA SHALL BE LIABLE ONLY TO THE EXTENT THAT ANY DAMAGES SPECIFIED HEREIN ARE FOUND BY A FINAL COURT OF COMPETENT JURISDICTION TO HAVE BEEN THE SEVERAL LIABILITY OF LJA. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES THAT ARE INCONSISTENT WITH THIS PROVISION OF THE AGREEMENT ARE WAIVED.

13. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such were originally prepared, or alteration of such without the written verification or adaptation by LJA for the specific purpose intended, shall be at the Client's risk. All title blocks and the engineer's seal, if applicable, shall be removed if Client provides deliverables in electronic media to any third party. Any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to reuse of modified plans. Client agrees that relevant analyses, findings, and reports provided in electronic media shall also be provided in hard copy and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. Client shall be afforded a period of thirty (30) days to check the hard copy against the electronic media. In the event that any error or inconsistency is found during that time, LJA shall be advised and the inconsistency shall be corrected at no additional cost to Client. Following the expiration of this notice period, Client shall bear all responsibility for the care, custody, and control of the electronic media. In addition, Client represents that it shall retain the necessary mechanisms to read the electronic media. Client agrees to indemnify and hold harmless LJA from all claims, damages, and expenses (including reasonable litigation costs) arising out of such reuse or alteration by Client or others acting through Client.

14. CLIENT DATA. Client or any third party designated by Client may provide information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project ("Client Data"). LJA may reasonably and in good faith rely upon the accuracy of Client Data and unless described as part of the Services, LJA is not required to audit, examine, or verify Client Data. However, LJA will not ignore the implications of information furnished to LJA and may make reasonable inquiries if Client Data as furnished appears to

be incorrect or incomplete. LJA makes no representations or warranties (express or implied) as the quality, accuracy, usefulness, or completeness of any Services to the extent LJA relies on Client Data. LJA, its affiliates, its officers, directors, and employees shall have no liability whatsoever with respect to the use of unreliable, inaccurate, or incomplete Client Data.

15. ASSIGNMENT/BENEFICIARIES. Neither party may assign this Agreement without the written consent of the other party. With the exception of such assignments, nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.

16. AMENDMENT, NO WAIVER, & SEVERABILITY. This Agreement can be amended in writing and signed by the parties. No waiver by either party of any default by the other party in the performance of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character. The various terms, provisions, and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

17. INDEPENDENT PARTIES. Each party is an independent entity and is not a partner, agent, principal, or employee of the other party, unless otherwise agreed to by the parties in writing. Nothing in this Agreement shall restrict or otherwise prohibit either party or their respective affiliates in the conduct of their businesses.

18. RESERVED.

19. STATUTORY TERMS APPLICABLE TO STATE POLITICAL SUBDIVISIONS. As required by Chapter 2252 of the Texas Government Code (the "Code"), and as such terms are defined therein, LJA is not listed on, nor does not do business with, "Companies" that are on the Texas Comptroller of Public Accounts' list of "Designated Foreign Terrorist Organizations." As required by Chapter 2271 of the Code, and as such terms are defined therein, LJA verifies that it does not, nor will it, "boycott Israel" through the term of this Agreement. As required by Chapter 2274 of the Code, and as such terms are defined therein, LJA hereby verifies that it does not, nor will it, "boycott energy companies," through the term of this Agreement. As required by Chapter 2274 of the Code, and as such terms are defined therein, LJA hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association," and will not discriminate against a firearm entity or firearm trade association through the term of this Agreement. As required by Chapter 113 of the Texas Business & Commerce Code, and as such terms are defined therein, LJA is not owned by nor has the majority of stock or other ownership interest of the company held by (i) individuals who are citizens of China, Iran, North Korea, Russia or a "designated country", or (ii) a company or other entity, including a governmental

entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or a "designated country." LJA is headquartered in Houston, Texas.

20. DISPUTE RESOLUTION. The parties shall attempt to settle all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, by discussion between the parties' senior representatives. If any dispute cannot be resolved in this manner, within five (5) business days, the parties agree to refer such claims, disputes, and controversies to mediation by a mediator mutually agreed to and equally paid for by the parties before, and as a condition precedent to, the initiation of any adjudicative action or proceeding. The mediator shall convene the mediation within ten (10) business days of the request of either party, and the mediation will last at such times and as long as the mediator reasonably believes agreement is probable. The parties agree that an officer of each entity with complete authority to resolve the dispute shall attend the mediation, however both parties acknowledge that any settlement would be subject to Client's City Council approval at a duly convened meeting. Notwithstanding the foregoing, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation, and LJA may pursue, at any time and without invoking dispute resolution as provided herein, any property liens or other rights it may have to obtain security for the payment of its invoice. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs including reasonable attorney's fees from the other party.

21. LITIGATION SUPPORT. LJA will not be obligated to provide expert witness or other litigation support related to its Services, unless expressly agreed in writing. In the event LJA is required to respond to a subpoena, inquiry, or other legal process related to the Services in connection with a proceeding to which LJA is not a party, Client will reimburse LJA for its costs and compensate LJA at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

22. GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without giving effect to any conflict or choice of law rules or principles under which the law of any other jurisdiction would apply. Each party hereby submits to the jurisdiction of the federal and state courts located in the county of LJA's address and agrees that such courts shall be exclusive forum and venue for resolving any legal suit, action or proceeding arising out of or relating to this Agreement.

Ver.CUSTOM

COMMUNICATION

SUBJECT: Consider Proposal No. 22-9338 from LJA Engineering for Planning Services to conduct a Downtown Waterfront Master plan for an estimated fee plus reimbursable expenses of \$50,000. Presenter is Jody Weaver

INFORMATION:

COUNCIL MEETING: MARCH 14, 2021**AGENDA ITEM:****DATE:** 3.07.2022**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS**FROM:** JODY WEAVER, INTERIM CITY MANAGER **SUBJECT:** LJA ENGINEERING PROPOSAL NO. 22-9338 – DOWNTOWN WATERFRONT MASTER PLAN

LJA Engineering has prepared the attached Planning Proposal to prepare a Downtown Waterfront Master Plan. This is an hourly contract. Hours spent on the initial consultation will be billed at the hourly fees established in Attachment B of the Professional Services Agreement, but are estimated to be \$5,000. The remaining phases, Analysis and Needs Assessment, Concept Plan and Master Plan shall be billed as a flat fee. The total estimated fee plus reimbursable expenses is \$50,000.

Recommendation: Approve the Planning proposal No. 22-9338 of LJA Engineering for the Downtown Waterfront Master plan.



3600 W Sam Houston Pkwy S, Suite 600, Houston, Texas 77042
t 713.953.5200 LJA.com TBPE F-1386 TBPLS 10110501

February 28, 2022

PLANNING PROPOSAL

JoAnna P. "Jody" Weaver, P.E.
Interim City Manager
City of Port Lavaca
202 N. Virginia Street
Port Lavaca, Texas 77979
Email: jweaver@portlavaca.org

Re: Proposal for Planning Services
Port Lavaca Downtown Waterfront Master Plan
Port Lavaca, Texas
LJA Proposal No. 22-9338

Dear Ms. Weaver:

LJA Engineering, Inc. is pleased to submit this proposal outlining planning services for the above-referenced property in the City of Port Lavaca, Texas. This agreement is by and between LJA Engineering, Inc. (LJA), the "Consultant" and the City of Port Lavaca, the "Client". This proposal is based on our current understanding of the tract and objectives of the Client. We propose the following services and corresponding fees in accordance with the attached Professional Services Agreement (PSA) between City of Port Lavaca and LJA Engineering, Inc. dated February 25, 2022.

Scope of Services

The work will consist of preparing a master plan for the Port Lavaca Downtown Waterfront, generally located to the northeast of Commerce Street

Analysis and Needs Assessment

1.1 Base Data Collection

Review the available base data for the property as provided by the client. Preparing a full analysis of the site to consist of:

- From various GIS sources, use parcel data, floodplain information, aerial photography, etc.;
- We will develop a slope study to better understand the physical constraints on the property;
- Review of historic maps, surveys, and other documents;
- A physical inventory of site conditions using GIS information and photographic documentation, to include existing buildings information for the purpose of the development of a base map.

1.2 Site Analysis

Assemble an opportunities and constraints exhibit to perform an analysis of the property to determine options for primary entrances, identify significant physical features, adjacent land use impacts, drainage patterns, and other characteristics of the property.

1.3 Needs Assessment Refinement

Refine and further develop the needs assessment that was defined in the preceding Master or Comprehensive Plan recommendations. We will conduct a meeting to review the various needs and program elements with the Client. With the approval of this phase, we will proceed with the conceptual design phase of the project.

We anticipate making two (2) trips to the site during the Analysis and Needs Assessment phase, one of these trips will be to gather public input on the project. Additional trips to the site requested by the Client will be billed on a time and materials basis.

Concept Plan

2.1 Concept Plan

We will then prepare the concept plan(s) to address the various issues identified in our analysis and needs assessment. This plan will be in a preliminary format and indicate suggested major roadway alignments, various land uses, significant elements, as well as any other physical encumbrances affecting the overall plan for the property.

We anticipate making one (1) trip to the site during the Concept Plan phase. Additional trips to the site requested by the Client will be billed on a time and materials basis.

2.2 Branding

We will prepare branding concepts for use in city signage materials with a focus on monumentation and wayfinding. The intent is to produce a brand or logo that complements the effort with the entry monument study.

Master Plan

Once the Conceptual Design for the proposed improvements are finalized, we will meet with the Client to prepare the Master Plan for the various elements identified.

3.1 Initial Master Plan

We will collaborate with the Client to produce a workable Master Plan that will show further refinement of conceptual design layouts and create more detailed drawings that help communicate the design intent and vision of the project. The Master Plan shall include a site plan layout of proposed improvements necessary to demonstrate the design intent.

We anticipate making three (3) trips to the site during the Master Plan phase, one of these trips will be to present the initial Master Plan and gather public input on the project. Additional trips to the site requested by the Client will be billed on a time and materials basis.

3.2 Finalize Master Plan

With feedback from the Client, we will finalize the Master plan and prepare a Master Plan document which will include the following exhibits:

- a. Existing conditions map;
- b. Opportunities and constraints map;
- c. Current improvements map;
- d. Proposed improvements map;
- e. Color Land Use plan;
- f. Illustrative streetscape plans and sections;
- g. Infrastructure plan, to include potential green infrastructure improvements;
- h. Transportation/mobility plan;
- i. Phased master plan;
- j. Suggested updates or revisions to city ordinances to aid in the development of the Master Plan;
- k. Overall project budget;
- l. Implementation timeline;

Exclusions/ Qualifications

This proposal excludes design development and construction documentation. The Master Plan, once approved, will become the basis for these documents.

1. This proposal excludes any surveying services that may be required in conjunction with the proposed landscape improvements.
2. This proposal excludes attending any meeting(s) or Client representation at various agencies to gain approval for the project. At your request we can attend and/or represent you as requested on a time and materials basis.

Commencement of Services

The scheduling, production, and delivery of the services outlined within this scope shall be performed in a timely and professional manner. The Consultant will strive to meet the schedule agreed to with the Client, assuming proper and adequate notices for the work and a timeline are given to the Consultant prior to the commencement of this contract. The scheduling, production, and delivery of these services shall be reviewed and mutually agreed to by the Client and Consultant prior to the commencement of this contract. This assumes timely feedback from the Client, other Consultants and/or approval entities, minimal revisions, and a continuous design process. Unanticipated events or directives can mandate changes to the scheduling of production. Work shall be scheduled upon your written authorization via a returned signed original proposal and Professional Services Agreement. If the Client changes the initially agreed scope of services once the work has commenced or requests effort beyond minor iterations once the design is approved by the Client, or CAD product is generated, or significantly complete, additional fees will apply. This time shall be billed on an hourly basis based on the rate of those individuals involved in the additional work.

Additional Services

Services requested by the Client with no specified budget listed in the agreement will be performed by the Consultant, and shall be billed on an hourly basis based on the rate of those individuals involved in the additional work, i.e. research, analysis, exhibits, etc.

Ms. JoAnna P. "Jody" Weaver, P.E.
 February 28, 2022
 Page 4 of 4

COMPENSATION

Consultation (As requested. Fees to be charged hourly per attached rate sheet.)	\$5,000.00
<u>Analysis and Needs Assessment</u>	\$10,000.00
1.1 Base Data Collection	
1.2 Site Analysis	
1.3 Needs Assessment Refinement (Flat Fee)	
<u>Concept Plan</u>	\$8,000.00
2.1 Concept Plan	
2.2 Branding (Flat Fee)	
<u>Master Plan</u>	\$25,000.00
3.1 Initial Master Plan	
3.2 Finalize Master Plan (Flat Fee)	
Estimated Reimbursable Expenses (mileage, printing, reproduction, etc.)	\$2,000.00
Total Estimated Fee Plus Reimbursable Expenses	\$50,000.00

TERMS OF PAYMENT

The scope of services for the above-referenced work has been clearly defined. Any modifications, revisions, or additional planning effort will be invoiced separately on a time and materials basis. If this proposal meets with your approval, please execute and return a copy to us. Your signature below will be sufficient authorization to commence the stated work.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions, please call me at 713.953.5200.

Sincerely,



Ernesto Alfaro
 Planning Project Manager

APPROVED BY:
CITY OF PORT LAVACA

By: _____

Name: Jack Whitlow

Title: Mayor

Date: _____

EA/lr
 Attachment(s)

COMMUNICATION

SUBJECT: Consider awarding construction contract to Lester Contracting, Inc. to complete the Voluntary Restoration work at the Harbor of Refuge Tract 16. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

CITY COUNCIL MEETING: MARCH 14, 2022

DATE: 3.07.2022

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: VOLUNTARY RESTORATION OF DISTURBED FINAL COVER AT THE HOR TRACT 16

Background: In 2020, RLB Contracting excavated a slip along the shoreline of their leased Tract 16, in order to make repairs to a barge. The excavation was done without the knowledge or consent of the City. A short time after this excavation was performed the surge from Hurricane Hannah caused erosion of the sides of the excavation and exposed some trash cells. We worked with the US Army Corps of Engineers and TCEQ to permit a voluntary restoration of the disturbed final cover of the old landfill, which I had contracted with Urban Engineering to prepare.

We received approval of our voluntary restoration plan last May. RLB agreed to complete the restoration work at no cost to the City, but that work was never completed and as you know we are working on a settlement agreement with RLB at this time.

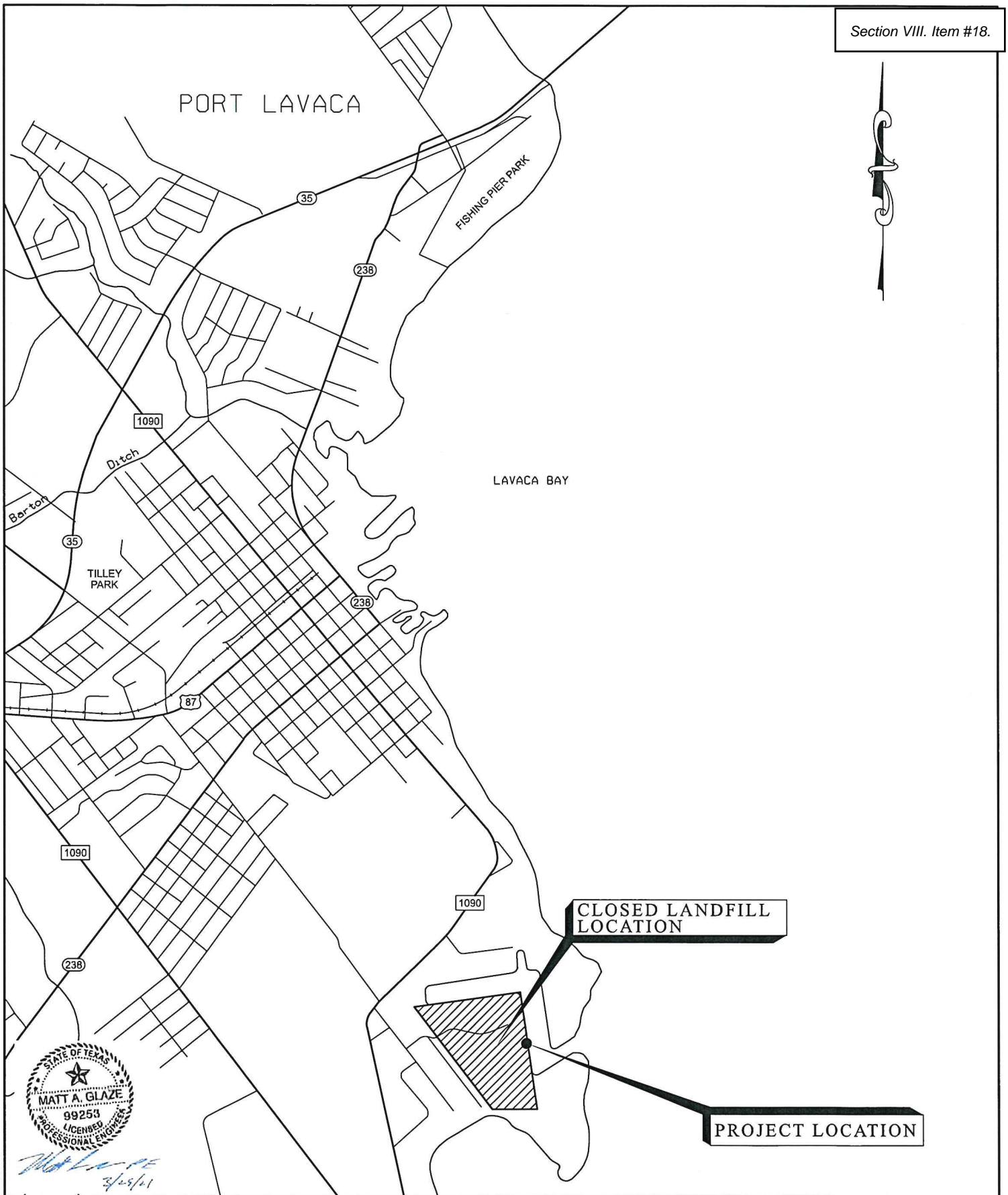
The work must be done without delay to avoid issues with TCEQ and/or the US Army Corps of Engineers. The work involves providing 18" of clay soil and 6" of top soil over an area about 150' x 95' then graded to drain and is shown on the attached plans.

Bids received: I recently solicited bids from 3 local contractors: Gonzales Contracting, Lester Contracting, and Sylva Construction. A bid tabulation is below.

Recommendation: Award a contraction contract to Lester Contracting for this restoration work in the amount of \$35,892.50. Lester Contracting has stated they can begin soon after the contract is awarded.

Gonzales Contracting, Inc.	\$38,280.00
Lester Contracting, Inc.	\$35,892.50
Sylva Construction, LLC	\$39,900.00

Attachments: construction plans



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DATE 03/29/21

CoPL HARBOR OF REFUGE BOAT SLIP RESTORATION

GENERAL LOCATION MAP



URBAN
engineering

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urbanvictoria.com • TREF# F-160



CoPL HARBOR OF REFUGE BOAT SLIP RESTORATION

SITE LAYOUT PLAN



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CoPL HARBOR OF REFUGE BOAT SLIP RESTORATION

RESTORATION PLAN

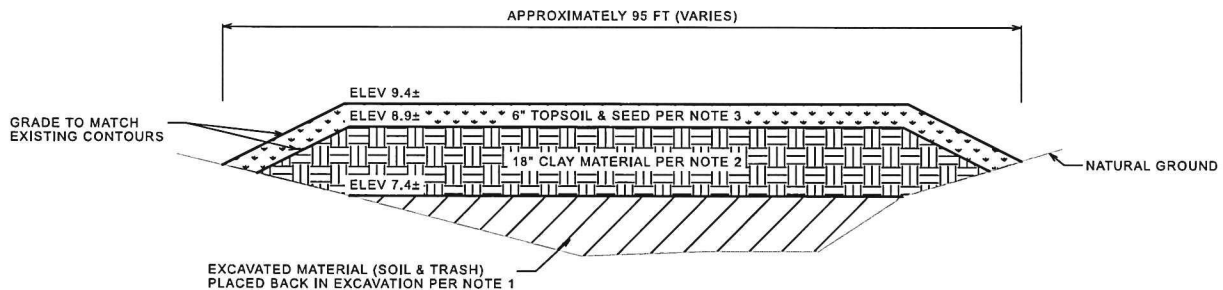
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GENERAL NOTES

1. EXCAVATED MATERIAL SHALL BE PLACED BACK IN THE EXCAVATION UNTIL ORIGINAL ELEVATION IS RESTORED.
2. 18" THICK COVER SHALL BE CLAYEY SOIL, CLASSIFICATION SAND CLAYEY (SC) OR LOW PLASTICITY CLAYEY (CL). FILL MATERIAL SHALL BE PLACED IN 6" LOOSE LIFTS AND COMPACTED TO 95% STANDARD PROCTOR DENSITY (ASTM D698) AT $\pm 2\%$ OF OPTIMUM MOISTURE.
3. 6" THICK COVER SHALL BE SUITABLE TOPSOIL THAT IS CAPABLE OF SUSTAINING NATIVE PLANT GROWTH. TOPSOIL SHALL BE SEEDED IMMEDIATELY FOLLOWING THE APPLICATION OF FINAL COVER. SEED MIXTURE SHALL BE TxDOT SEED MIX FOR CLAY SOILS IN THE YOAKUM DISTRICT.
4. FILL MATERIAL SHALL BE GRADED TO MATCH ADJACENT CONTOURS. ALL SLOPES SHALL BE LESS THAN 4:1.

Section VIII. Item #18.



1 PROPOSED FILL CROSS SECTION DETAIL



Matt A. Glaze
3/23/21

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DATE 03/29/21

CoPL HARBOR OF REFUGE BOAT SLIP RESTORATION

STANDARD DETAILS



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COMMUNICATION

SUBJECT: Consider award of a construction contract to Lester Contracting for the Brooks Lift Station reconstruction project. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

CITY COUNCIL MEETING: MARCH 14, 2022

AGENDA ITEM _____

DATE: 3.07.2021

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: BROOKS LIFT STATION IMPROVEMENTS

Background: The January 2020 Urban Engineering Lift Station Assessment Report, the Brooks Lift Station (on Half League Road in City park) is described as in “unsafe/very poor condition” and was recommended for complete reconstruction. In addition, the existing station has a capacity of 0.36 MGD, but sees peaks flows of over 0.5 MGD. A copy of the assessment of the lift station can be found at this link: <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:82cb0162-5513-4a98-8237-cb6c3392fa3a>

Urban Engineering was authorized under Task Order No. 23 to prepare plans and bid documents for this lift station replacement and upgrade. The proposed upgrade will have a total capacity of over 0.8 MGD allowing for future growth. Bids were advertised in the Port Lavaca Wave and invitations sent to Lester Contracting (Port Lavaca), Mercer Construction (Edna), Matula & Matula (Lake Jackson), Supak Construction (Orchard, TX), JTM (Rosenburg), and Keystone Construction (Austin), as well as several plan rooms. Bids were due on February 24. Only one bid was received from Lester Contracting. A bid tabulation is attached.

Financial Impact: \$500,000 was originally budgeted for this lift station replacement. This amount was reduced to \$300,000 last year after receiving bids on the Lynnhaven Lift Station and comparing the scopes of the two projects. To date \$32,800 has been encumbered for the Brooks Lift Station to pay for the engineering services.

The Base Bid amount is \$611,112.00, which we recognize is over twice the budgeted funds. Nearly \$70,000 of this is to demolish the existing lift station, which honestly had been overlooked when comparing the scope with Lynnhaven. We are currently looking at a change order which would reduce this demolition cost by only demolishing the above ground structure and simply backfilling the wet well in place. Other reasons for the higher than expected bid are basically a function of the state of our present economy and skyrocketing prices of materials.

This is an improvement project that has been needed to be done for many years and we do not recommend postponing. Neither do we realistically expect any reduced pricing if we were to put this out to bids again. As you can see, several utility contractors were actively solicited to bid, including a few plan rooms and the general response was they were already too busy.

To award the Base Bid project with a cost of \$611,112.00 we need \$343,912 of additional funds. There is about \$457,250 in the Utility Construction Account Fund which is set aside for the 12” water line between the two towers. Recall, this project was put on the back burner pending additional study. We would like to reassign \$350,000 of these funds to the Brooks Lift Station project in order to award this Base Bid now.

Staff recommendation: Staff recommends that Council award a construction project to Lester Construction in the amount of \$611,112.00 for this project. To fully fund the award, staff recommends that \$350,000 of funds reserved for the 12” waterline link project be reassigned to this project.

Attachment: Bid Tabulation

BID TABULATION					
CITY OF PORT LAVACA					
BROOKS LIFT STATION REPLACEMENT					
BID DATE: FEBRUARY 24, 2022					
				Lester Contracting, Inc.	
ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
BASE BID					
GENERAL					
1.	Mobilization, Insurance and Bonds (Maximum 5% of Base Bid)	1	LS	\$ 30,000.00	\$ 30,000.00
2.	Barricading & Traffic Control (Furnish, Install, Maintain & Remove Signs & Warning Devices) (Includes Flagmen, Traffic Handling & Temporary Striping)	1	LS	\$ 5,000.00	\$ 5,000.00
3.	Construction Staking	1	LS	\$ 3,500.00	\$ 3,500.00
4.	Dewatering per Section 01563	1	LS	\$ 5,000.00	\$ 5,000.00
SUBTOTAL GENERAL					\$ 43,500.00
DEMOLITION					
5.	Remove & Dispose of Existing Lift Station (Including, but not limited to, structures, pumps, valves, piping, and controls)	1	LS	\$ 50,000.00	\$ 50,000.00
6.	Remove & Dispose of Existing Concrete (Pavement & Sidewalk)	561	SF	\$ 9.50	\$ 5,329.50
7.	Remove & Dispose of Existing Asphalt (Pavement)	437	SF	\$ 6.00	\$ 2,622.00
8.	Remove & Dispose of Existing Concrete Curb	13	LF	\$ 47.00	\$ 611.00
9.	Remove & Dispose of Existing Concrete Structure (Inlet, Junction Box, Manhole)	2	EA	\$ 1,500.00	\$ 3,000.00
10.	Remove & Dispose of Existing Sanitary Sewer Main	74	LF	\$ 65.00	\$ 4,810.00
11.	Plug Existing Sanitary Sewer Main	2	EA	\$ 500.00	\$ 1,000.00
12.	Remove & Dispose of Existing Wooden Bollards	5	EA	\$ 65.00	\$ 325.00
13.	Remove & Dispose of Existing Tree	2	EA	\$ 1,000.00	\$ 2,000.00
SUBTOTAL DEMOLITION					\$ 69,697.50
PAVEMENT IMPROVEMENTS					
14.	Concrete Driveway (Commercial) (6" Thick, Class A)	431	SF	\$ 25.00	\$ 10,775.00
15.	Concrete Sidewalk	593	SF	\$ 19.50	\$ 11,563.50
SUBTOTAL PAVEMENT IMPROVEMENTS					\$ 22,338.50
SANITARY SEWER IMPROVEMENTS					
16.	Sanitary Sewer Force Main (8") (PVC) (Non-Paved Areas)	22	LF	\$ 95.00	\$ 2,090.00
17.	Sanitary Sewer Force Main (8") (PVC) (Asphalt Paved Areas)	51	LF	\$ 100.00	\$ 5,100.00
18.	Sanitary Sewer Force Main (8") (PVC) (Concrete Paved Areas)	9	LF	\$ 95.00	\$ 855.00
19.	Sanitary Sewer Main (15") (10' - 15' Cut) (Non-Paved Areas)	40	LF	\$ 200.00	\$ 8,000.00

BID TABULATION					
CITY OF PORT LAVACA					
BROOKS LIFT STATION REPLACEMENT					
BID DATE: FEBRUARY 24, 2022					
Lester Contracting, Inc.					
ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
20.	Sanitary Sewer Main (15") (10' - 15' Cut) (Asphalt Paved Areas)	51	LF	\$ 345.00	\$ 17,595.00
21.	Sanitary Sewer Main (15") (10' - 15' Cut) (Concrete Paved Areas)	4	LF	\$ 900.00	\$ 3,600.00
22.	Force Main 8" Bend (45 Deg)	1	EA	\$ 800.00	\$ 800.00
23.	Sanitary Sewer Manhole (Fiberglass) (5' - 10')	1	EA	\$ 8,500.00	\$ 8,500.00
24.	Sanitary Sewer Manhole (Fiberglass) (10' - 15')	2	EA	\$ 11,000.00	\$ 22,000.00
25.	Trench Excavation Protection (Sanitary Sewer Main & Services) (> 5' Cut)	177	LF	\$ 68.00	\$ 12,036.00
26.	Brooks Lift Station (Including all site improvements, pavement improvements, driveway, fencing, trench safety/shoring, 1 lift station structure and all pumping, piping equipment, lift station control panel, meter pedestal, and panel rack)	1	LS	\$ 395,000.00	\$ 395,000.00
SUBTOTAL SANITARY SEWER IMPROVEMENTS					\$ 475,576.00
TOTAL BASE BID					\$ 611,112.00
ALTERNATE NO. 1					
A1.	Remove & Dispose of Existing Asphalt (Pavement)	4,580	SF	\$ 1.50	\$ 6,870.00
A2.	Concrete Pavement (6" Thick, Class A)	4,580	SF	\$ 11.50	\$ 52,670.00
TOTAL ALTERNATE NO. 1					\$ 59,540.00
TOTAL BASE BID + ALTERNATE NO. 1					\$ 670,652.00
CALENDAR DAYS - SUBSTANTIAL COMPLETION					210

COMMUNICATION

SUBJECT: Consider Resolution No. R-031422-4 of the City of Port Lavaca suspending the May 2, 2022 effective date of the proposal by CenterPoint Energy Resources Corp., D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division to Implement Interim Grip Rate Adjustments for Gas Utility Investment in 2021 and requiring delivery of this resolution to the Company and Legal Counsel. Presenter is Anne Marie Odefey

INFORMATION:

RESOLUTION NO. R-031422-4

A RESOLUTION BY THE CITY OF PORT LAVACA, TEXAS SUSPENDING THE MAY 2, 2022 EFFECTIVE DATE OF THE PROPOSAL BY CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS – SOUTH TEXAS DIVISION TO IMPLEMENT INTERIM GRIP RATE ADJUSTMENTS FOR GAS UTILITY INVESTMENT IN 2021 AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Port Lavaca, Texas (“City”) is a gas utility customer of CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy South Texas Division, (“CenterPoint” or “the Company”) and a regulatory authority with an interest in the rates and charges of CenterPoint; and

WHEREAS, CenterPoint made filings with the City and the Railroad Commission of Texas (“Railroad Commission”) on March 3, 2022, proposing to implement interim rate adjustments (“GRIP Rate Increases”) pursuant to Texas Utilities Code § 104.301 on all customers served by CenterPoint, effective May 2, 2022; and

WHEREAS, it is incumbent upon the City, as a regulatory authority, to examine the GRIP Rate Increases to determine its compliance with the Texas Utilities Code.

THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS, THAT:

1. The May 2, 2022, effective date of the GRIP Rate Increases proposed by CenterPoint is hereby suspended for the maximum period allowed by Texas Utilities Code § 104.301(a) to permit adequate time to review the proposed increases, analyze all necessary information, and take appropriate action related to the proposed increases.

2. A copy of this Resolution shall be sent to CenterPoint, care of Keith L. Wall. at 1111 Louisiana Street, CNP Tower 19th Floor, Houston, Texas 77002 and to Thomas Brocato, legal counsel to the City, at Lloyd Gosselink, 816 Congress Ave., Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this 14th day of March, 2022.

Mayor Jack Whitlow

ATTEST:

City Secretary Mandy Grant

COMMUNICATION

SUBJECT: Consider Resolution No. R-031422-5 of the City of Port Lavaca authorizing the Mayor to execute an agreement with KSBR, LLC to administer the Community Development Block Grant Mitigation (CDBG-MIT) Coastal Resiliency Infrastructure Grant Program, Contract #22-087-001-D226, in the amount of \$887,480.00 and declaring an effective date. Presenter is Jody Weaver

INFORMATION:

RESOLUTION NO. R-031422-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT LAVACA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH KSBR, LLC TO ADMINISTER THE COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT) COASTAL RESILIENCY INFRASTRUCTURE GRANT PROGRAM, CONTRACT NO. 22-087-001-D226, IN THE AMOUNT OF \$887,480.00, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City is a sub-recipient of Community Development Block Grant Mitigation (CDBG- MIT) Coastal Resiliency Program, receiving funds in the amount of \$13,645,005.00, which will allow the City of Port Lavaca to construct breakwaters/living shorelines and enhance the shorelines by creating marsh habitats, and oyster reefs-fish habitats; and

WHEREAS, funding has been awarded, and this agreement sets forth the terms and conditions for KSBR, LLC to provide grant administration for completion of projects approved for mitigation funding.

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

1. That the Mayor is authorized to execute a Grant Administration Services agreement with KSBR, LLC to provide grant administration services for the Community Development Block Grant Mitigation (CDBG- MIT) Coastal Resiliency Program, Contract No. 20-087-001-D226, in the amount of \$887,480.00, substantially in the form attached hereto and incorporated herein, with changes in form as approved by the City Attorney.
2. That this resolution shall become effective immediately upon adoption

Passed and approved this 14th day of March, 2022.

Jack Whitlow, Mayor

ATTEST:

Mandy Grant, City Secretary

**GRANT ADMINISTRATION SERVICES FOR Non-Housing
UNDER THE U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK GRANT
MITIGATION PROGRAM
CONTRACT NO. 22-087-001-D226**

THE CITY OF PORT LAVACA (the “Subrecipient”) and KSBR, LLC, Tax Identification Number 81- 1402761 (“Provider”), each a “Party” and collectively, “the Parties,” enter into the following contract for grant administration services (the “Contract”) pursuant to Local Govt. Code 252 and 2 C.F.R. Part 200.

WHEREAS, the Subrecipient has received U.S. Department of Housing and Urban Development Community Development Block Grant - Mitigation funds, administered by the Texas General Land Office (“GLO”) for their Coastal Resiliency Program; and

WHEREAS, the CDBG-MIT program is funded under the with funds appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS, THAT the Parties agree to the following terms and conditions:

L. DEFINITIONS / INTERPRETIVE PROVISIONS / PROJECT DESCRIPTION

1.01 DEFINITIONS

“Activity” means a defined class of works or services authorized to be accomplished using CDBG-DR grant funds. Activities are specified in Subrecipient Budgets as ‘Category,’ and the terms are interchangeable under this Contract.

“Administrative and Audit Regulations” means the regulations included in Title 2, CFR, Part 200. Chapter 321 of the Texas Government Code; Subchapter F of Chapter 2155 of the Texas Government Code; and the requirements of Article VII herein. With regard to any federal funding, agencies with the necessary legal authority include: the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of Inspector General, and any of their authorized representatives. In addition, state agencies and/or designee’s with the authority to audit and inspect include, the Subrecipient, the GLO, the GLO’s contracted examiners, the State Auditor’s Office, the Texas Attorney General’s Office and the Texas Comptroller of Public Accounts.

“Activity” means a defined class of works or services authorized to be accomplished using CDBG-DR grant funds. Activities are specified in Subrecipient Budgets as ‘Category,’ and the terms are interchangeable under this Contract.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the execution page, or incorporated by reference, as if physically.

“Amendment” means a written agreement, signed by the parties hereto, which documents alterations to the Contract.

“Benchmark” or “Billing Milestone” means a clearly defined set of incremental services that must be performed; or an interim level of accomplishment that must be met by Provider in order to receive periodic incremental and final reimbursement for services under this Contract.

“CDBG—DR” means the Community Development Block Grant—Disaster Recovery Program administered by the U.S. Department of Housing and Urban Development, in cooperation with the GLO.

“CDBG-MIT” means the Community Development Block Grant—Mitigation Program administered by the U.S. Department of Housing and Urban Development, in cooperation with the GLO.

“Certificate of Construction Completion” means a document submitted by an engineer or, if none, a construction contractor, to a Grantee which, when executed by the Grantee, indicates acceptance of the non-housing project, as built.

“Contract” means this entire document, along with any Attachments, both physical and incorporated by reference; and any Amendments.

“Contract Period” means the period of time between the effective date of a contract and its expiration or termination date.

“Deliverable” means a unit or increment of work to include, any item, report, data, document, photograph, or other submission required to be delivered under the terms of this Contract, in whatever form =.

“Federal Assurances” means Standard Form 424B (Rev. 7-97) (non-construction projects); or Standard Form 424D (Rev. 7-97) (construction projects), in **Attachment A**, attached hereto and incorporated herein for all purposes.

“Federal Certifications” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions,” also in **Attachment A**, attached hereto and incorporated herein for all purposes.

“Final Inspection Report” means the document submitted by the housing contractor to a Subrecipient under a CDBG-DR Housing grant contract, indicating the completed construction of one Housing Unit.

“Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“GAAP” means “Generally Accepted Accounting Principles.”

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment B**, attached hereto and incorporated herein for all purposes, which Provider affirms by executing this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“GLO-Vendor Contract” means the contract or contracts between the GLO and Provider procured through the Solicitation; such GLO-Vendor Contract is hereby incorporated herein by reference, for all purposes.

“Grant Administration Fee” means the amount to be paid to Provider for all services performed for a Subrecipient.

“Housing” refers to a project involving home repair, home reconstruction, and new home construction; including housing for single-family and multi-family rental units under a CDBG-DR program grant.

“Housing Unit” means one house, or one multi-family rental unit.

“HSP” means HUB Subcontracting Plan, as outlined by Chapter 2161 of the Texas Government Code.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“HUD” means the United States Department of Housing and Urban Development.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>

“Non-housing” refers to a project involving the restoration and/or repair of infrastructure facilities and the economic revitalization activities approved under a CDBG-DR program grant.

“Performance Statement” means Provider’s detailed scope of work hereby incorporated for all purposes as **Attachment C**.

“Project” means the grant administration services described in **SECTION 1.03** of this Contract and in any applicable Attachments.

“Project Completion Report” means a report containing an “as built” accounting of all projects completed under a CDBG-DR non-housing or housing grant, and containing all information required to completely close out a grant file.

“Project Implementation Manual” means a set of guidelines for the CDBG-DR Program, incorporated herein by reference for all purposes in its entirety.

“Project Period” means the stated time for completion of a Project assigned by Work Order.

“Prompt Pay Act” means Chapter 2251, Subtitle F of Title 10 of the Texas Government Code.

“Provider” means KSBR, LLC, selected to provide the services under this Contract, if any. “Public Information Act” means Chapter 552 of the Texas Government Code.

“RFP” means the Request for Proposal put out by the Subrecipient and responded to by the Provider.

“Setup” means documentation, submitted by a Subrecipient, necessary for the GLO to determine that housing sites meet minimum eligibility criteria, resulting in approval for the Subrecipient to move forward with the projects.

“Solicitation” means Subrecipient’s Request for Proposals.

“Solicitation Response” means Provider’s full and complete response to the Solicitation, including any Addenda.

“State of Texas *TexTravel*” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontractor” means an individual or business that signs a contract to perform part or all of the obligations of Provider under this Contract.

“Subrecipient” means, the City of Port Lavaca, a local governmental body or political subdivision that receives funds under HUD’s CDBG—DR Program for housing projects. Any Work Order issued for services to a recipient of a housing grant shall refer to “Subrecipient” as the party served.

“Subrecipient Agreement” means the contractual agreement for a CDBG-DR housing or non-housing grant between the GLO and the Subrecipient for which Provider performs services assigned by the Subrecipient, if any.

“Technical Guidance Letter or ‘TGL’” means an instruction, clarification, or interpretation of the requirements of the CDBG-DR Program, issued by the GLO to specified recipients, applicable to specific subject matter, to which the addressed Program participants shall be subject.

1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, attachment, work order, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All attachments within this Contract, including those incorporated by reference, and any amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Subrecipient or by the Subrecipient by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Subrecipient shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract.
- (i) In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract; Attachments to the Contract: Attachment A; Solicitation Documents; and Provider’s Response to Solicitation.

1.03 PROJECT

Provider shall perform, or cause to be performed at the direction of the Subrecipient, in assistance to Subrecipient, comprehensive administration services necessary to facilitate activities for the disaster relief, recovery, restoration, and economic revitalization in areas impacted under the Coastal Resiliency Program; and will assist the Subrecipient in fulfilling State and Federal CDBG-MIT statutory responsibilities not limited to, performing grant administration services for non-housing projects. Grant administrative services must be performed in compliance with (i) HUD requirements, (ii) the Non- Exclusive List of Laws, Rules, and Regulations in Attachment D; Scope of Services in Attachment C; (iv) any Amendments to this Contract; (v) any Technical Guidance Letter, program requirements, or program guidance that may be issued by the GLO.

Provider shall be responsible at all times for maintaining close oversight of approved projects and record-keeping including, but not limited to, obtaining and maintaining, through Provider's own efforts, the Subrecipient's current Performance Statement / Implementation Schedule, and Budget, including Revisions approved and Technical Guidance Letters issued by the GLO; and any other information that may be required for the satisfactory performance by Provider of the services herein described or assigned under a Work Order, as discussed below.

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1.04 REPORTING REQUIREMENTS

Provider shall assist the Subrecipient to timely submit all reports and documentation that are required under this Contract and any Subrecipient Agreement.

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II. TERM**2.01 DURATION**

This Contract shall be effective as of the date signed by the last party and shall terminate on April 30, 2025. The Subrecipient, at its own discretion, may extend any contract awarded pursuant to the Solicitation for up to (2) additional year terms or until the time the grant funding expires, whichever comes first. Any extension will be subject to terms and conditions mutually agreeable to both parties.

2.02 EARLY TERMINATION

The Subrecipient may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of any such notice, Provider shall cease work, undertake to terminate any relevant subcontracts, and incur no further expense related to this Contract. Such early termination shall be subject to the equitable settlement of the respective interests of the parties, accrued up to the date of termination.

2.03 ABANDONMENT OR DEFAULT

If the Provider defaults on the Contract, the Subrecipient reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible vendor qualified under the Solicitation. The defaulting provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Subrecipient based on the seriousness of the default.

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L CONSIDERATION

3.01 CONTRACT LIMIT, FEES, AND EXPENSES

Provider will be compensated on at the negotiated fee basis, for an amount not to exceed, \$887,480.00, reimbursable in increments allowed in the Subrecipient Performance Statement.

The Grant Administration Fee shall not exceed the maximum amount available for such services as prescribed by the Subrecipient Agreement, the GLO, HUD or any governing law, for the term of this Contract. The Subrecipient agrees to pay Provider in accordance with The Prompt Pay ActTex. Govt. Code Ch. 2251. The fee shall be divided between \$100,000.00 for environmental, and \$787,480.00 for administration.

The form of invoice will be prescribed by the Subrecipient and made available to Provider in a separate submission from the Subrecipient.

Grant funds must not be commingled between or among HUD funding rounds; nor between or among Non-Housing and Housing assignments.

Reimbursement for services may be requested based on the Benchmarks, according to the type of services authorized, contingent upon Provider's facilitation of the timely submission of each Quarterly Report required, as discussed in **SECTION 1.04**, above.

At a minimum, invoices must clearly reflect:

- (a) Provider's Contract Number;
- (b) the name and GLO Contract Number (12 digits) of the Subrecipient Agreement to which services have been provided;
- (c) the current amount being billed;
- (d) the cumulative amount billed previously;
- (e) the balance remaining to be billed; and
- (f) an itemized statement of services performed, including documentation as required under the Contract, such as invoices, receipts, statements, stubs, tickets, time sheets, and any other which, in the judgment of the Subrecipient, provides full substantiation of reimbursable costs incurred.

Subject to the maximum Contract amount authorized herein, upon specific, prior, written approval by the Subrecipient, lodging, travel, and other incidental direct expenses may be reimbursed under this Contract for professional or technical personnel who are (a) away from the cities in which they are permanently assigned; (b) conducting business specifically authorized by the Subrecipient; and (c) performing services not originally contemplated in the Scope of Services.

The limit for such reimbursements shall be the rates established by the Comptroller of the State of Texas, as outlined in the State of Texas travel guidelines, *TexTravel*. If a rate within the limits set forth in *TexTravel* is not available, Provider shall use its best efforts to obtain the lowest available room rate. Provider shall obtain prior approval from the Subrecipient.

NOTICE TO PROVIDER:

Failure to include all of the information required in **SECTION 3.01** with each invoice may result in a significant delay in processing payment for the invoice.

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II. PROVIDER'S WARRANTY, AFFIRMATIONS, AND ASSURANCES

4.01 PERFORMANCE WARRANTY

Provider represents that all services performed under this Contract will be performed in a manner consistent with a degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Provider represents that all work product, including Deliverables if any, under this Contract shall be completed in a manner consistent with standards in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated Attachments (if any); and shall be fit for ordinary use, of good quality, and with no material defects. If Provider fails to submit Deliverables timely or to perform satisfactorily under conditions required by this Contract, the Subrecipient may require Provider, at its sole expense, to the extent such defect or damage is caused by the negligence of Provider, to (a) repair or replace all defective or damaged Deliverables; (b) refund any payment received for all defective or damaged Deliverables and, in conjunction therewith, require Provider to accept the return of such Deliverables; and/or (c) take necessary action so that future performance and Deliverables conform to the Contract requirements.

4.02 GENERAL AFFIRMATIONS

To the extent that they are applicable, Provider further certifies that the General Affirmations in **Attachment B** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein.

4.03 FEDERAL ASSURANCES

To the extent that they are applicable, Provider further certifies that the Federal Assurances in **Attachment A** have been reviewed and that Provider is in compliance with each of the requirements reflected therein. The Federal Assurance form must be executed by Provider's authorized signatory.

4.04 FEDERAL CERTIFICATIONS

To the extent that they are applicable, Provider further certifies that the Federal Certifications also in **Attachment A** have been reviewed, and that Provider is in compliance with each of the requirements reflected therein. The Federal Certifications form must be executed by Provider's authorized signatory.

In addition, Provider certifies that it is in compliance with any other applicable federal laws, rules, or regulations, as they may pertain to this Contract including, but not limited to, those listed in Attachment C.

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III. FEDERAL AND STATE FUNDING, RECAPTURE OF FUNDS, AND OVERPAYMENT

5.01 FEDERAL FUNDING

- (a) Funding for this Contract is appropriated under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (Public Law 115-123), enacted on February 9, 2018, for necessary expenses for Activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, mitigation, and affirmatively furthering fair housing, in accordance with Executive Order 12892, in the most impacted and distressed areas resulting from major declared disasters that occurred in 2015, 2016, and 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.). The fulfillment of this Contract is based on those funds being made available to the GLO as the lead administrative state agency. All expenditures under this Contract must be made in accordance with this Contract, the rules and regulations promulgated under the CDBG-MIT Program and any other applicable laws. All funds disbursed under this Contract are subject to recapture and repayment for non-compliance.
- (b) All participants in the CDBG-MIT grant program must have a data universal numbering system (DUNS) number, as well as a Commercial And Government Entity (CAGE) Code.
- (c) The DUNS number and CAGE Code must be reported to the GLO for use in various grant reporting documents.

5.02 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the Subrecipient, in its sole discretion, may terminate this Contract. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Furthermore, any claim by Provider for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Provider, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

5.03 RECAPTURE OF FUNDS

Provider shall conduct, in a satisfactory manner as determined by the Subrecipient, the Project as set forth in the Contract. The discretionary right of the Subrecipient to terminate for convenience under **SECTION 2.02** notwithstanding, it is expressly understood and agreed by Provider that the Subrecipient shall have the right to terminate the Contract and to recapture and be reimbursed for any payments made by the Subrecipient (i) that exceed the maximum allowable HUD rate; (ii) that are not allowed under applicable laws, rules, and regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures.

5.04 OVERPAYMENT

Provider understands and agrees that it shall be liable to the Subrecipient or the GLO for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Contract. Provider further understands and agrees that reimbursement of such disallowed costs shall be paid by Provider from funds which were not provided or otherwise made available to Provider under this Contract.

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IV. OWNERSHIP**6.01 OWNERSHIP AND THIRD PARTY RELIANCE**

- (a) The Subrecipient shall own, and Provider hereby assigns to the GLO, all right, title, and interest in all services to be performed; all goods to be delivered; and/or all other related work product prepared, or in the course of preparation, by Provider (or its subcontractors) pursuant to this Contract, together with all related worldwide intellectual property rights of any kind or character (collectively, the “Work Product”). Under no circumstance will any license fee, royalty, or other consideration not specified in this Contract be due to Provider for the assignment of the Work Product to the GLO or for the GLO’s use and quiet enjoyment of the Work Product in perpetuity. Provider shall promptly submit all Work Product to the GLO upon request or upon completion, termination, or cancellation of this Contract for any reason, including all copies in any form or medium.
- (b) Provider and the Subrecipient shall not use, willingly allow, or cause such Work Product to be used for any purpose other than performance of Provider’s obligations under this Contract without the prior written consent of either party and the GLO. Work Product is for the exclusive use and benefit of, and may be relied upon only by the parties. Prior to distributing any Work Product to any third party, other than the GLO, the parties shall advise such third parties that if it relies upon or uses such Work Product, it does so entirely at its own risk without liability to the GLO, Provider, or the Subrecipient.

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V. RECORDS, AUDIT, RETENTION, CONFIDENTIALITY, PUBLIC RECORDS

7.01 BOOKS AND RECORDS

Provider shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the Subrecipient, the GLO, the State of Texas Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

7.02 INSPECTION AND AUDIT

- (a) Provider agrees that all relevant records related to this Contract and any Work Product produced in relation to this Contract, including the records and Work Product of its Subcontractors, shall be subject to the Administrative and Audit Regulations. Accordingly, such records and Work Product shall be subject, at any time, to inspection, examination, audit, and copying at any location where such records and Work Product may be found, with or without notice from the Subrecipient, the GLO, HUD, or other government entity with necessary legal authority. Provider agrees to cooperate fully with any federal or state entity in the conduct of inspection, examination, audit, and copying, including providing all information requested. Provider will ensure that this clause concerning federal and state entities' authority to inspect, examine, audit, and copy records and Work Product, and the requirement to fully cooperate with the federal and state entities, is included in any subcontract it awards.
- (b) Provider understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Provider further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Provider will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to fully cooperate with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Provider relating to the Contract for any purpose. HUD, the Comptroller General, the General Accounting Office, the Office of Inspector General, or any authorized representative of the U.S. Government shall also have this right of inspection. **PROVIDER SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION 7.02, AND THE REQUIREMENT TO COOPERATE.**
- (c) Provider will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules including, but not limited to those identified in **Attachment D**, governing audit requirements pertaining to the Project.

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7.03 PERIOD OF RETENTION

All records relevant to this Contract shall be retained for a period subsequent to the final closeout of the State of Texas CDBG-DR grant program, in accordance with federal regulations. **The Subrecipient will notify all Program participants of the date upon which local records may be destroyed.**

7.04 CONFIDENTIALITY

To the extent permitted by law, Provider and the Subrecipient agree to keep all information confidential, in whatever form produced, prepared, observed, or received by Provider or the Subrecipient to the extent that such information is: (a) confidential by law; (b) marked or designated “confidential” (or words to that effect) by Provider or the Subrecipient; or (c) information that Provider or the Subrecipient is otherwise required to keep confidential by this Contract. Furthermore, Provider will not advertise that it is doing business with the Subrecipient, use this Contract as a marketing or sales tool, or make any press releases concerning work under this Contract without the prior written consent of the Subrecipient.

7.05 PUBLIC RECORDS

Information related to the performance of this Contract may be subject to the Public Information Act (“PIA”) and will be withheld from public disclosure or released only in accordance therewith. Provider shall make any information required under the PIA available to the Subrecipient in portable document file (“.pdf”) format or any other format agreed between the Parties. Failure of Provider to mark as “confidential” or a “trade secret” any information that it believes to be excepted from disclosure waives any and all claims Provider may make against the Subrecipient for releasing such information without prior notice to Provider. Provider shall notify the Subrecipient within twenty-four (24) hours of receipt of any third party written requests for information, and forward a copy of said written requests to the Subrecipient. If the request was not written, Provider shall forward the third party's contact information to the Subrecipient.

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VI. MISCELLANEOUS PROVISIONS

8.01 INSURANCE

Provider shall acquire for the duration of this Contract insurance with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount and in the form required by **Attachment E** of this Contract, **REQUIRED INSURANCE AND FORM**. Furthermore, Provider shall submit a certificate of liability insurance as required under this Contract, including (if requested) a schedule of coverage (or “underwriter’s schedules”) establishing to the satisfaction of the Subrecipient the nature and extent of coverage granted by each policy.

Provider shall submit certificates of insurance and endorsements electronically, in the manner requested by the Subrecipient. In the event that any policy is determined to be deficient to comply with the terms of this Contract, Provider shall secure such additional policies or coverage as the Subrecipient may reasonably request or that are required by law or regulation.

Provider will be responsible for submitting renewed certificates of insurance and endorsements, as evidence of insurance coverage throughout the term of this Contract. Provider may not be actively working on behalf of the Subrecipient if the insurance coverage does not adhere to insurance requirements. Failure to submit required insurance documents may result in the cancellation of this Contract.

8.02 TAXES/WORKERS’ COMPENSATION/UNEMPLOYMENT INSURANCE

PROVIDER AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, PROVIDER SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF PROVIDER’S AND PROVIDER’S EMPLOYEES’ TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. PROVIDER AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS’ COMPENSATION. THE SUBRECIPIENT SHALL NOT BE LIABLE TO THE PROVIDER, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/ OR WORKERS’ COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 2) PROVIDER AGREES TO INDEMNIFY AND HOLD HARMLESS THE SUBRECIPIENT, THE GLO, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS’ FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS’ COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. PROVIDER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS’ FEES. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE SUBRECIPIENT NAMED AS A DEFENDANT IN ANY LAWSUIT AND

PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE SUBRECIPIENT. PROVIDER AND THE SUBRECIPIENT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

8.03 LEGAL OBLIGATIONS

Provider shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Provider to provide the goods or services required by this Contract. Provider will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Provider agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

8.04 INDEMNITY

EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE SUBRECIPIENT OR THE GLO, PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS THE SUBRECIPIENT, THE STATE OF TEXAS, THE GLO, AND THE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES OF THE SUBRECIPIENT, THE STATE OF TEXAS, AND THE GLO FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- **THIS CONTRACT;**
- **ANY NEGLIGENCE, ACT, OMISSION, OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN; OR**
- **ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**

PROVIDER SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE SUBRECIPIENT. THE PROVISIONS OF THIS SECTION 8.03 SHALL SURVIVE TERMINATION OF THIS CONTRACT.

8.05 ASSIGNMENT AND SUBCONTRACTS

Provider shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the Subrecipient. Notwithstanding this provision, it is mutually understood and agreed that Provider may subcontract with others for some or all of the services to be performed. In any approved subcontracts, Provider shall legally bind such subcontractor to perform and make such subcontractor subject to all the

duties, requirements, and obligations of Provider as specified in this Contract. Nothing in this Contract shall be construed to relieve Provider of the responsibility for ensuring that the goods delivered and/or the services rendered by Provider and/or any of its subcontractors comply with all the terms and provisions of this Contract. Provider will provide written notification to the Subrecipient of any such subcontractor performing fifteen percent (15%) or more of the work under this Contract, including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

8.06 RELATIONSHIP OF THE PARTIES

Provider is associated with the Subrecipient only for the purposes and to the extent specified in this Contract, and, with respect to Provider's performance pursuant to this Contract, Provider is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the Subrecipient or the GLO any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other party. Provider shall be solely responsible for, and the Subrecipient shall have no obligation with respect to:

- (a) withholding of income taxes, FICA, or any other taxes or fees;
- (b) industrial or workers' compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by the State to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave; or
- (f) unemployment compensation coverage provided by the State.

8.07 COMPLIANCE WITH OTHER LAWS

In the performance of this Contract, Provider shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Provider shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract including, but not limited to, those attached hereto and incorporated herein for all purposes as **Attachment D**. Provider will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

8.08 NOTICES

Any notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

Subrecipient

City of Port Lavaca
202 North Virginia
Port Lavaca, Texas 77979

Provider

KSBR, LLC
 430 Church Street
 Sulphur Springs, TX 75482

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

8.10 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit between Subrecipient and Provider under this Contract shall be in a court of competent jurisdiction in Calhoun County, Texas; irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

8.11 SEVERABILITY

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

8.12 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected party's obligation to comply with such covenant shall be suspended, and the affected party shall not be liable for damages for failure to comply with such covenant. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to Provider.

8.13 DISPUTE RESOLUTION

The parties hereto agree to resolve all disputes arising hereunder in accordance with this section. If a dispute arises out of or relates to this Agreement or any alleged breach hereof, including determination of responsibility for any costs disallowed as a result

of non-compliance with federal, state or CDBG-DR program requirements, the party desiring to resolve such dispute shall deliver a written notice of the dispute, including the specific claim in the dispute to the other party. Following the delivery of such notice, the parties involved in the dispute shall meet at least twice within the thirty (30) day period commencing with the date of the notice and in good faith shall attempt to resolve such dispute through negotiation. If any dispute is not resolved or settled by the parties as a result of such negotiation, the parties in good faith shall submit the dispute to non-binding mediation before a retired judge of a federal district court or Texas district court or a similarly qualified, mutually agreeable individual. The parties shall bear the costs of such mediation equally. If is not resolved through such mediation, either party may proceed to file suit.

8.14 ENTIRE CONTRACT AND MODIFICATION

This Contract, its integrated Attachment(s), and any Technical Guidance issued in conjunction with this Contract, if any, constitute the entire agreement of the parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachment(s), Technical Guidance Letter shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment, Technical Guidance Letter, or Revision specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract.

8.14 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the GLO within thirty (30) days of execution by the other party, this Contract shall be null and void. In the sole discretion of the GLO, Work Orders issued, if any, may be executed by the parties in counterparts exchanged by electronic mail.

8.15 THIRD-PARTY BENEFICIARY

The Parties agree that the GLO, as the administrator of the CDBG-DR program, is a third-party beneficiary to this Contract and that the GLO shall have the right to enforce any provision of this Contract. Provided, however, that GLO shall only enforce a provision Contract after notifying the Parties, in writing, of a potential breach or default of the Contract and allowing the Provider sixty (60) days to cure the breach or default. Venue of any suit under this Section 8.17 shall be in a court of competent jurisdiction in Travis County, Texas. Provider irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

8.16 PROPER AUTHORITY

Each party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Provider acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by Provider before this Contract is effective or after it ceases to be effective are performed at the sole risk of Provider.

SIGNATURE PAGE FOLLOWS

Signature

This contract is effective on the date of the last party's signature.

City of Port Lavaca

KSBR, LLC.

By:

By:

Jack Whitlow, Mayor

Katy Sellers, President

Date: _____

Date: _____

COMMUNICATION

SUBJECT: Consider recommendation of the Planning Board for approval of a conceptual Daycare to be located at 511 S. Virginia Street. Presenter is Jody Weaver

INFORMATION:

CITY OF PORT LAVACA

MEETING: March 14, 2022**AGENDA ITEM** _____**DATE:** 03.8.2022**TO:** HONORABLE MAYOR WHITLOW AND CITY COUNCIL MEMBERS**FROM:** SARA SANCHEZ, PERMIT CLERK**SUBJECT:** Consider recommendation of the Planning Board approval of a conceptual daycare. To be located to at 511 S. Virginia.

The applicant, Kimberly Riley, has owned and operated Ladybug Preschool for 14.5 years in Port Lavaca. This current daycare is located at 515 N. Virginia Street, and Kimberly is proposing to relocate to be an in-home daycare provider to be located at 511 S. Virginia Street. Kimberly intends to keep her current hours of operation which are from 7:00 am to 5:30 pm. The intent is to have a smaller in-home daycare with approximately seventeen (17) children instead of her commercial/retail space as her daycare in the retail/commercial corridor of Virginia. Her proposed new location is a single-family residential home. The home does have a long driveway to accommodate the drop-off and pick-up of the children in her care. She will schedule the drop-offs and pick-ups with the parents to not fill the driveway space. Kimberly is an experienced licensed childcare provider with a positive long-standing history as a business owner in childcare services in Port Lavaca. Her business is an in-demand service for Port Lavaca families.

Kimberly is currently state, and county licensed at her existing daycare. She will continue to maintain compliance with all state and local licensing criteria.

The following is Kimberly's narrative of her daycare business proposal:

I have a bachelor degree in Interdisciplinary Studies with specializations in early childhood and reading. I have over 30 years experience in the field of education. I ran my school at 1400 N. Virginia, presently Donut Palace for 4 years. I then moved to a home at the corner of Austin and Commerce streets for 8.5 years, 401 South Commerce. (Hurricane Harvey did several thousand dollars worth of damage to my business.). I am currently located at 515 N. Virginia Street, previously Sandy and Co.

I have been very successful as a business owner and have provided childcare to thousands of families in Port Lavaca.

I am seeking to relocate to a home again. I like the idea of a home environment for the children. I would like to have a smaller school of around 17 children, depending on state licensing permit. I am currently paying a rent of \$4000.00 per month. In order to provide parents with reasonable costs, I only charge \$100.00/week which includes breakfast, lunch, and snacks/milk. I also provide preschool for the children, ages 18 months to 5 years of age. I know it is a good investment to

CITY OF PORT LAVACA

purchase a home and would be much more affordable. I have found the perfect home at 511 S. Virginia. I plan to keep my current hours, 7 am to 530 pm.

I am providing a very important service to the working parents of our city. I need a place that I can afford, and a home environment is best for the children in a small group setting. Please approve my request for the children, working parents, and myself as a business owner who strives to help our community.

I already have a permit from the state of Texas licensing. I will just need to change my address and number of children in care.

The following are sites for daycare compliance:

Texas Health and Human Services - Minimum Standards for Child-Care Centers

<https://www.hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/protective-services/ccl/min-standards/chapter-746-center-s.pdf>

Texas Health and Human Services - Texas Childcare Licensing

https://www.dfps.state.tx.us/child_care/

Victoria County Health Department - Environmental Services for all of your food permitting regulations for your child care food program.

<https://www.vcphd.org/page/health.environmental.home>

The Fire Department will do an inspection to establish occupant load and fire protection measures.

Staff Recommendation: APPROVAL

Approval of a conceptual daycare. To be located at 511 S. Virginia.

Planning Board Recommendation: APPROVAL

Approval of a conceptual daycare. To be located at 511 S. Virginia. Requested a driveway be poured.

Attachments:

- Google Maps
- Emails

Current Location





Ladybug Preschool

Capacity 15-20 children (depending on state permit)
Open from 7:00 am to 5:30 pm.

Ages 18m. - 8 years old (according to permit)
I am a preschool so my students are
18 months to 5 years of age.

parking plan :

parents will park to the right of home.

Parents will complete a schedule of
drop-off & pick-up times. There will
only be 2-3 parents present at
certain, designated times.

Employees, myself & one aide will park
to right of home, closest to back fence.

I will have a driveway installed for
parking.

Kimberly Riley

K. Riley

2/8/14/2022
K

2/3/22, 9:05 AM

Matrix

360 Property View

511 S Virginia Street, Port Lavaca, Texas 77979

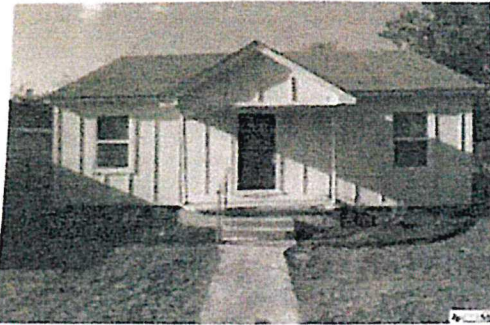
MLS #: 457032

Listing

MLS #: 457032 (Active)

List Price: \$125,000

511 S Virginia Street Port Lavaca, TX 77979



Residential Single Family

List Price: \$125,000

Orig Price: \$135,000

Price/SQFT: \$139.51

County: Calhoun

Elem. School:

High School:

Style: A-Frame

#Stories: One

Bedrooms: 2

Full Baths: 1

Half Baths: 0

Apex Sqft: 896

Source Sqft: Appraisal District

Construction Status: Complete Construction

Pool: None Pool Features:

Spa/Hot Tub Desc: No

First Right Refusal Option: N/A

Subdivision: Port Lavaca Original Townsite

School District: Calhoun County ISD

Middle School:

Waterfront: No

Apex Acreage: 0.185

Lot Dimensions:

Year Built: 1953

Year Built Src: Appraisal District

Zoning:

Construction Status: Complete Construction

Pool: None Pool Features:

Spa/Hot Tub Desc: No

Schedule a Showing

Recent: 01/31/2022 : PRC DECR : \$129,500->\$125,000

Legal Description: PORT LAVACA ORIGINAL TOWNSITE, BLOCK 29, LOT 4 & PT 5

Property ID: 17260

Res Flooded: No

Builder Name:

Total Tax Rate:

FEMA Flood Plain: Unknown

Restrictions:

Soil Type:

Sprinkler System:

Geo ID: S000100290000200

Manufactured Allowed:

Access:

In City Limits:

Estimated Completion Date:

Front Faces:

Lot/Block: 4/29

ETJ:

Horse Allowed:

Horses Alwd:

Room	Level	Dimensions
Bedroom		

Owner(s) Legal Name: STONE GABLE INVESTMENTS LLC

ByrAgyComp: 2.5%

Sub Agy Comp: 1.5%

Earnest Money: \$1,350.00

Also For Rent:

HOA: None

Additional MLS#:

Currently Leased: No

HOA Amount:

HOA Management Co Name:

HOA Term:

HOA Transfer \$:

HOA Phone:

HOA Name:

HOA Website:

HOA Fees Incl:

Documents on File: Lead Based Paint Addendum, Seller's Disclosure

Acceptable Financing: Cash, Conventional, FHA, Owner Financing, VA

Possession: Closing, Funding

Sale Type: Resale

Var Compensation: No

Prospects Exempt: No

Auction YN:

Short Sale:

Agent Disclosure:

Intermediary: Yes

Commission Payable:

Community Web:

Exemptions:

Resale Certificate Fee:

Listing Type:

Exclusive Right to Sell

Multiple PID #'s:

Security Dep Amt:

Security Deposit Paid To:

Sale Type: Resale

Tax Annl Amt: \$971

Tax Year: 2021

Taxed by Mult Counties:

Estimated Tax:

Tax Rate: 2.56

Water Access:

Interior Feat:	None
Kitchen Feat:	Solid Counter Tops
Master Bed Desc:	Ceiling Fan
Appliance/Equip:	Range-Electric
Constr Materials:	Wood
# Carport:	None
Carport:	
Garage:	None
Roof:	Shingle-Composition
Foundation:	Pillar/Post/Pier

Gated Community YN: No

Laundry: Dryer Connection Elec, Washer Connection

Fireplace: None

(12x12)
Classroom #3

nap area +
diaper changing
area

Bathroom

(10x11)
Classroom #4

to be used for
7:00 am arrivals

Hall

Kitchen

Storage
area

(12x13)
Classroom #2
(ages 18m. - 2 yrs.)
(centers)

(14x16) #1
Classroom
(Ages 3+ 4 yr. olds)
(centers + classroom)

Relocation: Driveway
Bauer Community Center =

Exit

Victoria County Public Health Department

2805 N Navarro Victoria TX 77901
(361) 578-6281



Public Health
Prevent. Promote. Protect.

ENVIRONMENTAL HEALTH SERVICES

Calhoun County 2022 Permit


This is to Certify That Ladybug Preschool

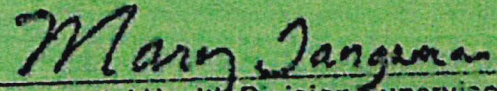
PL-411

has complied with the rules and regulations of this Department and is hereby granted
this PERMIT which entitles named establishment to conduct operations as at: Calhoun Co. Day Care Facility
Street: 515 N. Virginia St City: Port Lavaca TX Zip: 77979

This PERMIT shall remain in full force until: 5/31/2022
or unless revoked sooner for non-compliance of the rules and regulations of the County's Health Department.

Issued this date: 4/8/2021 Owner(s): Kim Riley


Health Department Director


Environmental Health Division Supervisor

Amended Permit



Section VIII. Item #22.

Item 1.

220 KB

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHILD CARE LICENSING

This is to certify:

Kimberly Riley
22 REDFISH WAY
PORT LAVACA, TX 77979 -5338

has been issued a License to operate as a
Licensed Child Care Program
Under the provisions of Chapter 42, Human Resources Code.

Located at:

Ladybug Preschool
515 N VIRGINIA ST
A
PORT LAVACA, TX 77979

Ages:
Toddlers, Pre-Kindergarten, School

Total Capacity: 85
Infant Capacity: 0

License Number: 1708243

Issuance Date: November 30, 2020

Cecile Erwin Young, Executive Commissioner

Attention:

- . This permit must be posted in a prominent place on premises where parents and others may see it during operating hours.
- . This permit is non-transferable and shall remain in effect until it expires, the Texas Health and Human Services Commission revokes or suspends it, or the Holder surrenders it.

Parents:

To verify the status of this permit or to check the compliance history, please call your local licensing office or visit www.txchildcaresearch.org.

COMMUNICATION

SUBJECT: Announcement by Mayor that City Council will retire into closed session:

INFORMATION:

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). Presenter is Mayor Whitlow

COMMUNICATION

SUBJECT: Return to Open Session and take any action deemed necessary with regard to matters in closed session. Presenter is Mayor Whitlow

INFORMATION:

