

CITY OF TEXAS CITY
REGULAR CALLED CITY COMMISSION MEETING

AGENDA

WEDNESDAY, MARCH 1, 2023 - 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM - CITY HALL
1801 9th Ave. N.
Texas City, TX 77590

PLEASE NOTE: Public comments and matters from the floor are generally limited to 3 minutes in length. If you would like to request to speak, please do so in advance of the meeting by filling out a Request To Address Commission form. All in attendance are required to remove hats and/or sunglasses (dark glasses) during meetings and to also silence all cell phones and electronic devices.

- (1) ROLL CALL
- (2) INVOCATION
- (3) PLEDGE OF ALLEGIANCE
- (4) PROCLAMATIONS AND PRESENTATIONS
- (5) REPORTS
 - (a) Marshal Office Racial Profiling Report (Marshal's Office)
 - (b) Fire Inspection Prevention Report (Fire Marshal)
- (6) PUBLIC COMMENTS
- (7) CONSENT AGENDA
 - (a) Approve City Commission Minutes for February 15, 2023 meeting. (City Secretary)
 - (b) Consider and take action on Resolution No. 2023-027, appointing Titilayo Smith as the Fair Housing Administrator in accordance with Texas City's Code of Ordinance Chapter 93, Section 24. (City Secretary)
 - (c) Consider and take action on Resolution No. 2023-028, adopting the updated CDBG Program Policies and Procedures. (Mayor's Office - Grants Administration)

- (d) Consider and take action on Resolution No. 2023-029, authorizing the Mayor to enter into an Interlocal Agreement for Cooperative Purchasing Services with Purchasing Cooperative of America (PCA) - a cooperative purchasing program. (Purchasing)
 - (e) Consider and take action on Resolution No. 2023-030, awarding A-1 Fire Equipment Co. D/B/A Of Island Fire and Safety Equipment, Inc PCA-OD-368-22 Trades and Related Items contract through Purchasing Cooperative of America (PCA)- a purchasing cooperative program. (Purchasing)
 - (f) Consider and take action on Resolution No. 2023-031, approving surface repairs/restriping and logo replacement to (4) gymnasium floors from BSN Sports through Buyboard (contract no. 679-22) – local government purchasing cooperative. (Purchasing)
 - (g) Consider and take action on Resolution No. 2023-032, approving the purchase of repairs to the Natatorium from Progressive Commercial Aquatics, Inc. through Buyboard (contract no. 613-20) – local government purchasing cooperative. (Purchasing)
 - (h) Consider and take action on Resolution No. 2023-033, authorizing the Mayor, or his designee, to enter into a Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC. (Transportation and Planning)
 - (i) Consider and take action on Resolution No. 2023-034, approving appointments of Board Members to the Cultural Arts Foundation and Housing Authority Advisory Committees. (City Secretary)
 - (j) Consider and take action on Resolution No. 2023-035, authorizing the Mayor, or his designee, to enter into a Road Easement Agreement with the United States Army Corps Of Engineers. (Management Services)
- (8) REGULAR ITEMS
- (a) Consider and take action on Ordinance No. 2023-04, amending the City's fiscal year 2022-2023 budget to create a fund and the funding for the Texas City Commission Community Grant program. (Finance)
 - (b) Consider and take action on Ordinance No. 2023-05, amending the 2022-2023 Fiscal Year Budget to account for a bridge replacement grant from Texas Department of Transportation. (Finance)
- (9) COMMISSIONERS' COMMENTS
- (10) MAYOR'S COMMENTS
- (11) ADJOURNMENT

NOTICE OF ANY SUBJECT APPEARING ON THIS AGENDA REGARDLESS OF HOW THE MATTER IS STATED MAY BE ACTED UPON BY THE CITY COMMISSION.

NOTICE: The City of Texas City will furnish free transportation to handicapped individuals via a 4-door sedan for anyone wishing to attend the City Commission meetings. Call 948-3111, City Secretary's Office before noon on Monday preceding the meeting to make arrangements.

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THIS NOTICE OF MEETING WAS POSTED ON THE BULLETIN BOARDS AT CITY HALL, 1801 9TH AVENUE NORTH, TEXAS CITY, TEXAS, AT A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AND ON THE CITY'S WEBSITE ON FEBRUARY 24, 2023, PRIOR TO 5:00 P.M. AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.

RHOMARI LEIGH
CITY SECRETARY

CITY COMMISSION REGULAR MTG

(5) (a)

Meeting Date: 03/01/2023

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Marshal Office Racial Profiling Report

BACKGROUND (Brief Summary)

RECOMMENDATION

Fiscal Impact

Attachments

Staff Report

Texas City Marshal's Office

- 2022 Annual Report
- March 1, 2023



Duties of TCMO

- Locate Wanted Individuals
- Assist the Texas City Municipal Court in:
 - Gaining Compliance to Judge's Orders
 - Reducing the Number of Outstanding Warrants
 - Increase the Number of Closed Cases
- Provide Security for Municipal Court
- Provide Security for City Hall



Racial Profiling Requirements



- Required to establish a policy:
 - *Defines racial profiling.
 - *Prohibits peace officers employed by the Marshals Office from engaging in racial profiling.
 - *Implements process for individuals to file a complaint.
 - *Provide education relating to compliment/complaint process.
 - *Requires appropriate corrective action against a peace officer shown to have engaged in racial profiling.
 - *Chief Administrator required to collect and report racial profiling statistics to TCOLE & local governing body.

Racial Profiling Report

- 2022 – Reporting Year
 - No traffic stops resulting in:
 - Verbal Warnings
 - Written Warnings
 - Citations
 - Arrest





2022 TCMO Warrant Stats

Warrants
Cleared –
3,543

Warrant
Value -
\$1,173,547

Collected -
\$771,669
(66%)

Cases
Closed –
2,822
(80%)



Goals

- Assist the municipal court with developing and implementing a Community Court.
- Find an excellent candidate to fill open position.
- Promote the TCMO via public outreach and social media.
- Continue to expand skip trace resources.



Questions?

CITY COMMISSION REGULAR MTG

(5) (b)

Meeting Date: 03/01/2023

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Fire Inspection Prevention Report (Fire Marshal)

BACKGROUND (Brief Summary)

RECOMMENDATION

Fiscal Impact

Attachments

Staff Report

Annual Fire Prevention Report

March 1, 2023



What we do

- Planning and development- reviewing detailed site plans, zoning changes, preliminary plats, re-plats, environmental assessments, civil blue prints, mechanical blue prints, and structural blue prints.
- Fire Investigations – cause determination and reporting.
- Public Education – fire prevention presentations at schools, safety presentations to various community groups.
- Inspections – Only city entity that conducts reoccurring safety inspections of existing occupancies for health and safety compliance.
- Neighborhood Improvement Services– oversees projects including substandard structures, junk and debris, high grass, and junk or abandoned vehicles.



What we do

- Enforcing all city ordinances – zoning, building, and fire code.
- Issuing Operational Permits – alcohol, hazardous operations, flammable liquid storage, compressed gas storage, explosive storage and transport, daycares and group homes.

Fire Prevention Month in October





Annual Statistics

- Inspections- 1310
- Fires Investigated- 86
- Numerous Code Complaint Investigations

Notable Openings

Blue Lagoon Bar & Grill



Giles Middle School



Smoothie King - 3401 Palmer Highway



Rich's Car Wash – 2821 Palmer Highway



The Yella Dog – 2800 Ted Dudley Drive



ZERO FIRE FATALITIES IN 2022

CITY COMMISSION REGULAR MTG

(7) (a)

Meeting Date: 03/01/2023

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Approve City Commission Minutes for February 15, 2023 meeting. (City Secretary)

BACKGROUND (Brief Summary)

RECOMMENDATION

Fiscal Impact

Attachments

Minutes

REGULAR CALLED CITY COMMISSION MEETING

MINUTES

WEDNESDAY, FEBRUARY 15, 2023 – 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM – CITY HALL

A Regular Called Meeting of the City Commission was held on Wednesday, FEBRUARY 15, 2023, at 5:00 P.M. in the Kenneth T. Nunn Council Room in City Hall, Texas City, Texas. A quorum having been met, the meeting was called to order at 5:00 p.m. by Mayor Dedrick D. Johnson.

1. ROLL CALL

Present: Dedrick D. Johnson, Mayor
Thelma Bowie, Commissioner At-Large, Mayor Pro Tem
Abel Garza, Jr. , Commissioner At-Large
DeAndre' Knoxson, Commissioner District 1
Felix Herrera, Commissioner District 2
Dorthea Jones Pointer, Commissioner District 3
Jami Clark, Commissioner District 4

2. INVOCATION

Led by Pastor Pierce Eaton of First Baptist Church.

3. PLEDGE OF ALLEGIANCE

Led by Mayor Pro Tem Thelma Bowie.

4. PROCLAMATIONS AND PRESENTATIONS

a. Service Awards

Corbin Ballast	Water	02/04/2013	10 years
Stacy Abraham	Public Works	02/18/2008	15 years
Jose Saldivar	Police	02/11/1993	30 years

5. REPORTS

a. Texas City's Annual Financial Report for FY 2021-2022

Patrick Simmons, Engagement Partner at Whitley Penn, presented the City's Annual Financial Report for FY 2021-2022. The City received an unmodified or "clean" opinion.

6. PUBLIC COMMENTS

Farhan Khokhar gave a public comment.

7. CONSENT AGENDA

Commissioner District 3 Dorthea Jones made a motion to approve Consent Agenda items a, b, c, d, and e; the motion was seconded by Commissioner District 4 Jami Clark. All present voted AYE. MOTION CARRIED.

- a. Approve City Commission Minutes for February 1, 2023 meeting. (City Secretary)

Vote: 7 - 0 CARRIED

- b. Consider and take action on Resolution No. 2023-023, authorizing the purchase of a new replacement fuel system for Pump Station A in the amount of \$214,438.00. (Public Works)

Vote: 7 - 0 CARRIED

- c. Consider and take action on Resolution No. 2023-024, approving and awarding Commission Grant funds in the amount of \$2,500.00 to assist The Salvation Army - Boys & Girls Club of Texas City. (Mayor Pro Tem Thelma Bowie)

Vote: 7 - 0 CARRIED

- d. Consider and take action on Resolution No. 2023-025, authorizing the Texas City Economic Development Corporation to allocate \$100,000.00 from the TCEDC Budget for the purpose of residential demolition projects, in accordance with Bid No. 2023-002. (Economic Development)

Vote: 7 - 0 CARRIED

- e. Consider and take action on Resolution No. 2023-026, approving the annual Galveston County Mosquito Control Program contract. (Management Services)

Vote: 7 - 0 CARRIED

8. REGULAR ITEMS

- a. Consider and take action on Ordinance No. 2023-03, amending and rewording Texas City Code of Ordinance, Chapter 122, Utilities, Sections 122-141, Backflow. (Utilities)

Motion by Commissioner District 4 Jami Clark, Seconded by Commissioner District 2 Felix Herrera

Vote: 7 - 0 CARRIED

9. ADJOURNMENT

Having no further business, Commissioner District 3 Dorthea Jones made a MOTION to ADJOURN at 5:30 p.m.; the motion was SECONDED by Commissioner District 4 Jami Clark. All present voted AYE. MOTION CARRIED.

DEDRICK D. JOHNSON, MAYOR

ATTEST:

Rhomari Leigh, City Secretary
Date Approved:

CITY COMMISSION REGULAR MTG

(7) (b)

Meeting Date: 03/01/2023

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Consider and take action on Resolution No. 2023-027, appointing Titilayo Smith as the Fair Housing Administrator in accordance with Texas City's Code of Ordinance Chapter 93, Section 24. (City Secretary)

BACKGROUND (Brief Summary)

§ 93.24 FAIR HOUSING ADMINISTRATOR.

(A) The Mayor shall appoint and the commission shall confirm a Fair Housing Administrator, referred to in the subchapter as "Administrator", who shall have the responsibility for implementing this subchapter.

(B) The Administrator may delegate his or her authority to investigate and conciliate complaints to other city employees under his or her direction.
(1998 Code, § 66-40)

RECOMMENDATION

Fiscal Impact

Attachments

Resolution

RESOLUTION NO. 2023-027

A RESOLUTION APPOINTING TITILAYO SMITH AS THE FAIR HOUSING ADMINISTRATOR IN ACCORDANCE WITH TEXAS CITY'S CODE OF ORDINANCE CHAPTER 93, SECTION 24; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

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

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby appoints Titilayo Smith as the Fair Housing Administrator in accordance with Texas City's Code of Ordinance Chapter 93, Section 24.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (c)

Meeting Date: 03/01/2023

Adoption of Updated CDBG Program Policies and Procedures

Submitted For: Titilayo Smith, Community Development/ Grant Admin

Submitted By: Titilayo Smith, Community Development/ Grant Admin

Department: Community Development/ Grant Admin

Information

ACTION REQUEST

Approve and adopt the updated Community Development Block Grant Program Policies and Procedures.

BACKGROUND (Brief Summary)

The City is required to maintain a current policies and procedures document for the CDBG Program.

The update includes:

- Update to organization chart including the Grants Administrator position.
- Addition of Information Management section identifying eCivis and Neighborly Software as the information systems of record for the City as it relates to grants administration and program administration respectively.
- Deletion of First Time Homebuyer Program section and guidelines in appendices (all programs have separate guideline manuals).
- Update of Annual CDBG Allocation Process to include Grants Administrator.

RECOMMENDATION

It is the recommendation of the Community Development/Grants Administrator that the Commission adopt this update.

Fiscal Impact

Attachments

CDBG Program Policies and Procedures
Resolution

COMMUNITY DEVELOPMENT BLOCK GRANT POLICIES AND PROCEDURES

Department of Community Development
928 5th Ave N
Texas City, TX 77590

Revised: 2/2023

Dedrick D. Johnson, Sr.
Mayor

Titilayo Smith
Community Development/Grants Administrator



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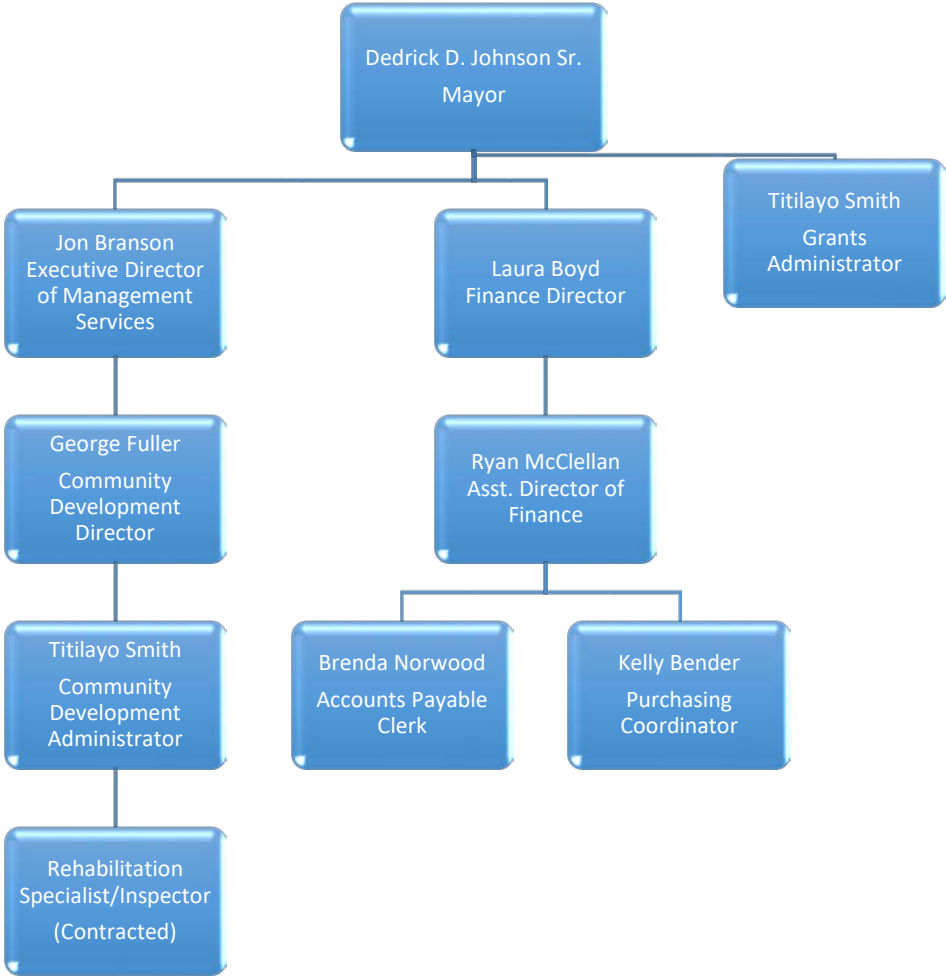
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- Appendix A Environmental Review Record
- Appendix B 2 CFR 200 Administrative Requirements
- Appendix C Personally Identifiable Information (PII) Policy
- Appendix D Texas City CDBG Annual Allocation Process

These CDBG Policies and Procedures are intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, federal regulations will prevail.

CITY OF TEXAS CITY ORGANIZATIONAL CHART 09/2022



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The City of Texas City Community Development Office does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its federally assisted programs or activities.

INTRODUCTION

The Community Development Block Grant (CDBG) Entitlement Program provides annual grants on a formula basis to entitled cities and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. The program is authorized under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended.

Entitlement communities develop their own programs and funding priorities. However, grantees must give maximum feasible priority to activities which benefit low-and moderate-income persons. A grantee may also carry out activities which aid in the prevention or elimination of slums or blight. Additionally, grantees may fund activities when the grantee certifies that the activities meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. CDBG funds may not be used for activities which do not meet one of these national objectives.

Since 1976, the City of Texas City has received a yearly Community Development Block Grant (CDBG) entitlement allocation from the U.S. Department of Housing and Urban Development (HUD). To continue participation in this program, the City contractually agrees with HUD to implement the Housing and Community Development Act of 1974 and related CDBG program regulations in accordance with Title 2 CFR 200 with guidance from 24 CFR 570. All CDBG allocations are subject to the regulations detailed in the financial management systems and Federal Administration Requirements at Title 2 CFR 200.

These Program Policies & Procedures provide the framework guiding the operation of Texas City's Community Development Block Grant (CDBG) Program. It provides an approach for making decisions, ensuring program compliance, and safeguarding participant's rights in a program that is operated in a fair and consistent manner.

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Any discrimination based on age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity.

CDBG Eligible Activities

Following is a list of examples of eligible activities that can be assisted with CDBG funds: (A full listing of basic eligible activities can be found in Sections 570.201- 570.206 of the CDBG Regulations)

- Acquisition of real property for any public purposes other than the general conduct of government;
- Clearance and disposition of property acquired with Community Development Block Grant funds;
- Acquisition, construction, rehabilitation, or installation of public facilities and improvements carried out by the City or other public or private nonprofit entity;
- Public Services (limited to 15% of the City's total CDBG entitlement) which are directed toward improving the community's public service and facilities, including, but not limited to, those concerned with employment, childcare, health care, drug abuse counseling and treatment, education, job training assistance, recreational needs, crime prevention, or energy conservation;
- Removal of architectural barriers, which restrict the mobility of elderly and/or persons with disabilities. All publicly and privately owned buildings and facilities are eligible for funding for architectural barrier removal;
- Rehabilitation – financing of residential, commercial/industrial, and Nonprofit-owned, nonresidential buildings and improvements that are not considered to be public facilities or improvements under §570.201(c) of the CDBG program regulations. Historic preservation of publicly or privately owned properties is also eligible under this category;
- Code enforcement- the payment of salaries and overhead costs directly related to the enforcement of state and/or local codes; and,
- Special economic development activities which can include assistance to private for-profit entities for an activity determined by the city to be appropriate to carry out an economic development project.

CDBG Ineligible Activities

Following is a list of activities that may not be assisted with CDBG funds:

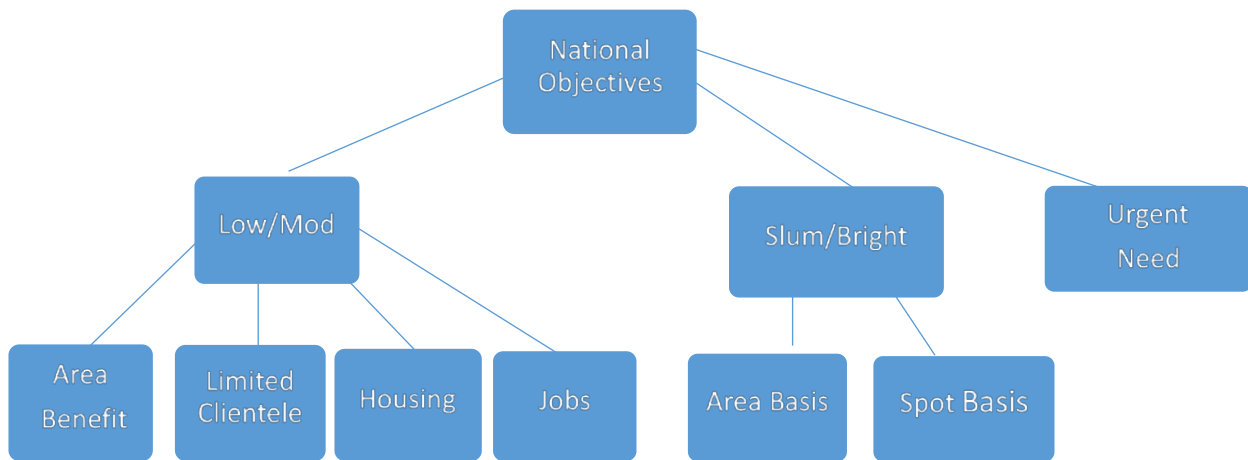
- Buildings for the general conduct of government. This includes operating and maintenance expenses. Exceptions are operation and maintenance associated with public service activities, interim assistance, and CDBG program staff.
- General government expenses except to carry out the CDBG program.
- Political and religious activities.
- Construction equipment.
- Fire protection equipment unless part of a public facility.
- Personal furnishing or property.
- Food not related to direct service delivery to clients.
- Furnishings that are not integral structural fixtures
- New housing construction except for land and other specific circumstances.
- Income payments and other subsidy payments made to individuals or a family.

CDBG National Objectives

The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of the following three national objectives:

- Benefit to low-and moderate- income (LMI) persons;
- Aid in the prevention or elimination of slums and blight: and,
- Meet a need having a particular urgency as defined by HUD

The statute also states that the city must ensure that at least 70% of its expenditures over a particular time period (one, two or three years) must be used for activities qualifying under the first of those national objectives (that of benefiting low- and moderate-income persons.)



An activity that fails to meet one or more of the applicable tests for meeting a national objective is in noncompliance with CDBG rules.

Benefit to Low - and Moderate - Income Individuals

Within this National Objective, there are four subcategories:

1. Low Mod Area (LMA)
2. Limited Clientele (LMC)
3. Low Mod Housing (LMH)
4. Low Mod Job Creation and Retention (LMJ)

Low Mod Area (LMA)

An area benefit activity is an activity which is available to benefit all the residents of an area which is primarily residential. To qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents are L/M income persons.

For this purpose, LMI determination is based upon the income of a family, household, or individual living in the CDBG project area whose household income does not exceed 80 percent of the median income for the area. The benefits of this type of activity are available to all residents in the area regardless of income.

Determining the service area of the activity is the determination of the area served by an activity is critical to this subcategory. The benefit to LMI persons test is met by documenting – through census data or an income survey – that 51 percent or more of the persons who live in the project area may be defined as being low-to-moderate income. **Chapter 3 in the Guide to National Objectives and Eligible Activities for Entitlement Communities** provides further information on determining LMA service areas:

<https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf>

Additional guidance on conducting income surveys to qualify a LMA service area is provided in CPD Notice 14-013:

<https://www.hudexchange.info/resource/4103/notice-cpd-14-013-guidelines-income-surveys-lmi-persons-cdbg-activity/>

Public facilities activities, such as water, sewer and storm water projects, street improvements and neighborhood facilities generally qualify under this category, providing area wide benefit to LMI persons.

Limited Clientele (LMC)

A low- and moderate-income limited clientele activity is an activity which provides benefits to a specific group of persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons.

Under the LMC subcategory, the following groups are currently presumed by HUD to be made up principally of L/M income persons: abused children, elderly persons, battered spouses, homeless

persons, adults meeting Bureau of Census' definition of severely disabled persons, illiterate adults, persons living with AIDS, and migrant farm workers.

Activities that would be expected to qualify under the LMC subcategory include:

- Construction of a senior center,
- Public services for the homeless,
- Assistance to L/M income persons developing a microenterprise,
- Meals on wheels for the elderly, and
- Construction of job training facilities for severely disabled adults.

Documenting LMC Benefit

For each LMC activity, one of the following five types of documentation must be kept in the Neighborly Software case record:

- (1) Documentation showing that the activity is designed to be used exclusively by a segment of the population presumed by HUD to be L/M income persons (e.g., abused children); or,
- (2) Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by L/M income persons; or,
- (3) Data showing the size and annual income of the family of each person receiving the benefit; or,
- (4) Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; or,
- (5) Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51% of the persons benefiting are L/M income persons. Reference: §570.506(b)(3).

Low Mod Housing (LMH)

It is important to note that for a housing activity assisted with CDBG Funds, the L/M Income Benefit status for this purpose is based on **households and not persons**. This distinction is very important because there can be situations where the persons residing in an assisted housing unit are not all members of the same family. Thus, this subcategory provides that for such activities to qualify under the L/M Income Benefit national objective, it must result in housing that will be occupied by L/M income households upon completion.

The housing can be either owner- or renter-occupied and can be either one family or multi-unit

structures. When the housing is to be rented, in order for a dwelling unit to be considered to benefit a L/M income household, it must be occupied by the household at affordable rents. The city is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public. Reference: §570.208(a)(3).

Documenting LMH Benefit

Occupancy of the assisted housing by L/M income households under this subcategory is determined using the following general rules:

- All assisted single unit structures must be occupied by L/M income households,
- An assisted two-unit structure (duplex) must have at least one unit occupied by a L/M income household, and,
- An assisted structure containing more than two units must have at least 51% of the units occupied by L/M income households.

The examples of CDBG-assisted activities that, in order to be considered as benefiting L/M income households, must qualify under the L/M Income Housing sub-category include:

- Acquisition of property to be used for permanent housing;
- Rehabilitation of permanent housing;
- Conversion of nonresidential structures into permanent housing;
- Newly constructed housing (when eligible), and,
- Assistance to a household to enable it to acquire ownership of a home (homeownership assistance).

Additional guidance on exceptions and records to be maintained to documenting compliance with the LMH criteria can be found on Pages 3-20 to 3-23 in the Guide to National Objectives and Eligible Activities for Entitlement Communities:

<https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf>

Low Mod Job Creation and Retention (LMJ)

A L/M income jobs activity is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either held by L/M income persons or considered to be available to L/M income persons.

Activities that could be expected to create or retain jobs include:

- Construction by the grantee of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and perhaps even expand;
- Loans to help finance the expansion of a plant or factory;

- Financial assistance to a business which has publicly announced its intention to close; and to help it update its machinery and equipment instead; and,
- Improvement of public infrastructure as needed by a company to comply with environmental laws to avoid closure.

Records to be maintained to document compliance with the LMJ criteria:

When assistance is provided to a business for the purpose of creating or retaining jobs, the grantee must have on file a written agreement with the business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time.

The agreement must also specify the actions the business will take to document the LMJ National Objective and steps taken to ensure that at least 51% of the jobs created or retained will benefit L/M income persons pursuant to the program rules.

The program records also must document which jobs were actually created and retained, whether each such job was held by, taken by, or made available to a L/M income person, and the full-time equivalency status of each job.

The above criteria provide the general record keeping requirements. More detailed guidance for documenting LMJ activities can be found on Pages 3-24 to 3-23 in the Guide to National Objectives and Eligible Activities for Entitlement Communities:

<https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf>

Elimination of Slums and Blighted Conditions

Slum and Blight on an Area Basis

Public and/or private facilities requiring improvements that aid in the prevention or elimination of slums or blighted conditions in an area designated as slum/blight by the city and that meet a definition of a slum, blighted, deteriorated, or deteriorating area under State or local law can qualify for funding under this National Objective category. Such projects could include demolition and clearance of multiple downtown buildings.

Slum and Blight on a Spot Basis

Activities can also be carried out for the elimination of specific conditions of blight or deterioration on a spot basis on the premise that as such action(s) serves to prevent the spread to adjacent properties or areas. Currently, Texas City's Community Development Department only demolishes residential single- family structures on a spot basis.

Meeting an Urgent Need

Activities that qualify for funding under this National Objective category must be designed to alleviate existing conditions which the city certifies poses a serious and immediate threat to the health or welfare of the city, is of recent origin or recently became urgent, as well as other criteria established by HUD. The City of Texas City has not funded any urgent need projects.

Criteria for Meeting Specific CDBG Expenditure Requirements:

Public Service Cap:

No more than 15% of the sum of the annual entitlement grant plus any grant program income received in the previous grant year can be spent on public service activities. The public service cap is calculated by:

Current year entitlement amount:	_____
+	+
Previous year program income received:	_____
=	=
Amount to calculate public service cap:	_____
X 0.15	X 0.15
Total Maximum amount for public service programs:	_____

Planning and Administration Cap:

No more than 20% of the sum of the annual entitlement grant plus any grant program income received during the grant year may be spent on planning studies or administration. The planning and administration cap is calculated by:

Current year entitlement amount:	_____
+	+
Current year program income expecting:	_____
=	=
Amount to calculate administration cap:	_____
X 0.2	X 0.2
Total maximum amount for administration:	_____

Overall Low and Moderate Income Benefit Requirement:

At least 70% of the City of Texas City's non-administration CDBG spending is required to meet the L/M income benefit national objective. The minimum 70% threshold must be met each year to maintain compliance. However, HUD does give its grantees the option of choosing a one, two,

or three program year period for this purpose. The period contained in the Consolidated Plan certification(s) made by the grantee to receive the grant for the program year(s) shall govern.

The Integrated Disbursement and Information System (IDIS) will assist in providing the information to be used for determining compliance with the national objectives and with this requirement. For illustration purposes, included below is an example of how a one-year 70% certification would be calculated:

The grantee has made a one-year certification and during that program year has spent a total of \$1,000,000. \$150,000 of that amount was spent for activities that were subject to the 20% cap on planning and administration. No funds were used for the repayment of Section 108 loans.

Of the remaining \$850,000, \$700,000 was spent for activities that qualify under the L/M Income Benefit national objective. Included in those L/M income activities was one involving the rehabilitation of a ten-unit building, eight of which are to be occupied by L/M income households. The rehabilitation of that building cost \$200,000 all of which was financed with CDBG funds.

The calculation would run like this:

<i>Total expenditures.....</i>	<i>\$1,000,000</i>
<i>Less planning/admin.....</i>	<i>(150,000)</i>
<i>Leaves for the denominator.....</i>	<i>\$850,000</i>
<i>Amount spent for non-housing</i>	
<i>L/M activities</i>	<i>500,000</i>
<i>Amount allowed for the multi</i>	
<i>unit building.....</i>	<i>160,000</i>
<i>(determined by dividing 8 by 10 [or .8] and</i>	
<i>multiplying \$200,000 by .8 which results in</i>	
<i>a limit of \$160,000 that may be included)</i>	
<i>Leaves for the numerator.....</i>	<i>\$660,000</i>

The calculation then involves dividing \$660,000 by \$850,000, which results in the percentage of 77.6, a number that is sufficient to demonstrate compliance with the 70% certification.

Timely Expenditure of CDBG Funds:

HUD requires all grantees to use CDBG funds it receives in a timely manner. HUD determines if the City is spending down its CDBG entitlement in a timely manner by checking to see what the unspent balance of funds in the grantees' U.S. Treasury Line of Credit 60 days prior to the start of the next CDBG Program Year. The city's program year starts on October 1st. Therefore, HUD conducts the official timeliness review of Texas City on August 2nd of each year. HUD requires the amount of unspent funds to be no more than 150% of the entitlement amount for the current year. The best method to review the City's timeliness is to refer to IDIS program report PR-56.

Benefit/Affordability Timeframe Requirements:

Texas City has made a local determination that CDBG assistance provided for its homebuyer, owner occupied rehabilitation, and economic development projects must meet the intended benefit for a minimum number of years described below: (Note: The City may determine longer benefit or affordability timeframes if needed.)

Homebuyer Projects

<u>Funds provided</u>	<u>Minimum Affordability Period</u>
\$7,500	2 years

Rehabilitation (Owner-Occupied)

<u>Funds provided</u>	<u>Minimum Affordability Period</u>
Less than \$ 5,000	2 years
More than \$15,000	5 years

Economic Development – Create or Retain Jobs

<u>Funds provided</u>	<u>Minimum Benefit Period</u>
Any Amount	4 years

FAIR HOUSING PLAN OVERVIEW:

According to the HUD Fair Housing Planning Manual, the broad objectives of Affirmatively Furthering Fair Housing can be interpreted to mean:

- Analyze and eliminate housing discrimination in the jurisdiction
- Promote fair housing choice for all persons
- Provide opportunities for racially and ethnically inclusive patterns of housing occupancy
- Promote housing that is physically accessible to, and usable by, all persons particularly persons with disabilities and
- Foster compliance with nondiscrimination provisions of the Fair Housing Act

The City prepared its Analysis of Impediments to Fair Housing in 2015 this report found areas that will require action or further review to ensure compliance with affirmatively furthering fair housing:

- Administrative Policies and Programs;
- Zoning;
- Rental Market, Section 8 and Public Housing;
- Homeownership Opportunities;
- Banking Practices and Predatory Lending;
- Challenges facing Affordable Housing Units;
- Cost-Burden and Employment;

- Land Resources and Site Selection;
- Environmental Constraints;
- Public Transportation;
- Regional Issues; and,
- Accessibility.

Through the compilation of data and information gathered for its Analysis of impediments to Fair Housing Choice, few incidences of discriminatory conditions were uncovered. The major actions which need to be taken are those which build upon the City’s current programs. Actions to be taken over the next several years, as they relate to fair housing choice include:

- The City will implement the recommendation of its Housing Study.
- The City will work with local lenders to address the investment gap between low, moderate, middle and upper income sections of the City.
- The City will print, post and distribute adequate information to the real estate community, local government leaders and the public about fair housing requirements and enforcement procedures.
- The City will commit to undertake Fair Housing Month Activities through the passage of a resolution by the Mayor and City Commissioners and place posters in public buildings.
- The City will commit to sponsor/conduct/fund fair housing activities at various times throughout the year.
- The City has collected data and information on the locations of protected populations and has adequate information for ensuring that new projects with “citywide benefits” will not perpetuate illegal differences in treatment.
- The City shall place ads, update posters, distribute Fair Housing Literature at city hall, library, and distribute at festivals and community events including National Night Out.
- The City will predominantly fund its Community Development Block grant projects in low and moderate- income areas.

Personally Identifiable Information (PII)

In order for the City to responsibly safeguard personally identifiable information (PII) and other information of a sensitive manner of program participants and staff, the City has developed a PII Policy (Appendix C).

Citizen Participation Plan

The City of Texas is a participating entitlement jurisdiction with the U.S. Department of Housing and Urban Development in receiving a Community Development Block Grant (CDBG). As such, citizens, public agencies and other interested parties are guaranteed a role in the development and review of plans, performance reports and shall have access to certain records and technical assistance. The Citizen Participation Plan sets forth those procedures. Encouragement of Citizen Participation the plan will encourage:

- Citizens, public agencies and other interested parties to participate in the development and review of the Consolidated Plan and its amendments, Annual Action Plan, Environmental Review Record and Consolidated Annual Performance and Evaluation Report;
- Participation by low and moderate income persons living in slum and blighted areas and in areas where CDBG funds are proposed to be used and residents of predominantly low and moderate income neighborhoods;
- Participation of all citizens of the City, including minorities and non-English speaking persons, as well as persons with disabilities; and,
- In conjunction with the Texas City Housing Authority, participation of residents in public and assisted housing developments in the process of developing and implementing the Consolidated Plan, along with other low-income residents of targeted revitalization areas in which the development is located.

Citizen Advisory Committee

The primary purpose and objective of the Citizen Advisory Committee is to administer the citizen participation requirements of the Housing and Community Development Act of 1974 and to recommend grant applications for CDBG funding to the Mayor and City Commissioners; monitor the progress of all funded programs and make recommendations to the Mayor and Commissioners regarding the implementation of the CDBG funded programs.

1. The CAC is made up of eight citizens appointed by the Mayor, the CAC is responsible for encouraging citizen participation, as required by the Plan;
2. The CAC shall participate in the preparation of the Consolidated Annual Performance and Evaluation Report;
3. All meetings of the CAC shall be conducted in an open manner, with freedom of access to all interested persons. Dates, time and location of all meetings shall be posted in a manner consistent with the Texas Freedom of Information Act;
4. The Citizen Advisory Committee shall select a Chairperson, a Vice-Chairperson and a Secretary. An annual organizational meeting for the purpose of electing officers shall be conducted each January; and,
5. The office of the CAC shall be maintained within the Community Development Department.

Responding to Citizen Comments, Views and Objections

- A. Program Recommendations, Requests and Objections
 1. Recommendations, requests and/or objections maybe submitted to the CAC for consideration from interested citizens, agencies and/or organizations at any time during the program year.

2. Written responses shall be made to these recommendations, requests and/or objections within fifteen (15) working days after a determination by the CAC at its special meeting or regular meeting.
3. Additionally, written comments, requests, and/or objections or inquiries which require a response to general information and/or clarification of the CDBG program can be handled by staff in the Community Development Department. The response time shall be within fifteen (15) working days of the receipt of the written comment, request and/or inquiry, where practicable.
4. All written responses to recommendations, request and/or objections shall state reasons for action taken or, in the case of staff response, shall make specific reference to pertinent sections of CDBG legislation.

B. Objections may also be made, in writing, to HUD. HUD will consider objections only on the following grounds:

1. The applicant's description of needs and objectives is plainly inconsistent with available facts and data; or
2. The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or
3. The applicant does not comply with the requirements of HUD or other applicable laws; or
4. The application proposes activities which are ineligible.

Objections shall include identification and documentation of requirements not met and where data is objected to, new data shall be offered.

Objections to a particular application should be submitted within thirty (30) days of the publication of the combined Notice of Release of Funds and Finding of No Significant Impact.

C. Citizen Comment to Federal and State Agencies

1. HUD will consider citizen objections to the CDBG Program at any time.
2. Citizens may comment to HUD at any time concerning the City of Texas City's failure to comply with any of the Citizen Participation Requirements of this Citizen Participation Plan.

D. Technical Assistance Shall be Offered to Facilitate Citizen Participation

1. Assistance shall be provided to citizen organizations, groups of low and moderate income persons, groups of residents in existing neighborhood target areas and nonprofit agencies who provide a service to low and moderate-income individuals.
2. Requests for assistance may be written or verbal, to the Office of Community Development specifying the type of assistance required and the reasons for assistance.

Availability of Records

A. The City will provide the Consolidated Plan, as adopted, substantial amendments, and the CAPER to the public, including the availability of materials in a form accessible to persons with disabilities, non-English speaking residents upon request where practical.

1. The City shall maintain records pertaining to the CDBG Program in the Office of Community Development for a period of five years.
2. Documents on file with Community Development shall include:
 - a. All mailings and promotional information.
 - b. Records of hearings and meetings with citizens.
 - c. All key documents, including prior Final Statements, letters of approval, grant agreements, the citizen participation file, performance reports, and evaluation.
 - d. Reports, Letters of Credit, other reports as required and the proposed and approved Final Statements for the current year.
3. Documents on file with the Department of Finance shall include:
 - a. Copies of all construction contracts over \$50,000
 - b. All financial data indicating expenditures of CDBG funds.
4. All records shall be available for inspection between the hours 8:30 a.m. to 4:30 pm Monday – Friday by appointment.
5. Requests for copies of any available records shall be made, in writing, pursuant to established City policy. The current fee schedule for copying shall be applied.

Consolidated Plan Adoption

Prior to adoption of the Five-Year Consolidated Plan, The City will make available to interested citizens, agencies, groups and other interested parties the following:

- Information that includes the amount of grant funds and programs income it expects to receive.
- The range of activities that may be undertaken.
- The estimated amount that will benefit persons of low and moderate income.
- Publication of the proposed Consolidated Plan in a manner that affords all citizens a reasonable opportunity to examine its contents and submit comments.
- Publish the proposed Consolidated Plan or its Summary in the Galveston Daily News and The Post newspaper. The Summary will describe the contents and purpose of the Consolidated Plan and will include a list of locations where copies of the entire proposed Plan may be reviewed.
- Make copies of the proposed Consolidated Plan and Summary available at City Hall, the Community Development Department, Moore Library, and with the Galveston County Community Action Council.
- Provide a thirty (30) day period for review and to receive comments from interested citizens, agencies and/or groups on the proposed Plan.
- The City shall consider all comments or views of interested citizens, agencies and/or groups received in writing and/or orally at the public hearing, in preparation of the final Consolidated Plan. A summary of comments and views received and a summary of

comments and views not accepted and the reasons why not accepted will be attached to the final Consolidated Plan.

- Public hearings will be held in venues accessible for those with disabilities. Upon request non-English speaking residents will be met with a translator, in the case of a public hearing where significant number of non-English speaking residents can be reasonably expected to participant, where practical.
- Provide a copy of the proposed Consolidated Plan and summary at www.texascitytx.gov

The Community Development Department shall conduct public meetings with interested citizens, agencies and/or groups and at least on public hearing prior to the development of the Five-Year Consolidated Plan.

1. Meetings shall be held to encourage the submission of views and recommendations prior to the formulation of the Consolidated Plan.
2. There shall be a thirty (30) day review period starting the next day of the posted notice in the paper for interested citizens, agencies and/or groups to submit their comments.
3. Public meetings may be held at selected sites convenient to the residents of Texas City, including persons with disabilities, with particular emphasis on participation by low and moderate-income residents.
4. Following the conduct of the public hearing on the development of the Consolidated Plan, the City must certify that the following assurances have been met:
 - a. The City has prepared and followed a written Citizen Participation Plan that meets the requirements of the Federal Regulations
 - b. The City has provided adequate notices of public hearing as required by the Citizen Participation Plan
 - c. The City has held a hearing on the proposed Consolidated Plan before adoption of a resolution by City Commission for submission to HUD
5. The Consolidated Plan must be submitted to the HUD field office for review and approval at least forty-five (45) days before the start of the City's program year of October 1 - September 30.

Development of the Annual Action Plan:

The Community Development staff shall solicit views of all citizens, agencies, and other interested parties, particularly low and moderate income persons, so as to enable them to be meaningfully involved in important discussions at various stages of the Annual Action Plan process. The Annual Action Plan shall include:

- Form Application- Standard Form 424 and Required Certifications
- Federal and Other Resources Available
- Activities To Be Undertaken
- Geographic Distribution
- Homeless and Other Special Needs Activities

- Other Actions include:
 - Address obstacles in meeting underserved needs, such as foster and maintain affordable housing, remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure and enhanced coordination;
 - Better coordination between public and private housing and social service agencies and foster public housing improvements and resident initiatives;
 - Reference to the annual revisions of the action plan prepared for the CDBG funds expected to be available during the program year including and next program year that has not yet been programmed or reprogrammed; and,
 - Amendments to the Consolidated Plan.

The Annual Action is due to HUD no less than forty-five (45) days before the start of the City's program year which starts October 1, each year. An advertisement shall be published in the Galveston Daily News and The Post newspaper in English and in Spanish no later than June 15, stating that a draft of the Annual Action Plan is available for review. This will provide a thirty (30) day period for review and to receive comments for interested citizens, agencies and/or groups on the proposed Annual Action Plan. The City shall consider any comments or views received and a summary of comments and views not accepted and the reasons therefore, shall be attached to the final Annual Action Plan. Public hearings and meetings will be held in venues accessible for those with disabilities. Upon request non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate, where practical.

Prior to submitting the combined notice of Release of Funds and Finding of No Significant Impact to HUD, an Environmental Review Record (ERR) must be completed on each activity that is identified in the Annual Plan. CDBG funds cannot be spent prior to approval from HUD on a Release of Funds.

Upon Completion of the ERR, a legal notice will be placed in the Galveston Daily News and The Post newspapers in English and Spanish stating that the ERR is available for review and that comments are encouraged for interested citizens, agencies and/or organizations for a period of fifteen (15) days.

Program Amendments

The City of Texas City's policy for program and budget amendments to the Consolidated Plan and/or Annual Action Plan is done on the following basis:

- (1) when program income is received as a result of a CDBG funded activity or project.
- (2) when there is a substantial change in the purpose, scope, location, or beneficiaries of a project or activity involving \$50,000 or more of CDBG funds that are to be transferred to an existing CDBG activity or to a newly created activity.

Per HUD regulations at Section CFR 91.505, a thirty (30) day public comment period is required prior to obligation of funds, including local newspaper publication for citizen input.

After the public comment period expires, the budget amendment request is then signed by the official representative (mayor) or his designee of the City and submitted to HUD for their approval.

Consolidated Annual Performance and Evaluation Report

1. The Consolidated Annual Performance and Evaluation Report (CAPER), which is a requirement of HUD pursuant to 24 CFR Part 91, is due for submission at HUD within ninety (90) days of the close of the City's program year which is the 29th of December each year. The purpose of the CAPER is to provide HUD with necessary information to assess the City's ability to carry out its programs in compliance with applicable regulations and requirements; provide information necessary for HUD to report to Congress; and, provide the City with an opportunity to describe its program achievements to interested citizens, agencies and and/or groups.
2. An advertisement shall be published in the Galveston Daily News and The Post newspapers, the web page, and the municipal channel no later than the 14th day of December stating that a draft of the CAPER is available for review. This will provide a fifteen (15) day period for review and to receive comments from interested citizens, agencies/or groups on the proposed CAPER. The City shall consider any comment or view of citizens in writing and/or orally in preparation of the final CAPER. A summary of comments and views received and a summary of comments and views not accepted and the reasons therefore, shall also be attached to the final CAPER.

Environmental Review Process

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it complies with the National Environmental Policy Act (NEPA) and related laws and authorities. All HUD-assisted projects are required to undergo an environmental review to evaluate environmental impacts. The analysis includes both how the project can affect the environment and how the environment can affect the project, site, and end users.

An environmental review must be performed before any funds, regardless of source, are committed to a project.

In its role in administering its CDBG Program, Texas City follows HUD regulations at 24 CFR 58. This section of the environmental regulations allows the assumption of authority to perform the environmental reviews by responsible entities, which are units of general local government, such as a town, city, county, tribe, or state. The responsible entity is responsible for the scope and content of the review and making the finding. The certifying officer of the responsible entity, usually the mayor, signs the review and takes legal responsibility for the review.

Part 58 applies when legislation for a program allows local governments to assume authority. (See 58.1(b) or HUD Environmental Regulations for a list of programs authorized under Part 58). Local governments must assume responsibility for grants made directly to the local government when legislation permits. They are encouraged to be responsible for the environmental review in cases where the grants are made to other entities, such as nonprofit organizations and public housing authorities.

Documentation of the environmental review should be maintained in the environmental review record. This record contains the description of all activities that are part of the project and an evaluation of the effects of the project on the human environment and vice versa. This record should be made available for public review.

HUD responsibilities under Part 58 are very limited. HUD will receive the Request for Release of Funds and Certification (HUD form 7015.15) from the responsible entity, accept public comments during the HUD public comment period, and approve the use of HUD assistance through the Authority to Use Grant Funds (HUD form 7015.16). HUD will also periodically conduct in-depth monitoring of responsible entities' environmental review records.

Further guidance concerning the requirements under Part 58 are available at the link below:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl

Financial Management and Fiscal Policies

The City of Texas City has created Policies and Procedures specifically to address the CDBG program requirements related to Financial Management and administration of the program which may be obtained from the City's Director of Finance.

The City has adopted 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in its administration of the CDBG program. These requirements are included in Appendix B.

The City's financial management system of record is Munis.

Information Management

The City's information management systems of record are eCivis for overall grants administration and Neighborly Software for CDBG program management.

All required program documentation will be filed digitally in Neighborly Software, including, but not limited to, that related to eligibility determination, environmental review, historical review, project and/or activity progress, contractor procurement, data required for CAPER preparation, and records established and maintained associated with the information entered into IDIS.

Appendix A

Environmental Review Record

Prior to any action commencing on a CDBG activity; staff must compile an environmental review record and make a determination about the impact on the environment.

58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

- (a) Historic properties. (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
 - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and
 - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C.469a-1).
 - (b) Floodplain management and wetland protection. (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)
- (5) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961),3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part, 55 particularly sections 2 and 5 of the order.
 - (c) Coastal Zone Management. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).
 - (d) Sole source aquifers. (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h-3(e)).
- (6) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).
 - (e) Endangered species. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).
 - (f) Wild and scenic rivers. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).
 - (g) Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (7) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) Farmlands protection. (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(8) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) HUD environmental standards. (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

58.6 Other requirements.

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(9) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(10) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(11) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information. [61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

Activities fall into five categories that require different levels of review, public notification and HUD review.

58.34(a) Exempt Activities

The following activities require only a written determination of the exemption in the environmental record.

1. Environmental and other studies; resource identification; plans and strategies;
2. Information and financial services;
3. Administrative and management activities;
4. Public services that have no physical impact or result in physical change;
5. Inspections and testing;
6. Purchase of insurance;
7. Purchase of tools
8. Engineering, design or training;
9. Technical assistance or training
10. Temporary or permanent improvements limited to protection and restoration to control or arrest effects from disasters; and,

11. Payment of principal and interest on loans made or guaranteed by HUD.

58.35 Categorical Exclusions (b) Excluded Activities Not subject to 58.5

The following activities require a written determination of the exclusion with documentation in the environmental review record:

1. Tenant based rental assistance;
2. Supportive services such as health care, day care, housing placement;
3. Operating costs, maintenance, utilities, furniture and equipment;
4. Economic development activities such as equipment purchase, inventory financing, interest subsidy, operating expenses not associated with construction or expansion;
5. Activities to assist homeownership of existing or “new dwelling units not assisted with Federal funds”; and,
6. Affordable housing pre-development “soft” cost.

58.35 Categorical Exclusions (a) Excluded Activities Subject to 58.5

The following activities require written determination of the exclusion with documentation in the environmental review record, a complete statutory checklist, 7 day Notice of Intent to Request Release of Funds and HUD approval:

- a) Acquisition, repair, improvement, reconstruction or rehab of public facilities other than building without change in use or increase in size or capacity by more than 20 percent;
- b) Projects to remove material and architectural barriers that restrict handicap access;
- c) Rehabilitation of buildings: i) in case of residential if a) unity density not increased by more than 20 percent, b) does not change use from residential to non-residential, and c) cost of rehab less than 75% of total cost of replacement after rehab, ii) in case of non-residential if a) facilities are in place will not change in size or capacity by more than 20 percent, and b) the activity does not involve a change in land use.
4. Individual action on a 1-4 family dwelling or project of 5 or more units on scattered sites if more than 2,000 feet apart or not more than 4 units on one site;
5. Acquisition, disposition of existing structure or acquisition of vacant land where use will remain unchanged.

58.36 Environmental Assessment (EA)

Required for all other activities that are not considered exempt or categorically excluded and that do not require the completion of an Environmental Impact Statement, Environmental Assessments require a written determination with documentation in the environmental review record, a complete statutory checklist, a complete environmental assessment checklist, a complete Finding of No Significant Impact (FONSI), a 15 day combined Notice of FONSI and Notice of Intent to Request Release of Funds and HUD approval.

Required when activity is determined to have potential significant impact on the environment Contact HUD to determine the complete required process under the following circumstances:

58.37 Environmental Impact Statement Determination (EIS)

1. Project provides a site or sites for, results in construction of, hospitals or nursing homes containing 2,500 or more beds;
2. Project removes, demolishes, converts, results in construction of or installation of or substantially rehabs, 2,500 or more units or housing sites;
3. Project would provide additional water and sewer capacity to support 2,500 or more new housing units or comparable development.

For further guidance please refer to: HEROS – HUD Environmental Review Online System – Part 58 User Guide version July 2014

Appendix B

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

Introduction:

Title 2 of the CFR §1.100 Content of this title. This title contains— (a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies and procedures for the award and administration of grants and agreements; and (b) Federal agency regulations implementing that OMB guidance. The following 2 CFR 200 will be used with OMB Guidance replacing OMB Circulars 24 CFR and 84 and 24 CFR 85.

OFFICE OF MANAGEMENT AND BUDGET GOVERNMENTWIDE GUIDANCE FOR GRANTS AND AGREEMENTS

CFR PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Chapter XXIV—Department of Housing and Urban Development PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION

- **Subpart A-General:** The Secretary of HUD or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary or a designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government wide policy in Executive Order 12549.
- **Subpart B—Covered Transactions-**In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the HUD nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the a appendix to 2 CFR part 180).
- **Subpart C—Responsibilities of Participants-** (a) The City, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so.
(1) You may, but are not required to, check the Excluded Parties List System (EPLS).
(2) You may, but are not required to, collect a certification from that person. (b) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.
- **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions-** To communicate to a participant the requirements described in 2 CFR 180.435 of

the OMB guidance, you must include a term or condition in the transaction that requires the participant to: comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and include a similar term or condition in lower-tier covered transactions

- **Subparts E-F [Reserved]**
- **Subpart G—Suspension**-In all HUD suspensions, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.
- **Subpart H—Debarment**-In all HUD debarments, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer
- **Subpart I—Definitions**
- **Subpart J—Limited Denial of Participation**-A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government.

PART 2429—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

- **Subpart A [Reserved]**
- **Subpart B—Requirements for Recipients Other Than Individuals**- A recipient other than an individual who is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HUD office with which it currently has an award.
- **Subpart C-Requirements for Recipients Who Are Individuals**
- **Subpart D—Responsibilities of Agency Awarding Officials**- To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award: Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 2429, which adopts the government wide implementation (2 CFR part 182) of sections 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).
- **Subpart E—Violations of This Part and Consequences**- the Secretary of HUD or designee is the official authorized to make the determination under 2 CFR 182.500.
- **Subpart F [Reserved]**

CHAPTER II—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE

Part 200 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

- **Subpart A**—Acronyms and Definitions / Section 200.0

- ❖ **§200.100 Purpose.** (a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in §200.101 Applicability. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order. (2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106). (b) Administrative requirements. Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award. (c) Cost Principles. Subpart E—Cost Principles of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute. (d) Single Audit Requirements and Audit Follow-up. Subpart F—Audit Requirements of this part is issued pursuant to the Single sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits. | For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

- **Subpart B**—General Provisions / Section 200.100

- ❖ **§200.111 English language.** (a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application. (b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms

and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

- **Subpart C**—Pre-Federal Award Requirements and Contents of Federal Awards / Section 200.200

- ❖ **§200.205 Federal awarding agency review** of risk posed by applicants.

(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of government wide eligibility qualification or financial integrity information, such as Federal Awardee Performance and Integrity Information System (FAPIIS), Dun and Bradstreet, and “Do Not Pay”. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations. (b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in §200.203 Notices of funding opportunities. (c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following: (1) Financial stability; (2) Quality of management systems and ability to meet the management standards prescribed in this part; (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards; (4) Reports and findings from audits performed under Subpart F—Audit Requirements of this part or the reports and findings of any other available audits; and (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities. (d) In addition to this review, the Federal awarding agency must comply with the guidelines on government wide

- **Subpart D**—Post Federal Award Requirements / Section 200.300

- ❖ **§200.303 Internal controls.** The non-Federal entity must: (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of

the Treadway Commission (COSO). (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards. (c) Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards. (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings. (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

- **Subpart E—Cost Principles / Section 200.400**

- ❖ **§200.413 Direct costs.** (a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also §200.405 Allocable costs. (b) Application to Federal awards. Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations. (c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met: (1) Administrative or clerical services are integral to a project or activity; (2) Individuals involved can be specifically identified with the project or activity; (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and (4) The costs are not also recovered as indirect costs. (d) Minor items. Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives. (e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which: (1) Include the salaries of personnel, (2) Occupy space, and (3) Benefit from the non-Federal entity's indirect (F&A) costs. (f) For non-profit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also §200.454 Memberships, subscriptions, and professional activity costs. (2) Providing services and information to members, legislative or administrative bodies, or the public. See also § 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying. (3) Promotion, lobbying, and other forms of public relations. See also §200.421 Advertising and public relations and 200.450 Lobbying. (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also §200.432 Conferences. (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. (6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also §200.431 Compensation—fringe benefits.

- ❖ **§200.414 Indirect (F&A) costs.** (a) Facilities and Administration Classification. For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director’s office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for institutions of higher education, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding. (b) Diversity of nonprofit organizations. Because of the diverse characteristics and accounting practices of nonprofit.

- **Subpart F—Audit Requirements / Section 200.500**

- ❖ **§200.501 Audit requirements.** (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part. (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section. (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-

through entity in the case of a subrecipient, approves in advance a program-specific audit. (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO). Title 2 Grants and Agreements Revised as of January 1, 2014 containing a codification of documents of general applicability and future effect.

Procurement Procedures

§200.318 General procurement standards. (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

I(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

I To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and,

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction

Procurement by **small purchase procedures**. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

1. Procurement by **sealed bids** (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose

§200.319 Procurement by Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for

proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business; **(2)** Requiring unnecessary experience and excessive bonding; **(3)** Noncompetitive pricing practices between firms or between affiliated companies; **(4)** Noncompetitive contracts to consultants that are on retainer contracts; **(5)** Organizational conflicts of interest; **(6)** Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and **(7)** Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate

I The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations: **(1)** Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible for the use of sealed bids. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and **(2) Identify** all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement. **(a)** Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

I Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph

(1) of this section apply. (1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and,

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and,

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive p by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting and the following requirements apply:

i. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

ii. Proposals will be solicited from an adequate number of qualified sources;

iii. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

iv. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,

v. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Procurement by **noncompetitive proposals** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- A. The item is available only from a single source;
- B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- C. The awarding agency authorizes noncompetitive proposals; or,
- D. After solicitation of a number of sources, competition is determined Inadequate.

I Contracting with small and minority firms, women’s business enterprise and labor surplus area firms.

1. The grantee and sub grantee will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises;
 - v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and,
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs I(2) (i) through (v) of this section.

(f) Contract cost and price.

1. Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or

proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

2. Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 2 CFR Sec. 200.400). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

1. Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
 1. A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
 2. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation: or
 3. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
 4. The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
3. A grantee or subgrantee will be exempt from the pre- award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
 - i. A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
 - ii. A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.
- (h) Bonding requirements.** For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- (i) Contract provisions.** A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
4. (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
5. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
6. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
7. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
8. Notice of awarding agency requirements and regulations pertaining to reporting.
9. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
10. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
11. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
12. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
13. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
14. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 87)

Appendix C

Personally Identifiable Information (PII) Policy

Purpose

As part of all CDBG grant activities, City and contractor/sub-grantees may have access to program participant or staff PII. This information is generally found in personnel files, participant data sets, performance reports, program reviews/evaluations, funding applications, contractor/sub-grantee files, or other sources. Federal law and federal policies require that PII and other sensitive information be secured and always protected.

Parties Affected

This policy applies to all Community Development staff, contractor/sub-grantee staff, and any other individuals or groups involved in the handling and protecting of Personally Identifiable Information (PII) for any CDBG activities that serve participants who receive CDBG and other public and private funds.

Regulatory References

2 CFR Part 200.303 (e) and 24 CFR Part 570.502 (a)

Definitions

The Office of Management and Budget (OMB) defines “Personally Identifiable Information” PII as information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

“Sensitive Information”: Any unclassified information whose loss, misuse, or unauthorized access to or modification of could adversely affect the interest or the conduct of Federal programs or the privacy to which individuals are entitled un the Privacy Act.

There are two types of PII, “protected PII” and “non-sensitive PII”. The differences between protected PII and non-sensitive PII are primarily based on an analysis regarding the “risk of harm” that could result from the release of the PII.

1. “Protected PII” is information that if disclosed could result in harm to the individual whose name or identity is linked to that information. Examples of protected PII include, but are not limited to, social security numbers (SSN), credit card numbers, bank account numbers, home telephone numbers, ages, birthdates, marital status, spouse names, educational history, biometric identifiers (fingerprints, voiceprints, iris scans, etc.), medical history, financial information, and computer passwords.

2. “Non-sensitive PII” is information that if disclosed, by itself, could not reasonably be expected to result in personal harm. It is standalone information that is not linked or closely associated with any protected or unprotected PII. Examples of non-sensitive PII include

information such as first and last names, e-mail addresses, business addresses, business telephone numbers, general education credentials, gender, or race. However, depending on the circumstances, a combination of these items could potentially be categorized as protected or sensitive PII.

To illustrate the connection between non-sensitive PII and protected PII, the disclosure of a name, business e-mail address, or business address most likely will not result in a high degree of harm to an individual. However, a name linked to a social security number, a date of birth, and mother's maiden name could result in identity theft. This demonstrates why protecting the information of all program participants is critically important.

Eligibility Requirements

PII from all participants and potential participants under CDBG programs must be always protected and there are no eligibility requirements necessary for the applicability of these requirements.

PII Policy

All parties must ensure the privacy of all PII obtained from participants and potential participants and to protect such information from unauthorized disclosure. All parties must ensure that PII used has been obtained in conformity with applicable Federal and state laws and policies governing the confidentiality of information.

All PII transmitted via e-mail or stored on external drives must be encrypted. All PII stored on-site must be always kept safe from unauthorized individuals and must be managed with appropriate information technology (IT) services. Accessing, processing, and storing PII data on personally owned equipment at off-site locations (e.g. employee's home, and non-grantee managed IT services, e.g. Yahoo mail, Gmail, etc.) is strictly prohibited.

All parties who will have access to sensitive/confidential/proprietary/private data must be advised of the confidential nature of the information, the safeguards with which they must comply to protect the information, and that they may be liable to civil and criminal sanctions for improper disclosure.

Access to any PII obtained related to CDBG activities must be restricted to only those employees of the grant recipient who need it in their official capacity to perform their duties in connection with the scope of work in the contractor/sub-grantee written agreement.

All PII data must be processed in a manner that will protect the confidentiality of the records/documents and is designed to prevent unauthorized persons from retrieving such records by computer, remote terminal, or any other means.

All contractors/sub-grantees must permit authorized City Community Development and other program related Departmental staff to make on-site inspections during regular business hours for the purpose of conducting audits and/or other investigations to assure that the contractor/sub-grantee is complying with the confidentiality requirements described above. In accordance with

this responsibility, contractors/sub-grantees must make records applicable to this agreement available to authorized persons for the purpose of inspection, review and/or audit.

Contractors/sub-grantees must retain data only for the period required to use it for assessment and other purposes, or to satisfy applicable Federal and City records retention requirements, if any. Thereafter, the contractor/sub-grantee agrees that all data will be destroyed, including deletion of electronic data.

Recommendations:

1. Before collecting PII or sensitive information from participants, have participants sign releases acknowledging the use of PII for CDBG grant purposes only.
2. Whenever possible, use unique identifiers for participant tracking instead of SSNs. While SSNs may initially be required for performance tracking purposes, a unique identifier could be linked to each individual record. Once the SSN is entered for performance tracking, the unique identifier would be used in place of the SSN for tracking purposes. If SSNs are to be used for tracking purposes, they must be stored or displayed in a way that is not attributable to a particular individual, such as having a truncated SSN.
3. Use appropriate methods for destroying sensitive PII in paper files (i.e. shredding) and securely deleting sensitive electronic PII.
4. Do not leave records containing PII open and unattended.
5. Store documents containing PII in locked cabinets when not in use.
6. Immediately report any breach or suspected breach of PII to next higher level of management and/or IT.

Appendix D

Texas City's Annual CDBG Allocation Process

Each year the United States Congress produces an annual Federal Budget comprised of 13 individual spending authorization bills. The Department of Housing and Urban Development (HUD) receives its annual appropriation of funds through one of those bills. The Community Development Block Grant (CDBG) Program is one of many programs within HUD's annual budget and has been in existence for more than 40 years. Funds are allocated to cities, counties, and states on a formula basis. Since 1976, Texas City has received an annual allocation of CDBG funds.

The process established and utilized by Texas City to distribute these important funds includes opportunities for citizens to participate in the local community's design and selection of activities. Each year, this process includes the following steps (see Process Map attached):

Step 1 – HUD notifies the Mayor (via the Grants Administrator) of Texas City of the amount of the allocation.

Step 2 – The Grants Administrator notifies the Texas City Community Development Department (CDD) of the funding notification.

Step 3 – The CDD notifies the Citizen Advisory Committee (CAC) of the funding notification.

Step 4 – The CAC meets to discuss potential activities to include in the Annual Action Plan (AAP) which forms the application to be submitted to HUD for approval.

Step 5 – The CAC finalizes its recommendations and submits to the CDD for review. At this point, the CDD reviews the recommended activities and provides feedback to the CAC if any of the activities fail to meet the two-pronged test for CDBG which are a) must be eligible and b) must meet one of three national objectives of the program.

Step 6 – CDD conducts final due diligence analysis to ensure all proposed activities meet the program requirements. This is accomplished by CDD activity review committee comprised of the Community Development/Grants Administrator, Finance Department Assistant Director and the City's Community Development Director. The Community Development/Grants Administrator will prepare a full activity description including how the proposed activity meets the CDBG eligibility criteria under 24 CFR Part 570.201-206, as well as identifying which of the three program national objectives will be met once the proposed activity is completed. The review committee will make final decisions and the

Executive Director of Management Services will confirm/approve that each activity meets the program requirements. The Community Development/Grants Administrator will document the record by including this information in the program files.

Step 7 – The CDD will include the final list of vetted activities and prepare the draft Annual Action Plan.

Step 8 – The AAP will be made available for public input and the Citizen Participation process will be activated for no less than 30 days. All comments received will be considered, responded to and included in the final submission to HUD.

Step 9 – The AAP, including the budget for all activities, will be submitted to the Mayor and City Commission for adoption.

Step 10 – The CDD submits the final AAP to the US HUD Houston Field Office no less than 45 days prior to the City's Program Year start date.

RESOLUTION NO. 2023-028

A RESOLUTION APPROVING AMENDMENTS TO AND ADOPTING AMENDMENTS TO THE CITY OF TEXAS CITY'S COMMUNITY BLOCK GRANT PROGRAM POLICIES AND PROCEDURES; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, it is recommended by the Community Development/Grants Administrator to amend and adopt changes to the Community Development Block Grant Program Policies and Procedures.

WHEREAS, the changes are as follows:

- Update to organization chart including the Grants Administrator position.
- Addition of Information Management section identifying eCivis and Neighborly Software as the information systems of record for the City as it relates to grants administration and program administration respectively.
- Deletion of First Time Homebuyer Program section and guidelines in appendices (all programs have separate guideline manuals).
- Update of Annual CDBG Allocation Process to include Grants Administrator.

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

SECTION 1: That the City Commission of the City of Texas City hereby approves and adopts the amendments to the City of Texas City's Community Development Block Grant Program Policies and Procedures, attached hereto as **Exhibit "A"**, and made a part hereof.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (d)

Meeting Date: 03/01/2023

Purchasing Cooperative of America (PCA)

Submitted For: Kelly Bender, Purchasing

Submitted By: Kelly Bender, Purchasing

Department: Purchasing

Information

ACTION REQUEST

Approve the Mayor to enter into an Interlocal Agreement for Cooperative purchasing services with Purchasing Cooperative of America (PCA) cooperative purchasing program.

BACKGROUND (Brief Summary)

The purpose of this Agreement is to support public entities by facilitating their purchasing operations through cooperative contracting and to promote real savings for Purchasing Cooperative of America (PCA) Members with discounts resulting from the competitive bid process. Eligible public entities may use all PCA contracts awarded to a Vendor. Entities eligible for PCA membership include local, state, and federal governmental agencies, Indian tribal governments; educational institutions K-12 through University. There is no fee to the PCA Member to join or use PCA contracts.

RECOMMENDATION

It is my recommendation to approve a Resolution authorizing the Mayor to enter an Interlocal Agreement for Cooperative Purchasing Services with Purchasing Cooperative of America (PCA).

Fiscal Impact

Attachments

PCA Interlocal Agreement

PCA Information

Resolution



INTERLOCAL AGREEMENT FOR COOPERATIVE PURCHASING SERVICES

This Interlocal Agreement for Cooperative Purchasing Services (“Agreement”) is entered into by

and between _____
COMPLETE LEGAL NAME (DO NOT ABBREVIATE) & MAILING ADDRESS

(“PCA Member”, “Party”), a governmental entity, and Purchasing Cooperative of America (“PCA”, “Party”) on behalf of PCA Awarding Agencies to participate in all Purchasing Cooperative of America (“PCA”) cooperative purchasing programs administered by PCA and its affiliates and subsidiaries and for the purpose of participating in the cooperative purchasing services of PCA. Collectively, PCA and PCA Member and will be known as the “Parties”.

RECITALS

Purpose

The purpose of this Agreement is to support public entities by facilitating their purchasing operations through cooperative contracting and to promote real savings for PCA Members with discounts resulting from the competitive bid process.

Texas Government Code, Chapter 791, Interlocal Cooperation Act, and Texas Local Gov't. Code, Chapter 271, Subchapter F. Cooperative Purchasing Program allows for governmental entities to contract for cooperative purchasing services that each Party to the contract is authorized to perform individually.

Eligible public entities may use all PCA contracts awarded to a Vendor. Each jurisdiction is subject to its own and members’ requirements. The use of a PCA contract by a PCA Member, along with their signed purchase order or other extension of the contract, constitutes acceptance of the contract and completes the interlocal agreement (if required by the entity(ies) between the Awarding Agency and PCA Member.

Membership Eligibility

Public entities in all 50 states, the U.S. Territories, Canada and Mexico, including local, state and federal governmental agencies, Indian tribal governments; educational institutions including K-12 public, private and charter schools, state and private colleges and universities; and non-taxed non-profit religious and charitable organizations are eligible to participate in the PCA purchasing cooperative. There is no fee to the PCA Member to join or use PCA contracts.

Role of the PCA Awarding Agency

1. Acts as Party to the Agreement.
2. Awards PCA contracts that have been competitively bid.
3. Provides service and support to PCA, PCA members and vendors, as necessary.

Role of the PCA Member

1. Registers on the PCA website, www.pcamerica.org, or any successor website.
2. Executes a copy of this Agreement by providing an authorized signature in the appropriate space below and submitting the form to Members@pcamerica.org.

3. Designates a contact person and updates the contact information as necessary.
4. Works with PCA awarded contractors according to the PCA contract.
5. Issues supplemental contracts, purchase orders, or other applicable authorizations for purchases directly to the awarded contractor; and includes "Purchasing Cooperative of America" or "PCA" and the "Contract Number".
6. Makes payments to vendors in a timely manner and in accordance with the state laws and local procedures applicable to the PCA Member for all goods and services received.
7. Notifies PCA at the address or email shown below of any substantial problems in quality of goods or performance of services with an awarded contractor under a PCA contract.

Role of the Purchasing Cooperative (PCA)

1. Acts as a group purchasing organization that governmental entities join as members.
2. Performs the administration and management duties and responsibilities for which PCA will receive fees from PCA vendors using PCA contracts.
3. Performs all of the required steps of the competitive solicitation process in compliance with all applicable state statutes and regulations related to competitive procurement and contracting in the State of Texas.
4. Provides members access to cooperative contracts, due diligence documentation and PCA vendor contact information.
5. Provides support and service to PCA Members and vendors.
6. Performs such other related services and duties as are customarily performed by a entity in a similar position.

General Provisions

1. Effective Date. This Agreement is effective upon signature and shall be automatically renewed annually unless either Party gives sixty (60) days prior written notice of non-renewal.
2. No Minimum Purchase Requirement. This Agreement does not obligate the PCA Member to purchase a minimum amount of goods and/or services under any PCA contract.
3. Federal Requirements. The parties agree to comply fully with all applicable federal statutes, rules and regulations in connection with the cooperative contracts contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.
4. State Joint Powers Statutes. It is the sole responsibility of each PCA Member to follow their state procurement statutes as it pertains to cooperative purchasing, or joint power agreements, with in-state or out-of-state public agencies.
5. Governing Law-Texas. Any issue concerning PCA contracts in which a PCA Awarding Agency is involved shall be governed by the law of the State of Texas, excluding the conflicts of law provisions.
6. Venue-In Texas. Exclusive Venue for any litigation whatsoever involving PCA is the state district court of Harris County, Texas.
7. Governing Law-Outside Texas. PCA member's use of PCA contracts shall be governed by the laws of the State of _____, excluding the conflicts of law provisions.
8. Venue-Outside Texas. Exclusive Venue for litigation arising between PCA Member and PCA awarded contractor from use of PCA contracts is _____.
(court jurisdiction)

9. Invalid Provision. If any term(s) or provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
10. Immunity. Neither Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees and agents as a result of this Agreement being executed or the performance of the functions and obligations describe herein.
11. Final Agreement. This Agreement incorporates all agreements, covenants and understandings between the Parties concerning subject matter in the Agreement. No prior agreement of understanding, verbal or otherwise, by the Parties or their agents, shall be valid or enforceable unless embodied in this Agreement.
12. "As is" Contracts. PCA makes PCA contracts available to the PCA Member "as is" and is under no obligation to revise the terms, conditions, scope, prices, and/or any other requirements of the contract for the benefit of the PCA Member.
13. Termination. This Agreement may be terminated with or without cause by either party upon (60) days prior written notice.
14. Notice. All forms of written notice, under this Agreement, shall be made by first class mail, postage prepaid and delivered to the other Party of this Agreement.
15. Records Requests. PCA Member agrees to cooperate in compliance with any reasonable request for information and/or records made by PCA. Breach of this provision may be grounds for termination after ten (10) days written notice to the PCA Member.
16. Submission. Send the signed Agreement via email to Members@pcamerica.org. An email copy of an executed signature shall have the same force and effect as an original signature page.
17. Term. This Agreement is effective the date of the final signature and shall continue indefinitely, subject to the Termination clause.

Authorization

By execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized to enter into and perform the terms of this Agreement.

PCA Member Organization Name

Authorized Signature

Printed Name

Title _____

Date _____

Designated Contact _____

Title _____

Phone _____

Email _____

Purchasing Cooperative of America

PCA Authorized Signature

Dean Zajicek

Printed Name

Title Assistant Director

Date _____

Phone 844-722-6374

Email Dean@pcamerica.org

Main PCA Email pcamerica@pcamerica.org

PCA Awarded Contractors proudly display this symbol:



PCA understands the needs of small & large Purchasing Departments with their limits on time, personnel, and expertise.

Members, there is no fee to join!

We are EDGAR compliant and look forward to providing our services to you!

PCA provides:

- Procurement Expertise
- Industry Standard Contracts
- Value Add Benefits
- Best Price Guarantees

Save Time, Save Money!

Purchasing Cooperative of America Information

Contact us:

844-722-6374 Toll Free

Register to become a Member:

<http://www.pcamerica.org/members>

Register to become a Vendor:

<http://www.pcamerica.org/vendor>

Entities eligible for PCA Membership include:

Governmental Agencies, Educational Institutions (K12 through University) and Non-Taxed/Non-Profit Organizations (including Religious and Charitable Organizations).

Co-ops are good for everyone!

PCA

Purchasing Cooperative of America



**All 50 States, U. S. Territories,
Canada & Mexico**

www.pcamerica.org

**SIGN UP to BECOME a
Member TODAY!**

PCA *Purchasing Cooperative of America*

Members work directly with the Vendors who have been awarded PCA contracts through our rigorous solicitation responses & evaluation process, according to Texas and other states purchasing, contracting, & cooperative statutes.

Contracts for:

CONSTRUCTION / JOC

- Building Facilities Services & Assessments
- Construction Management for Construction Programs
- Job Order Contracting (JOC)
- Roofing & Waterproofing
- Disaster Recovery Energy Services
- Energy Performance (ESCO) & Procurement
- Energy Conservation - Lighting, Automated Controls, \ and Building Energy-Saving Items
- Facility Operations & Maintenance
- Flooring Products, Services, Installation, Maintenance & RI (JOC)
- Modular & Portable Storage Buildings
- Trenchless Rehabilitation

CUSTODIAL / JANITORIAL SERVICES

- Custodial Services, Supplies and Cleaning Equipment
- Custodial Services/Landscaping & Grounds/Operations & Maintenance
- Janitorial Products, Equipment, & Related Items

FINANCIAL

- Financial Procurement
- Financial Services for Sustainable Products
- Grant Writing

MISC. – SPECIALTY SERVICES

- Auction Services for Public Entities
- Automobile Tires and Related Items
- Books, Digital Readers, Videos
- Care Management
- Demographics
- Employee Assistance Programs
- Energy & Infrastructure Services
- Highway & Road Materials for Roadways, Parking Lots, Parks, etc.
- Heavy Equipment Rental, Maint., Parts, & New/Used Sales
- Insurance Services
- Screen Printing and Branded Promo Items
- Substitutes & Temporary Personnel
- Waste & Refuse Containers - Roll Offs, Dumpsters, & Other Heavy Duty Containers, and Parts/Service

PUBLIC SAFETY

- Police/Corrections: Equip, Surveillance, IT, Supplies, Safety Equip., etc.
 - Firing Ranges & Maintenance Services
 - ID Verification & Investigative Programs
- First Responders Safety Equipment
- Safety/Security/Compliance/Verification Plan for the Public-At-Large
- Disinfecting/Sanitizing products & Services, and PPE
- Safe Schools & Public Buildings
- Safety Equipment for Schools, Police, & First Responders
- Security Systems

SPORTS - EQUIPMENT, FIELDS, WEIGHTS, LIGHTING

- Athletic Equipment, Supplies, & Related Items
- Field Turf, Sport & Recreational Surfaces
- Outdoor Recreational Surfaces, Sports & Field Turf, & Associated Outdoor Items
- Playgrounds & Parks Equipment and Services
- Sports Protective Gear and Related Items
- Stadiums and Sports Fields Equipment, Installation & Maintenance Services
- Weight Training Equipment & Flooring

SUPPLIES

- Educational & Instructional - Books, Apps, Videos, Digital Readers, Musical Instruments, etc.
- Art Supplies
- Commercial Kitchen Soft Wares (Pots, Pans, Utensils, Sanitizing Products...)
- Disinfecting/Sanitizing products & Services, and PPE
- Laboratory Supplies
- Medical Supplies
- Office Supplies, Paper, Ink/Toner

TECHNOLOGY

- Audio Computers, Peripherals, Hardware and Software Supplies
- Audio-Visual, Media Equipment, Supplies &/or Service
- Cloud-Based Communication & Storage
- Document Management Software/Programs for Administrative Records
- Network Electronics Equip, Design & Consulting, & Wiring Services
- Procurement Sourcing Software
- Software
- Technology, Computers, Software
- Technology Products, Services, & Equipment for the Disabled
- Telecommunications Equipment, Supplies &/or Service
- Website Services, Programs, and Products

TRADES

- Facilities Maintenance, Repairs, & Operations
- Aluminum Ramps, Walkways, Stairs Systems, RI and Services
- Commercial Kitchen Equipment, Products, Installation, and Related Items
- Elevator Inspection
- Glazing
- HVAC Equipment, Installation, & Repair
- Manholes, Sanitization
- Roofing & Waterproofing
- Signage - Sales, Parts, Service and Related Items
- Trades for Operations & Maintenance & Related Services & Supplies

www.pcamerica.org/currentcontracts

RESOLUTION NO. 2023-029

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT FOR COOPERATIVE PURCHASING SERVICES WITH PURCHASING COOPERATIVE OF AMERICA (PCA) - A COOPERATIVE PURCHASING PROGRAM; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the Texas City Purchasing Department is requesting the approval of an Interlocal Agreement for Cooperative purchasing services with Purchasing Cooperative of America (PCA) – a cooperative purchasing program; and

WHEREAS, the purpose of this Agreement is to support public entities by facilitating their purchasing operations through cooperative contracting; and

WHEREAS, there is no cost for joining the Purchasing Cooperative of America (PCA).

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

SECTION 1: That the City Commission hereby approves an Interlocal Agreement for Cooperative purchasing services with Purchasing Cooperative of America (PCA) – a cooperative purchasing program.

SECTION 2: That the Mayor is hereby authorized to execute an Interlocal Agreement for Cooperative purchasing services with Purchasing Cooperative of America (PCA) – a cooperative purchasing program, in the form attached hereto as **Exhibit “A”** and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (e)

Meeting Date: 03/01/2023

A-1 Fire Equipment Co. DBA Island Fire and Safety Equipment

Submitted For: Kelly Bender, Purchasing

Submitted By: Kelly Bender, Purchasing

Department: Purchasing

Information

ACTION REQUEST

Approve and award A-1 Fire Equipment Co. DBA of Island Fire and Safety Equipment, Inc. through Purchasing Cooperative of America (PCA) purchasing cooperative program contract PCA OD-368-22 Trades and Related Items expiring July 10, 2027, in La Marque, Texas to provide for services related to and include annual fire extinguisher inspection for all City buildings and vehicles.

BACKGROUND (Brief Summary)

The Trades and Related items contract through Purchasing Cooperative of America (PCA) will be utilized by all City departments. We currently use A-1 Fire for Annual Fire extinguisher inspections and other related services and using the Cooperative Purchasing program PCA will eliminate formal bidding and/or quoting for commonly purchased items or services.

RECOMMENDATION

It is my recommendation to approve the use of A-1 Fire Equipment Co. DBA of Island Fire and Safety Equipment, Inc PCA-OD-368-22 Trades and Related Items contract through Purchasing Cooperative of America (PCA) purchasing cooperative program.

Fiscal Impact

Attachments

A-1 Fire PCA-OD 368-22

Scope of work & pricing

Resolution

PCA *Purchasing Cooperative of America*

[Home](#) [Vendors](#) [Contracts/Vendors List](#) [Members](#) [Solicitations](#) [FAQs](#) [Forms](#) [Contact Us](#) [Current Contracts](#)

A-1 Fire Equipment Co. DbA Of Island Fire And Safety Equipment, Inc.

Awarded Contracts

- PCA OD-368-22 Trades and Related items
 - Awarded July 11, 2022 Ends: July 10, 2027

Contacts:

Andrew Long
PH: 409-744-4438
Email: andrew@a-1fire.com

Matt Lyons
PH: 409-744-4438
Email: matt@a-1fire.com

Crystal Flores
PH: 409-744-4438
Email: accounting@a-1fire.com

Members put "PCA OD-368-22 Trades" on your Purchase Order.

User Menu

- ◀ [My account](#)
- ◀ [Log out](#)



Please click on the logo to go directly to company's site to place orders.

A-1 Fire Equipment Co.
3202 Main Street
3202 Main Street La Marque, TX 77568
Phone: (409) 744-4438
Fax: (409) 938-1331

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The Woodlands, Texas 77380 | 844-722-6374 | <http://www.pcamerica.org>
Website development and hosting by [Siriad Solutions](#)

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 Trades and Related Items**

SECTION 5-SCOPE AND SPECIFICATIONS

SCOPE

It is the intent of Purchasing Cooperative of America (PCA) to establish a contract with one or more vendors to furnish and/or deliver Trades and Related Items on behalf of PCA Members, present and future, meeting the selection criteria for Texas and other states with similar laws. Vendors are requested to submit a proposal for offering the total line of available products and services that are commonly purchased by government agencies and educational institutions.

This is an IDIQ solicitation (Indefinite Delivery Indefinite Quantity) and not for a specific job or project. This is a competitive procurement process to qualify awarded contractors for future projects to be determined directly between PCA Members and PCA Awarded Contractor. Any reference to requirements for specific projects should be construed as suggestions for response.

Awarding Agency/PCA is seeking to contract on a local, regional, statewide or national basis with vendors with the requested experience and qualifications. Vendor will meet the compliance requirements for working with public sector entities including, but not limited to, local, state, special districts, and federal government agencies, hospitals, law enforcement agencies and courts, community public sport association facilities, educational institutions (including K-12, public, private, charter schools, etc. and higher education including junior college systems and universities, etc.) as well as nontaxed nonprofit organizations and religious institutions.

Vendor may elect to limit their proposals to products only, a single service within one of the categories, or multiple services in any or all categories. PCA also requests any 'Value-Add' commodities or services adjunct to this solicitation that Vendor can provide.

Additional Glossary Terms Specific to this Solicitation

Days – calendar days, unless specified as business days. The following are recognized holidays. Presidents' Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. It is up to the Vendor to recognize holidays in the states and jurisdictions in which they work.

Bid Coefficient – discount off as applied to selected cost book or books.

Hours, Premium – the hours not included in Regular Hours or Federal holidays. Premium Hours must be approved by the member for each delivery order and noted in the Job Order Response as a line item during negotiations, overtime. Applies to Job Order Construction – type work.

Hours, Regular – the hours between 7 am and 6 pm Monday thru Friday.

Job Order Contracting (JOC) – construction method used in cooperation purchasing

Job Order Response – a document prepared by the Vendor and sent/given to the Member that includes line-item estimates for work to be performed, specific to Job Order Contracting-type projects.

Types of product/services for the scope of this RFP includes, but is not limited to:

- Building automation controls for heating, air conditioning, lighting, fire, etc.
- Building waterproofing
- Cabling and networking
- Carpentry

PURCHASING COOPERATIVE OF AMERICA
OD-368-22 Trades and Related Items

- Communications
- Painting
- Concrete and asphalt: new, maintenance and repair
- Drywall and painting: new maintenance and repair
- Electrical and lighting: new, maintenance, repair, replacement
- Environmental services
- Flooring: new maintenance, repair, replacement
- Irrigation systems
- Moving and leveling modular buildings
- Plumbing: new, maintenance, repair, replacement
- Other standard installations
- Other standard operations and maintenance services

Vendors may offer equipment and supplies also in any one or more of the following categories, including but not limited to:

Adhesives, sealants and tape	Window installation, glass cutting, etc.
Air filters	Welding and soldering
Appliances	Other related categories
Cabinets, countertops, etc.	
Clearing equipment and supplies	
Electrical supplies and equipment	
Emergency preparedness supplies	
Fasteners, hardware, hand tools, etc.	
General maintenance supplies	
Green/Sustainable products	
HVAC supplies	
Ice machines and refrigeration	
Irrigation equipment and supplies	
Janitorial supplies	
Landscaping supplies	
Lighting, ballasts and bulbs, etc.	
Lubricants, sealants and paint	
Machine and cutting tools	
Material handling and storage supplies	
Measuring tools and test instruments	
Motors, pumps etc.	
Outdoor garden supplies and equipment	
Paint, equipment and supplies	
Plumbing supplies	
Pneumatic tools	
Power tools and accessories	
Raw materials	
Safety and security related items	
Swimming pool chemicals	
Tools (general purpose & Machine)	
Window treatments	

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

NIGP Codes - including, but not limited to:

- 285 Misc. Electrical Equipment and Supplies
 - 670 Plumbing Equipment, Fixtures, and Supplies
 - 750-32 Concrete Crack Repair, Adhesive Repair
 - 770 Roofing and Supplies
 - 909 Building Maintenance, Installation and Repair Services
 - 910-54 Painting, Maintenance and Repair Services (Including Caulking)
 - 910-48 Locksmith Services
 - 910-51 Services - Concrete
 - 910-78 Weatherization, Weather and Waterproofing Maintenance and Repair Services
 - 912 Construction Services, General, including Maintenance and Repair Services
 - 913 Construction Services, Heavy, including Maintenance and Repair
 - 914-84 Trade Services, Construction (not otherwise classified)
 - 931 Equipment Maintenance and Repair Services for Appliance, Athletic, Cafeteria, Furniture, Musical Instruments, and Sewing Equipment
 - 934 Equipment Maintenance and Repair Services for Laundry, Lawn, Painting, Plumbing, and Spraying Equipment
 - 936 Equipment Maintenance and Repair Services for General Equipment
 - 958 Management Services
 - 968-94 Waterproofing Systems and Repair
-

SPECIFICATIONS

NOTE: Respond with the requested information. Instructions are in red.

Vendor is asked to use and furnish at Vendor's expense all labor, equipment, and materials necessary for the satisfactory performance of Trades and Related Items as requested by PCA Member. PCA is seeking contractors who possess licenses in their states (where required) to provide the materials and perform the work. The divisions listed in a unit cost book (UPB) are available under this solicitation. Vendor is required to self-perform the services. If the project requires additional services that the primary vendor doesn't have, the work could be subbed out to a subcontractor. The subcontractor will be required to follow the same guidelines and requirements as the prime vendor.

1. **Company Profile. Required.**
 - a. Provide a brief company history and organizational summary.
 - b. Include brief biographical information regarding the personnel who would be directly responsible for the management and local supervision of projects under a PCA contract.
 - c. Provide documentation of Vendor's safety record in performing similar services, including safety violations, assessments or citations issued by applicable governmental agencies in the past five (5) years.
 - d. Performance Bond-If required. If Vendor is providing the service to install road repair products, vendor shall provide the PCA Member with a performance bond issued by a corporate surety.

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

2. **Products/Services. Required.**
 - a. Discuss whether Vendor will be (1) offering products only; (2) offering products and services; or offering services only.
 - b. Confirm that the products/services proposed meet the intent of the solicitation.
 - c. Describe products/services Vendor is offering to provide PCA Members. Vendors are requested to offer their line of available products and services that are commonly purchased by public sector entities that they currently perform in their normal course of business.
 - d. State if Vendor provides expert advice/consultation.
 - e. Discuss whether Vendor routinely uses or plans to use Subcontractor or perform all work as agreed to by PCA Member using his own equipment and personnel.
 - f. Vendor agrees to advise PCA Member when work is expected to be hazardous to students, employees, the public and/or other workers.

3. **Sample Project. Required.** Provide a project completed for a public sector customer (desired). Do not identify the customer unless prior written approval has been obtained. Cover:
 - a. Size of customer
 - b. Sample user agreement/supplemental agreement/purchase order.
 - c. List of personnel used.
 - d. Scope of work.
 - e. Duration of the project.
 - f. Overall cost.

4. **Marketing Plan. Required.** Show how Vendor plans to use the PCA contract to market its products/services. It could include sample handouts/flyers, lunch and learn programs, and conferences.

5. **Training Program.** **If Not Applicable, initial here**

Describe program for training for PCA Member on equipment and operation, if applicable. Cost should be included in SECTION 6.

6. **'Value Add' Products and Services.** **If Not Applicable, initial here** ML

Describe 'Value Add' items Vendor can provide to PCA Members. Include specifications for each product/service listed and provide pricing in SECTION 6. Failure to include description and pricing may result in 'Value Add' items not being considered for or included in a contract award.

7. **Detail Vendor Freight, Delivery, Inspection & Acceptance Policy and Capabilities.** **If Not Applicable, initial here** ML

All deliveries requiring Inspection and Acceptance shall be Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery and shall be included in Vendor pricing unless otherwise clearly stated in writing in Vendor's proposal to PCA Member. Deliveries shall be made during PCA Member's business hours.

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

Delivery, If Applicable. State fully your delivery terms and conditions including:

- a. State your customary delivery charges.
- b. Minimum order for free delivery.
- c. State standard delivery timeframe.
- d. Carriers, own trucks or common carrier (FedEx, UPS, USPS, etc.)
- e. Delivery time and fill rate.

PCA Member issuing the Purchase Order may request emergency delivery. Vendor must use its best efforts to comply with rush or emergency requested. However, if Vendor is unable to fulfill the emergency delivery request, PCA Member may procure its needs from alternative sources without penalty.

8. **Warranty Information.** **If Not Applicable, initial here** ML

- a. State length of standard warranty on parts/equipment/materials.
- b. Length of standard warranty on installation/service.
- c. Does Vendor offer extended warranty or maintenance contract? Yes No
If 'Yes', provide the cost as a separate line item on the Price List in SECTION 6.

All products shall EITHER be **NEW** and free from defects OR refurbished as authorized by PCA Member. If defective or incorrect products are delivered, the PCA Member may make the determination, at its sole discretion, to return the products to Vendor at no cost to the PCA Member. Vendor agrees to pay all shipping and handling costs for return shipment. Vendor also shall be responsible for arranging the return of the defective or incorrect products.

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

SECTION 6-PRICING

This solicitation is for Trades and Related Items with a job order contracting (JOC) component included intended for the maximum benefit of PCA Members. This solicitation is priced using a unit price book (UPB) for all labor, materials, equipment, supervision, coordination efforts, services, filing fees, security, insurance and other associated or related items specified herein that are necessary to complete the work.

General JOC contractors working in other states, such as Arizona, may, where those laws allow, use an open book pricing method as agreed upon between the PCA Member and JOC contractor.

Texas does not allow the open book method.

Vendor must choose which price book they want to utilize and provide bid coefficients below.

Vendor pricing will include all costs for equipment, products, services, freight, warranties, labor, delivery, project management, technical assistance, training, subcontractor costs and others items as part of their bid coefficient which will be listed on quotes and invoices for PCA Member.

Vendor will specify which trades they wish to provide and bid a coefficient percent off of the price book for each UPB division or present a single coefficient for all of the price book's divisions for JOC work. If the project is not construction-related, vendor may list their installation and labor costs for example, for replacement or repair.

Pricing will include the PCA Administrative Fee ("Fee") of **three percent (3%)** to be included as part of overhead cost on delivery/purchase orders and invoices and not listed as a separate line item. The PCA fee will be calculated:

0.03 X (gross purchase order/contract amount LESS the specified pass-through amounts).

EDGAR Requirements

For jurisdictions (primarily K-12) requiring EDGAR, price validation may use the non-pre-priced method for validation and inclusion into the cost books. The number of line items being validated may vary and left up to the PCA Member and Vendor to agree upon. Craftsman welcomes this approach and will use this to update their cost books.

Best Price

Vendor will provide best pricing for PCA Members. PCA expects Vendor's response to include their Best Price offered all governmental, cooperative or retail customers. Additional discounts may be negotiated between the Vendor and Member as long as other Member agencies who meet the exact same criteria are offered an equal discount. The purchase order must reflect any additional discounts agreed upon.

Bundling

PCA contracts may be bundled for additional value with vendors holding other current PCA contracts (PCA Awarded Contractors) where it is allowed for the benefit of PCA Members.

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

'Value Add'

Bundling and/or packaging desirable packages, purchasing levels and a series of added benefits that are significant in value are, in themselves, a whole lot more valuable than simply the product is by itself and may be offered as 'Value Add'.

Best and Final Offer

PCA may request Vendor to submit a Best and Final Offer. Vendors must submit their Best and Final Offers in writing.

Price Lists, Catalogs or On-line Pricing

Provide installation and labor cost for projects that are not construction-related, such as replacement or repair. Otherwise, Vendor will present a coefficient for the overall UPB or a coefficient for individual divisions of the UPB. If vendor is submitting services for any 'Value Add' items that are proposed. Vendor shall list published pricing with discount and additional volume price break ranges, if applicable.

Pricing will be re-verified by Vendor with PCA Member. PCA may be contacted to review proposed and negotiated pricing.

Unit Price Book – Bid Coefficient – Discount Off

Coefficients represent the discount off of the national Unit Price Book (UPB) being used. All coefficients must be rounded to two (2) places only. For example: a coefficient of 0.953 would be rounded to 0.95

Option One – Entire Cost Book

Check here if choosing this option

Vendor will provide a bid coefficient for the entire UPB, which is a normal and an after-hour coefficient. Vendor will then choose one or more UPB to provide the coefficient for.

A. Craftsman National Construction Estimator Check here if choosing this option

Craftsman NCE does not include overhead and profit (O&P) in the price book. Add 30% to your coefficient (example only) as needed. This will make Craftsman coefficient higher than 1.0 because overhead and profit (O&P) is not included in their UPB. Example of bid coefficient using Craftsman NCE would be: normal hours 1.25 and after hours would be 1.35.

Craftsman Bid Coefficient: Normal Hours _____ After Hours _____

B. R. S. Means Check here if choosing this option

R.S. Means does have O&P built into their unit prices. PCA will not accept a bid coefficient higher than 1.0. When estimating costs using R. S. Means, the far-right hand column (100% cost installed) will be utilized when adding your bid coefficient to the quote. Example of bid coefficient using R. S. Means would be: normal hours .90 and after hours of .95 would give PCA Member a 10% discount from the cost book with local adjustment factor added in for normal hours and 5% discount for after hours.

R. S. Means Bid Coefficient: Normal Hours .80 After Hours .90

C. Other Manufacturer/Supplier/Distributor Cost Book(s) Check here if choosing this option

**PURCHASING COOPERATIVE OF AMERICA
OD-368-22 TRADES AND RELATED ITEMS**

Labor

Upload hourly rates/installation costs rate sheet showing the discount.

Delivery, If Applicable

Please state fully your delivery terms and conditions including:

- a. Minimum order for free delivery
- b. Carriers, own trucks or common carrier (FedEx, UPS, USPS, etc.)
- c. Delivery time and fill rate

PCA Contract Reference on Member Purchase Order and Vendor Invoice

PCA Members will require a contract, purchase order, supplemental contract, or other form to be completed when negotiating the use of Vendor's PCA awarded contract. Instruct your customer/PCA Member to reference "PCA OD-368-22 Trades and Related Items" (or PCA OD-368-22 'Trades') on the job/work/purchase order or other form. This information is the PCA Member's purchase justification, keeps them compliant with state and local purchasing policies, and assists the PCA Member with their periodic audits.

Likewise, Vendor will reference "PCA OD-368-22 Trades and Related Items" (or PCA OD-368-22 'Trades') on the quote and invoice or other form.

PCA Price Adjustment Policy

Contract amendment discounts must be commensurate with the original discount offered. PCA must be given sufficient time to review the request. The contract amendment request letter format is available from PCA Vendor's letter should include:

- Signed by company principal on company letterhead
- Contract number and title
- Product/service description
- Justification/explanation
- Contact information, and
- Pricing/price list (may be an attachment)

NEW PRODUCTS/SERVICES can be added to Vendor's contract as they become available for purchase and must meet contract specifications. New products/services cannot be purchased under this contract until PCA has reviewed Vendor's request and accepted and executed a contract amendment. If new product line is proposed, Vendor must submit a manufacturer's authorization letter.

The contract amendment request letter should also include current price and adjusted price for the following categories:

PRICE DECREASES are accepted for existing products/services at any time during the contract term.

PRICE INCREASE requests must be tied to a market indicator such as the Cost Price Index (CPI) or Consumer Cost Index (CCI) or an equivalent justification.

UPDATED AND NEW MODULE ADDITIONS may be accepted for existing products at any time during the contract term. Changes may be made to update or replace original contracted modules. New modules providing additional capabilities may be added as long as the coefficient/discount offered is the same as the PCA coefficient/discount from the published schedule.



Island Fire & Safety Equipment Co., Inc. d.b.a. A-1 FIRE EQUIPMENT COMPANY

3202 Main Street
La Marque, TX 77568
(409) 744-4438 Fax (409) 938-1331

ACR 1750774 / ECR 973 / SCR-G-1847307

Products and Services

- a) A-1 Fire Equipment will provide Fire alarm parts/services, Fire extinguishers, parts and services, Fire suppression systems, parts and services, Fire sprinkler systems, parts, and services, as well as inspections for all.
- b) All products meet the intent of the solicitation.
- c) Fire Alarm parts include Honeywell, Firelite fire control panels, initiation devices, notification devices, repairs for systems, installation, and inspections required. Fire Extinguisher and Suppression include: Amerex/Pyrochem new extinguishers and systems, installations, recharges and repairs, and inspections required. Fire Sprinkler include Globe, Tyco, Viking sprinkler heads, various sprinkler piping, valves, hangers, and backflow preventers, as well as the installation, repair and retrofit, and inspections required.
- d) We also provide advice and consultation.
- e) We do not use or plan to use any subcontractors to perform any work equipment for the PCA Member.
- f) We agree to advise the PCA Member when work is expected to be hazardous to students, employees, the public and/or other workers.



Island Fire & Safety Equipment Co., Inc.
d.b.a. A-1 FIRE EQUIPMENT COMPANY

3202 Main Street
La Marque, TX 77568
(409) 744-4438 Fax (409) 938-1331

ACR 1750774 / ECR 973 / SCR-G-1847307

Hourly rates/installation costs rate sheet showing the discount

Labor Rate for Technician

Normal Hourly= \$140.28
Holiday Double= \$315.63
After Hours = \$ 236.73

Labor Rate for Helper

Normal Hourly= \$86.84
Holiday Double= \$195.39
After Hours = \$ 146.55

RESOLUTION NO. 2023-030

A RESOLUTION APPROVING AND AWARD A-1 FIRE EQUIPMENT COMPANY D/B/A OF ISLAND FIRE AND SAFETY EQUIPMENT, INC. THROUGH PURCHASING COOPERATIVE OF AMERICA (PCA) – A PURCHASING COOPERATIVE PROGRAM FOR TRADES AND RELATED ITEMS; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the Texas City Purchasing Department requests authorization to process payments for trades and related items through the Purchasing Cooperative of America (PCA OD-368-22), expiring July 10, 2027.

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

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby authorizes the Texas City Purchasing Department to process payments for trades and related items through the Purchasing Cooperative of America (PCA OD-368-22), expiring July 10, 2027, in the amount as set out on the quotes attached hereto as **Exhibit “A”** and made a part hereof for all intents and purposes.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (f)

Meeting Date: 03/01/2023

Surface Repairs, restriping and Logo Replacement Services to Four (4) Gymnasium Floors

Submitted For: Dennis J Harris, Recreation and Tourism

Submitted By: Kelly Bender, Purchasing

Department: Purchasing

Information

ACTION REQUEST

Consider and take action on Resolution 2023-031, approving surface repairs/restriping and logo replacement to (4) gymnasium floors from BSN Sports through Buyboard (contract #679-22) – local government purchasing cooperative.

BACKGROUND (Brief Summary)

Recreation and Tourism Department is requesting the purchase of repairs and maintenance services for existing gymnasium flooring in three different locations: Lowry Fitness Center, Sanders/Vincent Center, and Carver Center. The current flooring is experiencing issues such as disintegration, stripping of game lines, and surface damage, making it necessary to make repairs.

Considering the age of the gymnasium flooring at Lowry Gymnasiums (since 2007) and Carver and Sanders Centers (since 2010), it is essential to take this into account when planning for the repairs. The proposed plan is to sand the floors, re-stripe the game lines, and replace the logo for all four gymnasiums, as outlined in the scope of work attached.

RECOMMENDATION

It is the recommendation of the Parks, Recreation & Tourism Department to approve both surface repairs/restriping and logo replacement of all (4) gymnasiums; Lowry Gymnasium #1 (\$21,713.33), Lowry Gymnasium #2 (\$21,713.33), Carver Center Gymnasium (\$21,713.33), and Sanders-Vincent Center Gymnasium (\$21,713.33). BSN Sports, through Buyboard (contract #679-22) – local government purchasing cooperative for a total amount of \$86,853.32. Funds are available in the FY2022-23 Recreation and Tourism Building & Grounds budget.

Fiscal Impact

Attachments

Gym Floor Scope of Work
Resolution



PO Box 841393
 Dallas, TX 75284-1393
 Phone: 800-527-7510 Fax: 800-899-0149
 Visit us at www.bsnsports.com

Contact Your Rep

James Lynch Email: jwlynch@bsnsports.com | Phone: 281-240-8440

Sold to
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Ship To
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Payer
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Quote	
Quote #:	21376479
Purchase Order #:	Lowery Center Gym 1
Cart Name:	
Quote Date:	06/08/2022
Quote Valid-to:	03/16/2023
Payment Terms:	NT30
Ship Via:	
Ordered By:	

Item Description	Qty	Unit Price	Total
Sand/Restripe and Logo Replacement Item # - NSPINSTALL	1 EA	\$ 21,713.33	\$ 21,713.33

Subtotal:	\$21,713.33
Other:	\$0.00
Freight:	\$0.00
Sales Tax:	\$0.00
Order Total:	\$21,713.33
Payment/Credit Applied:	\$0.00
Order Total:	\$21,713.33

Sand and restripe existing gamelines

Remove existing inlaid logo and replace with new inlaid logo (up to 3 colors)

Owner must ensure that all equipment, mats, tables, chairs, etc. have been removed and the floor is clear of obstructions, bleachers are pushed in to the upright position and all temporary game line tape is removed from the floor.

NON PREVAILING

NON UNION

NO LICENSING/PERMITS



PO Box 841393
 Dallas, TX 75284-1393
 Phone: 800-527-7610 Fax: 800-899-0149
 Visit us at www.bsnsports.com

Contact Your Rep
 James Lynch Email: jwlynch@bsnsports.com | Phone: 281-240-8440

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 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Ship To
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 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Payer
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Quote	
Quote #:	21376480
Purchase Order #:	Lowery Center Gym 2
Cart Name:	
Quote Date:	06/08/2022
Quote Valid-to:	03/16/2023
Payment Terms:	NT30
Ship Via:	
Ordered By:	

Item Description	Qty	Unit Price	Total
Sand/Restripe and Logo Replacement Item # - NSPINSTALL	1 EA	\$ 21,713.33	\$ 21,713.33

Subtotal:	\$21,713.33
Other:	\$0.00
Freight:	\$0.00
Sales Tax:	\$0.00
Order Total:	\$21,713.33
Payment/Credit Applied:	\$0.00
Order Total:	\$21,713.33

Sand and restripe existing gamelanes

Remove existing inlaid logo and replace with new inlaid logo (up to 3 colors)

Owner must ensure that all equipment, mats, tables, chairs, etc. have been removed and the floor is clear of obstructions, bleachers are pushed in to the upright position and all temporary game line tape is removed from the floor.

NON PREVAILING
 NON UNION
 NO LICENSING/PERMITS



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 Phone: 800-827-7510 Fax: 800-899-0149
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 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Payer
 1334879
 TEXAS CITY PARKS AND REC
 2010 6TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Quote	
Quote #:	21378477
Purchase Order #:	Carver Center Gym
Cart Name:	
Quote Date:	06/08/2022
Quote Valid-to:	03/18/2023
Payment Terms:	NT30
Ship Via:	
Ordered By:	

Item Description	Qty	Unit Price	Total
Sand/Restripe and Logo Replacement Item # - NSPINSTALL	1 EA	\$ 21,713.33	\$ 21,713.33

Subtotal:	\$21,713.33
Other:	\$0.00
Freight:	\$0.00
Sales Tax:	\$0.00
Order Total:	\$21,713.33
Payment/Credit Applied:	\$0.00
Order Total:	\$21,713.33

Sand and restripe existing gamolines

Remove existing inlaid logo and replace with new inlaid logo (up to 3 colors)

Owner must ensure that all equipment, mats, tables, chairs, etc. have been removed and the floor is clear of obstructions, bleachers are pushed in to the upright position and all temporary game line tape is removed from the floor.

NON PREVAILING
 NON UNION
 NO LICENSING/PERMITS



PO Box 841383
 Dallas, TX 75284-1383
 Phone: 800-527-7510 Fax: 800-899-0149
 Visit us at www.bsnsports.com

Contact Your Rep
 James Lynch Email: jwlynch@bsnsports.com | Phone: 281-240-8440

Sold to
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Ship To
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Payer
 1334879
 TEXAS CITY PARKS AND REC
 2010 5TH AVE N
 TEXAS CITY TX 77590-3400
 USA

Quote	
Quote #:	21376478
Purchase Order #:	Sanders Center Gym
Cart Name:	
Quote Date:	06/08/2022
Quote Valid-to:	03/18/2023
Payment Terms:	NT30
Ship Via:	
Ordered By:	

Item Description	Qty	Unit Price	Total
Sand/Restripe and Logo Replacement Item # - NSPINSTALL	1 EA	\$ 21,713.33	\$ 21,713.33

Subtotal:	\$21,713.33
Other:	\$0.00
Freight:	\$0.00
Sales Tax:	\$0.00
Order Total:	\$21,713.33
Payment/Credit Applied:	\$0.00
Order Total:	\$21,713.33

Sand and restripe existing gamelines

Remove existing inlaid logo and replace with new inlaid logo (up to 3 colors)

Re-glue existing rubber flooring at two areas (3'x3' and 5'x5')

Owner must ensure that all equipment, mats, tables, chairs, etc. have been removed and the floor is clear of obstructions, bleachers are pushed in to the upright position and all temporary game line tape is removed from the floor.

NON PREVAILING
 NON UNION
 NO LICENSING/PERMITS

RESOLUTION NO. 2023-031

A RESOLUTION APPROVING THE PURCHASE OF SURFACE REPAIRS/RESTRIPING AND LOGO REPLACEMENT TO FOUR (4) GYMNASIUM FLOORS FROM BSN SPORTS THROUGH BUYBOARD (CONTRACT NO. 679-22) – LOCAL GOVERNMENT PURCHASING COOPERATIVE; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, this request is for surface repairs/restriping and logo replacement to four (4) gymnasium floors from BSN Sports through BuyBoard, Contract No. 679-22– local government purchasing cooperative; and

WHEREAS, the Texas City Recreation and Tourism Department requests authorization to process a payment through the BuyBoard, Contract No. 679-22, in the amount of \$86,853.32. Funds are available in the FY22/23 Annual Budget.

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

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby authorizes surface repairs/restriping and logo replacement to four (4) gymnasium floors from BSN Sports through BuyBoard, Contract No. 679-22 – local government purchasing cooperative from Progressive Commercial Aquatics, Inc. in the amount of \$86,853.32, as set out on the quotes attached hereto as **Exhibit “A”** and made a part hereof for all intents and purposes.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (g)

Meeting Date: 03/01/2023

Natatorium Repairs

Submitted For: Dennis J Harris, Recreation and Tourism

Submitted By: Kelly Bender, Purchasing

Department: Purchasing

Information

ACTION REQUEST

Consider and take action on Resolution No. 2023-032, approving the purchase of repairs to the Natatorium from Progressive Commercial Aquatics, Inc. through Buyboard (contract #613-20) – local government purchasing cooperative.

BACKGROUND (Brief Summary)

The Matthew T. Doyle Natatorium was dedicated in 2007, since the 16-year time period a lot of wear and tear along with high usage have created some damages that will need to be repaired to the facility. It is important that we replace the UV system, expansion joint at bottom of pool along with the two main drain covers. The UV System purpose is a secondary form of sanitation using ultraviolet light in addition to chemicals to disinfect the water as it passed over the lamp. Attached you will find the descriptions for each item.

RECOMMENDATION

It is the recommendation of the Parks, Recreation & Tourism Department to approve the purchase of repairs to the Matthew T. Doyle Natatorium. Replace the UV System (\$53,350.00) Remove and Replace expansion joints (\$4,100.00), Replace main drain cover (\$4,790.00), from Progressive Commercial Aquatics, Inc. through Buyboard (contract #613-20) – local government purchasing cooperative for a total amount of \$62,240.00 Funds are available in the Rec and Tour FY2022-23 budget.

Fiscal Impact

Attachments

Natatorium Repairs

Resolution



Progressive Commercial Aquatics, Inc.

2510 Farrell Rd
Houston TX
77073 281-982-0212

Quote

Quote #: Q5887
Date: 3/31/2022
Shipping Method:
Salesperson: Erica
Exp Date: 2/28/2023

Bill To

City of Texas City (TEXASC)
INDOOR UV
Do Not Mail
mfavalora@texascitytx.gov
kbender@texascitytx.gov

Ship To

City of Texas City (TEXASC)
INDOOR UV
Attn: Kelly Bender
2010 Fifth Ave. N
INV:mfavalora@texascitytx.gov
CC:ctouchton@texascitytx.gov
Texas City TX
77590 409-948-3111

Item	Description	Qty	UOM	Unit Price	Tax	Total
NONSTOCK	PVC Parts & Materials 10" Sch80	1	EA	\$3,500.00	\$0.00	\$3,500.00
NONSTOCK	Unistrut & Hardware	1	EA	\$1,900.00	\$0.00	\$1,900.00
NONSTOCK	PMD320G UV System	1	EA	\$42,200.00	\$0.00	\$42,200.00
LABOR	Labor for Service Jobs	1	EA	\$5,750.00	\$0.00	\$5,750.00

EXMPT \$0.00

Total Weight of Items 0 lbs

Total	\$53,350.00
Tax Total	\$0.00
Grand Total	\$53,350.00

There will be a 25% restocking fee on all returned items.
Credit Card Purchases will include a 2% Service Fee
Due to Material Shortages, Quotes are only valid for 60 days

Thank you for your business



Progressive Commercial Aquatics, Inc.

2510 Farrell Rd
 Houston TX 77073
 281-982-0212

Quote

Quote #: Q6196
 Date: 8/3/2022
 Shipping Method:
 Salesperson: Erica
 Exp Date: 2/28/2023

Bill To

City of Texas City (TEXASC)
 Pool Expansion Joint
 Do Not Mail
 mfavalora@texascitytx.gov
 kbender@texascitytx.gov

Ship To

City of Texas City (TEXASC)
 Pool Expansion Joint
 Attn: Kelly Bender
 2010 Fifth Ave. N
 INV:mfavalora@texascitytx.gov
 CC:ctouchton@texascitytx.gov
 Texas City TX 77590
 409-948-3111

Item	Description	Qty	UOM	Unit Price	Tax	Total
NONSTOCK	Remove & Replace Expansion Joint	1	EA	\$3,300.00	\$0.00	\$3,300.00
LABOR	Assistance draining, filling and rebalancing	1	EA	\$800.00	\$0.00	\$800.00

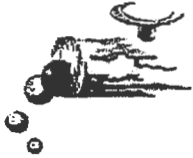
EXMPT \$0.00

Total Weight of Items 0 lbs

Total \$4,100.00
 Tax Total \$0.00
 Grand Total \$4,100.00

There will be a 25% restocking fee on all returned items.
 Credit Card Purchases will include a 2% Service Fee
 Due to Material Shortages, Quotes are only valid for 60 days

Thank you for your business



Progressive Commercial Aquatics, Inc.

2510 Farrell Rd
 Houston TX 77073
 281-982-0212

Quote

Quote #: Q6583
 Date: 2/3/2023
 Shipping Method:
 Salesperson: Erica
 Exp Date: 4/4/2023

Bill To

City of Texas City (TEXASC)
 Main drain cover replace
 Do Not Mail
 mfavalora@texascitytx.gov
 kbender@texascitytx.gov

Ship To

City of Texas City (TEXASC)
 Main drain cover replace
 Attn: Kelly Bender
 2010 Fifth Ave. N
 INV:mfavalora@texascitytx.gov
 CC:ctouchton@texascitytx.gov
 Texas City TX 77590
 409-948-3111

Item	Description	Qty	UOM	Unit Price	Tax	Total
NONSTOCK	18 x 23 Riverflow Grates	3	EA	\$600.00	\$0.00	\$1,800.00
NONSTOCK	Screw Kit	3	EA	\$20.00	\$0.00	\$60.00
FREIGHT	Freight charges	1	EA	\$180.00	\$0.00	\$180.00
LABOR	Install - Pool Drained	1	EA	\$950.00	\$0.00	\$950.00
LABOR	Install - Diver - Pool Filled	1	EA	\$1,800.00	\$0.00	\$1,800.00

EXMPT \$0.00

Total Weight of Items 0 lbs

Total \$4,790.00
 Tax Total \$0.00
 Grand Total \$4,790.00

There will be a 25% restocking fee on all returned items.
 Credit Card Purchases will include a 2% Service Fee
 Due to Material Shortages, Quotes are only valid for 60 days

Thank you for your business

RESOLUTION NO. 2023-032

A RESOLUTION APPROVING THE PURCHASE OF REPAIRS TO THE NATATORIUM FROM PROGRESSIVE COMMERCIAL AQUATICS, INC. THROUGH BUYBOARD (CONTRACT #613-20) – LOCAL GOVERNMENT PURCHASING COOPERATIVE; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, this request is for repairs to the Natatorium from Progressive Commercial Aquatics, Inc. through Buyboard (contract #613-20) – local government purchasing cooperative; and

WHEREAS, the Texas City Recreation and Tourism Department requests authorization to process a payment through the BuyBoard Contract No. 613-20 in the amount of \$62,240.00. Funds are available in the FY22/23 Annual Budget.

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

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby authorizes repairs to the Natatorium from Progressive Commercial Aquatics, Inc. through Buyboard (contract no. 613-20) – local government purchasing cooperative from Progressive Commercial Aquatics, Inc. in the amount of \$62,240.00, as set out on the quotes attached hereto as **Exhibit “A”** and made a part hereof for all intents and purposes.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (h)

Meeting Date: 03/01/2023

Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC

Submitted For: Kim Golden, Transportation and Planning

Submitted By: Veronica Carreon, Transportation and Planning

Department: Transportation and Planning

Information

ACTION REQUEST

Consider and take action on the Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC

BACKGROUND (Brief Summary)

Topaz Generating operates a power plant located at 5651 Attwater Avenue with a primary water source from Gulf Coast Water Authority. ERCOT is requiring electrical power providers to enhance their stand-by generating capacities and to increase the resilience of their operations during periods of high demand. To satisfy these requirements from ERCOT, Topaz Generating desires to contract with the City for potable water as a non-emergency, non-essential, back-up and secondary source of water for occasional use to support the routine operation of the power plant. In association with the receipt of source water from the City, Customer may from time to time have additional reject water from its processes which requires disposal into a permitted sanitary sewer collection system. The City municipal sanitary sewer system and existing lift station at Attwater No. 33 has existing additional capacity for the collection of such reject water to the extent of two hundred gallons per minute (200 gpm). The parties have a Sewer Use Agreement dated May 2, 2022 which will be replaced in its entirety by this agreement when executed.

RECOMMENDATION

Staff recommends approval of the non-emergency water and sewer service agreement. In accordance with City Charter, this agreement is being brought to City Commission for approval because revenues within the first 12 months may could exceed \$50,000. The agreement incorporates the water and sewer rates adopted by City Commission and applicable to other customers of the system, including any updates to such rates.

Fiscal Impact

Attachments

Agreement

Resolution

NON-EMERGENCY WATER AND SEWER SERVICE AGREEMENT

THIS NON-EMERGENCY WATER AND SEWER SERVICE AGREEMENT (“Agreement”) entered into on this ____ day of _____, 2023, by and between TOPAZ GENERATING, LLC (“Customer”) and the CITY OF TEXAS CITY, TEXAS (“City”) a municipal corporation situated in Galveston County, Texas, duly organized and existing under its charter and the Constitution and Laws of the State of Texas, acting herein by and through its duly authorized officers.

ARTICLE I – BACKGROUND

1.1 Customer operates a power plant consisting of ten LM6000 natural gas turbines located at 5651 Attwater Avenue (the “Property”) in Texas City, Texas. The gas turbines utilize water primarily for NOx emissions control and combustion efficiency. Customer obtains its primary source water directly from the Gulf Coast Water Authority (GCWA). ERCOT is requiring electrical power providers to enhance their stand-by generating capacities and to increase the resilience of their operations during periods of high demand. To satisfy these requirements from ERCOT, Customer desires to contract with the City for potable water as a non-emergency, non-essential, back-up and secondary source of water for occasional use to support the routine operation of the power plant. Customer’s typical demand from the GCWA is 2,000,000 to 6,000,000 gallons per month at a maximum rate of approximately 200,000 gallons per day.

1.2 The City’s Attwater Water System is physically situated to provide the water service requested by Customer. City operates the Attwater System through a direct connection to the GCWA Thomas Mackey Water Treatment Plant with no bypass or secondary source of water. For this reason, the Attwater System is subject to interruption of service when there are interruptions of service at the water treatment plant, such as during times of high-water demand, extreme weather events, or when the treatment plant is operating on generators either partially or entirely. The City’s take point for the Attwater System is a 12-inch main which typically operates at 1500 gpm.

1.3 In association with the receipt of source water from the City, Customer may from time to time have additional reject water from its processes which requires disposal into a permitted sanitary sewer collection system. The City municipal sanitary sewer system and existing lift station at Attwater No. 33 has existing additional capacity for the collection of such reject water to the extent of two hundred gallons per minute (200 gpm). The parties have a Sewer Use Agreement dated May 2, 2022 which will be replaced in its entirety by this agreement when executed. Customer to remain responsible for any and all outstanding or unpaid accounts as of the effective date.

ARTICLE 2 – SERVICE AGREEMENT

The City agrees to sell and deliver water to, and agrees to collect and treat reject process water related thereto from Customer upon the following terms:

2.1 The services provided pursuant to this Agreement are deemed a non-emergency,

secondary, back-up source for the convenience and routine operation of Customer's facilities. Such services may be limited or interrupted entirely by City at its sole discretion without default of this Agreement as necessary to prevent or avoid any detriment to its ability to provide essential water and sanitary sewer service to the residents and essential service providers of the City.

2.2 Water shall be delivered to Customer at the designated take point at the rate of no more than 200 gallons per minute not to exceed 100,000 gallons per day. Customer shall be allowed a water tap and meter of no greater than 3-inches. Customer shall accept water quality "as is" and "where is" at the point of delivery with no representation or warranty of water quality whatsoever from City. Water quality shall be as received by the City from GCWA with no other obligation whatsoever relating to the quality of water delivered.

2.3 City shall make reasonable effort to deliver such water at a minimum pressure of 20 psig, provided it shall in no instance be required to deliver water at system pressure any greater than the lowest actual operating pressure of the entire system at any given time.

2.4 Ancillary to the actual provision of water in accordance with this agreement, reject water may be received from Customer at Lift Station No. 33 at no more than two hundred gallons per minute (200 gpm) not to exceed 100,000 gallons per day and a temperature not to exceed 80 degrees Fahrenheit. It is understood that such reject water shall in no instance be a standalone service provided to Customer by City.

2.5 Customer shall construct, operate, maintain and pay for at its sole expense all infrastructure necessary to connect to the City's water and sewer systems upon conditions and specifications satisfactory to the City Engineer and Director of Utilities.

2.6 Customer shall construct, operate, maintain and pay for at its sole expense all metering required by the City for water supply upon conditions and specifications satisfactory to the City Engineer and Director of Utilities.

2.7 City shall bill and Customer shall pay on a monthly basis the City's standard customer rate upon the same terms as set by City Commission or delegated to the City Administration for water services based upon actual metered consumption. The Property does not currently have a sewer usage meter and receives water from an industrial reservoir operated by Gulf Coast Water Authority ("GCWA") and from the City of Texas City pursuant to this agreement. Both sources are metered, and Customer shall meter any sources added subsequent to the effective date of this agreement. Failure to provide a meter on the source may result in the City requiring Customer to install a sewer usage meter as a condition for continuing to provide these sewer services. Sewer usage shall be calculated as follows: the quantity in thousands of gallons (kGal) of water received from all sources multiplied by a factor of 0.30 and multiplied by the current rate. The initial rate shall be \$4.00/kGal). Expressed as a formula: (Gallons received from all sources/1,000 x 0.30) x \$4.00/kGal. Customer shall pay for all consumption from the date Customer connects to City's systems. Billing rates shall remain current with any and all rate changes enacted by the City Commission or City Administration throughout the term of this Agreement and any and all extensions thereto.

2.8 Customer shall pay to City a deposit in the amount of \$ 42,000.00 together with the standard rate of deposit for the water meter based upon size, with such deposits to be held against future billings for services, repairs and any other charges which may become due under this agreement. Such deposit shall be restored to such minimum amount and retained by City until six (6) months following the termination or expiration of this Agreement.

2.9 Customer understands and agrees that all City ordinances and codes, including applicable permits, fees including impact fees, and inspections shall be of full force and effect upon the work and services covered by this agreement.

ARTICLE 3 – MAINTENANCE AGREEMENT

3.1 Customer shall maintain the connection to City's systems to the satisfaction of the City Engineer and Director of Utilities. Customer shall not construct any wells or make provision for connection to any other water sources without prior written consent from the City. **City confirms its consent to Customer's existing connection to the GCWA for its primary water source.** Any connection to other water sources (s) shall be constructed to prevent any cross-connection, intentional or inadvertent, with the City Water System. All plans therefor shall be submitted to the City Engineer for review and approval and as-built drawings shall be provided to the City upon Completion. Customer stipulates its intent to construct a water well no. 16364 in accordance with permit dated -5/16/2022 from the Harris-Galveston County Subsidence District AND its understanding that this provision shall apply to said construction when made.

3.2 Customer shall install and maintain and cause to be calibrated at least annually a metering assembly(ies) satisfactory to the City Engineer and Director of Utilities.

3.3 Failure of the Customer to perform maintenance satisfactory to the City shall upon ten (10) days written notice allow the City to perform or have performed by qualified third parties the necessary maintenance and repairs and thereafter to invoice the actual costs plus a 30% mark-up to the Customer. Such repair by the City shall not constitute a cure of Customer's default, if any, in failing to maintain the connections to systems to the satisfaction of the City.

3.4 Upon termination or expiration of this Agreement, Customer shall remove the connections to City's systems and restore to original condition to the satisfaction of the City Engineer and the Director of Utilities subject to normal wear and tear. Alternatively, **if Customer shall fail to remove such connections as requested by City,** the City may at its sole discretion exercise an option to remove the connections and restore to original conditions with its own forces or by contract services, with such expenses to be billed to Customer for reimbursement.

ARTICLE 4 – PRIORITY OF SERVICE

4.1 City is the sole provider of potable municipal water and sanitary sewer services to residents and essential services providers within the corporate limits of the City. Providing such services is its core mission and primary purpose under the Charter of the City. Therefore, notwithstanding any other provision in the Agreement, the City shall never be required to provide services to Customer to the detriment of the service to the residents and citizens of the City.

Additionally, during periods of high demand, water conservation, drought, acts of God, force majeure, declared or non-declared emergency or other exigent circumstances, the City may at its sole discretion and without default of this Agreement limit services to Customer, in whole or in part, as it finds necessary to assure its ability to perform its obligation to provide safe, potable municipal water and sanitary sewer services to the residents and essential service providers within the corporate limits of the City.

4.2 The parties specifically agree Article 9, Dispute Resolution, does not apply to the City's actions in accordance with this article.

ARTICLE 5 – TERM OF AGREEMENT

5.1 This Agreement is subject to all rules, regulations, or laws as may be applicable to similar agreements of the State of Texas. The initial term of this Agreement shall be five (5) years and shall continue automatically thereafter on a month-to-month unless and until either party provides sixty (60) days written notice to the other that the Agreement is terminated for convenience OR the agreement is renewed by written amendment signed by both parties for a specific term.

ARTICLE 6 – TERMINATION OF THE AGREEMENT

6.1 Either party may terminate the Agreement for cause at any time upon thirty (30) days written notice, provided the other party shall have thirty (30) days to cure any default or address the cause for termination. The notice of termination shall enumerate and describe the cause for termination and provide reasonable explanation of the actions necessary to relieve the cause and re-instate the Agreement.

6.2 If at any time the City decides it is unable or unwilling to provide the water and/or sewer services described in this agreement, the City will give six (6) months written notice to enable the Customer to make other provisions for service. This provision shall not apply to termination for failure to make timely payment, for non-payment, or for repeated or reoccurring delays in payment, though cured, which termination may be as provided herein.

6.3 Notwithstanding any other provision herein, failure by Customer to pay an invoice for thirty (30) days or more from the date due shall constitute an event of default for which termination may be made upon ten (10) days written notice, provided the other party shall have ten (10) days to cure such default. Repeated or reoccurring delays in payment, though cured, may constitute grounds for termination of this agreement by the City upon thirty (30) days written notice.

6.4 Notwithstanding any other provision herein, failure to prevent cross-connection with another water source or the discovery of an actual cross-connection with another water source made without approval from the City Engineer may be grounds for immediate physical disconnection and separation from the City's water system and termination of this agreement.

ARTICLE 7 – INDEMNIFICATION AND HOLD HARMLESS

7.1 Each party shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state, and federal government authorities relating to the water and sewer services which are the subject of this Agreement, together with the installation, maintenance, use, operation, and removal of the equipment and other alterations or improvements authorized herein. Customer does hereby fully release, defend, indemnify and hold City harmless from and against any claim of liability or loss from personal injury or property damage resulting from or arising out of the services or the use of the equipment authorized herein by the Customer, its customers, servants or agents; provided, however, the foregoing shall not apply to the extent of City's gross negligence or willful misconduct.

ARTICLE 8 – CONSEQUENTIAL DAMAGES

8.1 Whether the cause of any damage, loss, or liability is insurable, insured, or not insured, foreseen or unforeseen, neither party nor its customers, representatives, agents, contractors, subcontractors, invitees, or licensees shall in any event be liable to the other party or to its customers, representatives, agents, contractors, subcontractors, invitees, or licensees for claims for anticipatory profits, consequential, incidental, exemplary, punitive, or any indirect damages of any nature arising at any time, from any cause whatsoever, whether arising in tort, contract, warranty, strict liability, by operation of law, or otherwise, even if by such party's, its representatives', agents', contractors', subcontractors', invitees' or licensees' negligence or fault, connected with or resulting from performance or non-performance under this Agreement or as a result of the construction, maintenance, operation, or use of the services or an property or appurtenances related thereto by either party.

ARTICLE 9 – DISPUTE RESOLUTION

9.1 The Customer and the City shall each designate in writing to the other from time to time a representative who shall be authorized to resolve any dispute relating to the subject matter of this Agreement in an equitable manner to exercise the authority of such party to make decisions by mutual agreement.

9.2 The Customer and the City each agree (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged written records, information and data pertaining to any such dispute.

9.3 If any dispute relating to the subject matter of this Agreement is not resolved between the Customer and the City pursuant to this Article 9 within 30 days from the date on which a party provides written notice to the other party of such dispute and of the notifying party's position on the disputed matter, then upon written notification by either party to the other party, the parties agree to attend mediation prior to any legal action(s), except for actions relating to Customer's non-payment or repeated delay in payment.

9.4 The parties specifically agree this Article does not apply to actions based upon

Article 4 – Priority of Service or subparagraph 6.4 – disconnection and termination for unauthorized cross-connection.

ARTICLE 10 – MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but this Agreement shall not be assignable by the Customer without prior written consent of the City which may be withheld for any cause or no cause. Whenever reference is made in this Agreement to either party hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and assigns of each party.

10.2 If any provision of this Agreement or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

10.3 This Agreement can be amended only by written agreement executed by both parties.

10.4 This Agreement contains the entire Agreement between the parties and any additional agreement made after this date shall be ineffective to alter, change, modify, or discharge it in whole or in part, unless such agreement is in writing and signed by the Parties.

10.4 This Agreement shall be governed by the laws of the State of Texas.

10.5 Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any party shall be sent to that party by first class mail or express delivery at the address provided below, or to such other address as directed in writing provided to a party by the party to whom the notice is to be directed. All such written notices shall be addressed to each other party's signatory to this Agreement. Unless otherwise directed, notices shall be mailed to the following addresses:

City:

City of Texas City, Texas
1801 Palmer Hwy
Texas City, Texas 77590
Attn: Mayor

With a copy to:

City Engineer
7800 Emmett F. Lowery Expy
Texas City, TX 77591

Customer:

Topaz Generating, LLC
Attn: Cliff Oliver
8303 McHard Rd
Houston, TX 77053

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original

CITY OF TEXAS CITY, TEXAS

By: _____
Dedrick Johnson, Sr., Mayor

ATTEST:

Rhomari Leigh, City Secretary

CUSTOMER

By: _____
Name: Cliff Oliver
Title: VP, Asset Management

RESOLUTION NO. 2023-033

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A NON-EMERGENCY WATER AND SEWER SERVICE AGREEMENT WITH TOPAZ GENERATING, LLC; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, Topaz Generating desires to contract with the City of Texas City for potable water as a non-emergency, non-essential, back-up and secondary source of water for occasional use to support the routine operation of the power plant. In association with the receipt of source water from the City, Customer may from time to time have additional reject water from its processes which requires disposal into a permitted sanitary sewer collection system. The parties have a Sewer Use Agreement dated May 2, 2022, which will be replaced in its entirety by this agreement when executed; and

WHEREAS, the Texas City Engineering, Transportation and Planning Department is requesting the approval of a Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC.

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

SECTION 1: That the City Commission hereby approves a Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC.

SECTION 2: That the Mayor is hereby authorized to execute a Non-Emergency Water and Sewer Service Agreement with Topaz Generating, LLC., in the form attached hereto as **Exhibit “A”** and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (i)

Meeting Date: 03/01/2023

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Consider and take action on Resolution No. 2023-034, approving appointments of Board Members to the Cultural Arts Foundation and Housing Authority Advisory Committees. (City Secretary)

BACKGROUND (Brief Summary)

RECOMMENDATION

Ruth Ann Sandino to replace Peggy Dietel on the Cultural Arts Foundation Board
Warren Reed to replace George Shannon on the Housing Authority Advisory Board

Fiscal Impact

Attachments

Resolution

RESOLUTION NO. 2023-034

A RESOLUTION APPOINTING AND/OR REPLACING MEMBERS TO THE CULTURAL ARTS FOUNDATION BOARD OF DIRECTORS AND THE HOUSING AUTHORITY ADVISORY BOARD; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, On March 1, 2023, the City Commission of the City of Texas City, Texas, a general discussion was held concerning the appointment of members to vacant boards, commissions, and committees; and

WHEREAS, the City desires to fill the position with the following:

- Ruth Ann Sandino to replace Peggy Dietel on the Cultural Arts Foundation Board
- Warren Reed to replace George Shannon on the Housing Authority Advisory Board

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

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby appoints Ruth Ann Sandino to the Cultural Arts Foundation Board.

SECTION 2: That the City Commission of the City of Texas City, Texas, hereby appoints Warren Reed to Housing Authority Advisory Board.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(7) (j)

Meeting Date: 03/01/2023

Approval of Resolution No. 2023-035 authorizing United States Army Corps Of Engineers a Road Easement Agreement

Submitted For: Jon Branson, Management Services

Submitted By: Jon Branson, Management Services

Department: Management Services

Information

ACTION REQUEST

Consider approval of a Road Easement Agreement with the United States Army Corps of Engineers (USACE) granting them a non-exclusive Road Easement upon, over and through property owned by the City of Texas as further described in Exhibit A, and Exhibit B and Area Overview attached hereto.

BACKGROUND (Brief Summary)

The USACE performs regular maintenance of the Port of Texas City Channel for the purpose of maintaining and improving navigability throughout the Channel. The proposed non-exclusive agreement would allow USACE the right of ingress to and egress from the Easement over the City's land so long as USACE does not unreasonably interfere with the City's operations. The term of the agreement is for twenty-five (25) years and would enable them to carry out their maintenance responsibilities on the Texas City Channel.

RECOMMENDATION

Staff recommends approval of the proposed Road Easement Agreement.

Fiscal Impact

Attachments

USACE Road Easement Agreement
Area Overview
Resolution

ROAD EASEMENT AGREEMENT

GRANTOR:

City of Texas City

GRANTOR'S MAILING ADDRESS:

City of Texas City

1801 – 9th Avenue North

P.O. Drawer 2608

Texas City, TX 77592-2608

GRANTEE:

The United States of America and its assigns, by and through
The U. S. Army Corps of Engineers

GRANTEE MAILING ADDRESS:

U. S. Army Engineer District,

Galveston District, Corps of Engineers

P.O. Box 1229, Galveston, Texas 77553-1229

ATTN: CESWF-RE

THIS AGREEMENT, made this _____ day of _____, 2023, by and
between CITY OF TEXAS CITY, having its principal office at 1801 – 9th Avenue
North, Texas City, TX 77592-2608 herein referred to as “GRANTOR;”

and

UNITED STATES OF AMERICA, GRANTEE acting through the U. S. Army
Corps of Engineers, Galveston District, having its principal office at P. O. Box 1229,
Galveston, Texas 77553-1229, hereinafter referred to as "USACE."

WITNESSETH

WHEREAS, GRANTOR is the non-federal sponsor of a navigation project (the
“Project”) for Texas City Ship Channel, a navigable waterway, which is located in
Galveston County; and

WHEREAS, USACE, acting through its Galveston District, is the responsible party to execute the design and construction of the Channel so as to improve its navigability; and

WHEREAS, USACE needs certain lands for (a) the purpose of depositing dredged materials in upland placement areas, and (b) improving the Channel in certain areas by deepening and widening and bend easing; and

WHEREAS, GRANTOR holds real property in the vicinity of the Channel and is willing to provide to USACE an easement access thereto for the purposes described;

In consideration of these premises, the grant by GRANTOR and the mutual promises made by each to the other, GRANTOR and USACE agree as follows:

1. GRANTOR hereby grants to USACE, a non-exclusive Road Easement upon, over and through the lands described and depicted in the drawings attached as:

Exhibit A – 0.9102 acres-Tract F

Exhibit B – 22.825 acres-Tract G

for the following purposes:

(a) for the location, construction, operation, maintenance, alteration replacement of a road and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Exhibits “A” and “B”;

Included in the grant to USACE of this easement is the right of USACE to delegate to its contractor(s) the power to execute the actions and activities related to the construction of the dredged material disposal facility, the placement and deposit of the dredged material thereon and the channel improvement works.

2. This Easement is granted by the GRANTOR to USACE subject to the foregoing matters and all rules, regulations and statutes which may have any applicability to the uses granted herein.

3. GRANTOR reserves all oil, gas and minerals on and under said lands and the right

to fully use and enjoy the land, over, under, around and through the Easement premises, subject to the rights, privileges and authority herein granted and conveyed, which shall not be unreasonably interfered.

4. USACE shall have the right of ingress to and egress from the Easement over GRANTOR'S land so long as USACE does not unreasonably interfere with the use thereof.

5. The rights granted herein shall not be assignable together or separately, in whole or in part.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their authorized representatives and to be effective for all purposes for the period of Twenty-Five (25) years as of the _____ day of _____, 2023.

CITY OF TEXAS CITY

U. S. ARMY CORPS OF ENGINEERS

By: _____

“NAME”

“TITLE”

City of Texas City

By: _____

Timothy J. Nelson
Chief of Real Estate
Galveston District

STATE OF TEXAS

§

§

COUNTY OF GALVESTON

§

BEFORE ME, the undersigned authority, on this day personally appeared “NAME”, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the “TITLE” of City of Texas City and acknowledged to me that he executed the same as the act of said City of Texas City for the purposes therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of _____, 2023.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

BEFORE ME, the undersigned authority, on this day personally appeared Timothy J. Nelson, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the Chief of Real Estate, Galveston District, USACE and acknowledged to me that he executed the same as the act of said Galveston District, USACE, for the purposes therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of _____, 2023.

Notary Public, State of Texas

DRAFT

Exhibit A

0.9102 acres - Tract F

LAND DATA SURVEYS, INC.

DON DENSON

Registered Professional Land Surveyor



File 01-011J

May 15, 2001

METES AND BOUNDS DESCRIPTION 0.9102 ACRE TRACT

A tract containing 0.9102 acre being part of and out of the called 65.325 Acre Tract conveyed to the City of Texas City as described in Cause No. 107,674 in the Judicial District Court No. 122 (February 10, 1970), and also being in the H.B. Littlefield Survey, Abstract No. 143, in Galveston County, Texas; said 0.9102 acre being more particularly described by metes and bounds as follows with all bearings and coordinates referenced to the Texas Coordinate System, South Central Zone:

BEGINNING at a point with coordinates of $N = 13,699,859.7063$ and $E = 3,275,126.2282$, same being the point of intersection of the westerly line of the said 65.325 Acre Tract with the southerly line of a called 34.50 Acre Tract described as a 150 foot wide canal right-of-way or easement granted to Galveston County in instrument recorded in Book 1687, Page 205 of the Galveston County Deed Records (GCDR), said beginning point being located $N 88 \text{ deg. } 00' 43'' \text{ E}$, a distance of 7,069.78 feet from the intersection of the easterly right-of-way line of State Highway Loop 197 (based on a width of 160 feet) with the southerly line of said 150 foot wide canal;

THENCE, $N 36 \text{ deg. } 39' 43'' \text{ E}$, along the westerly line of said 65.325 Acre Tract, for a distance of 64.02 feet to the northwest corner of the herein described tract;

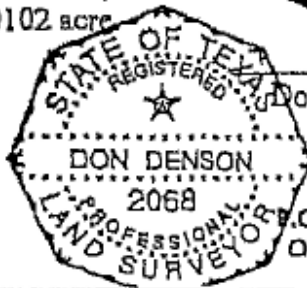
THENCE, $N 88 \text{ deg. } 00' 43'' \text{ E}$, for a distance of 152.86 feet to the northeast corner of the herein described tract, on the easterly line of the said called 65.325 Acre Tract;

THENCE, $S 61 \text{ deg. } 20' 17'' \text{ E}$, along the easterly line of said called 65.325 Acre Tract, for a distance of 190.30 feet to an angle point;

THENCE, $S 28 \text{ deg. } 39' 43'' \text{ W}$, continuing along an easterly line of said called 65.325 Acre Tract, for a distance of 38.34 feet to a point for corner;

THENCE, $S 88 \text{ deg. } 00' 43'' \text{ W}$, along a line being parallel to and 80 feet southerly from the southerly line of the aforesaid 150 foot wide canal, for a distance of 401.00 feet to a point for corner, on the westerly line of the said called 65.325 Acre Tract;

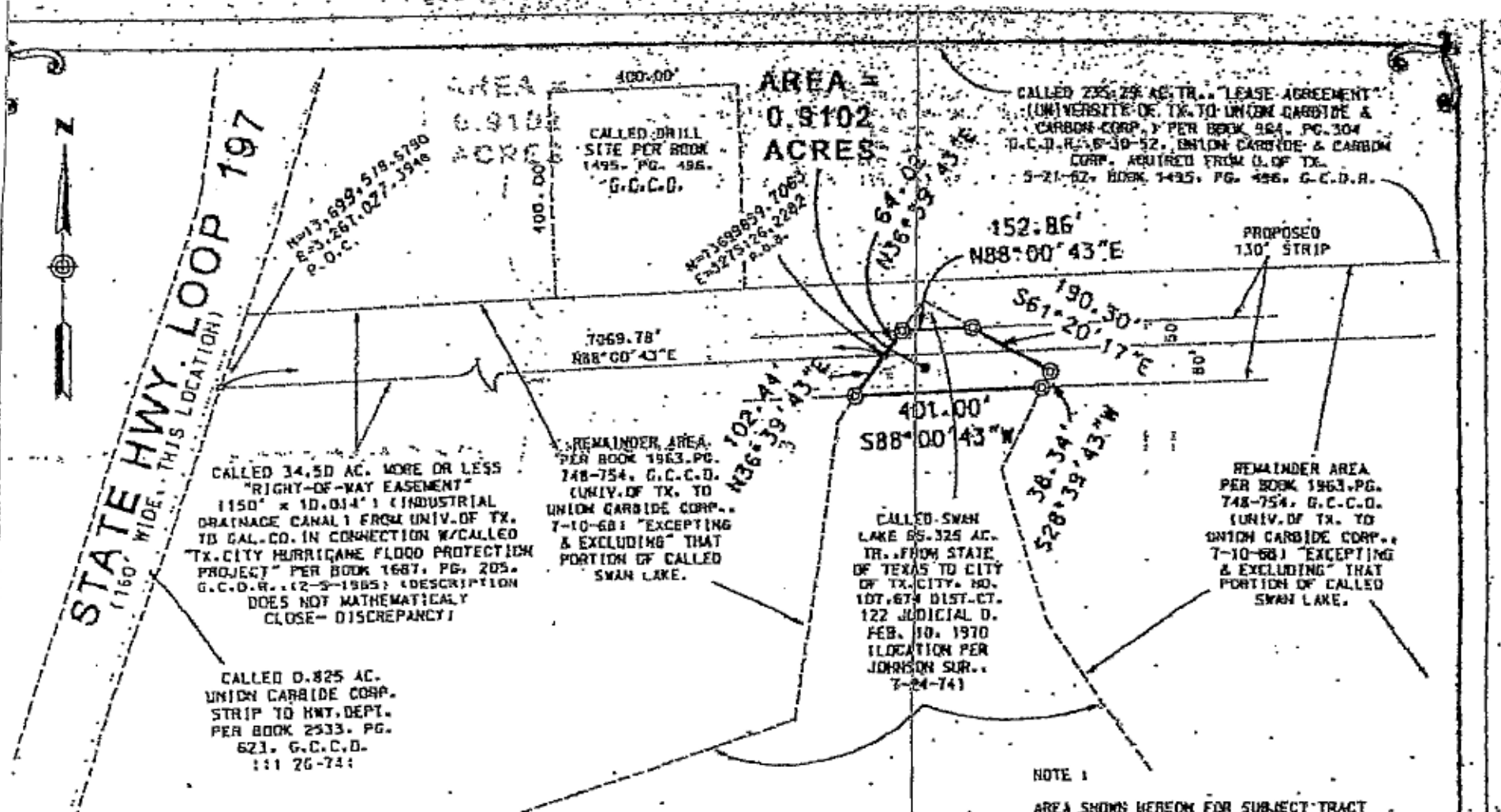
THENCE, $N 36 \text{ deg. } 39' 43'' \text{ E}$, along the westerly line of the said called 65.325 Acre Tract, for a distance of 102.44 feet to the POINT OF BEGINNING, and containing 0.9102 acre



Don Denson, RPLS # 2068; STATE OF TEXAS

Date: 5-15-01

P.O. Box 890027 - Houston, Texas 77289-0027
Office: (713) 643-8585 • Fax: (281) 286-8462



STATE HWY. LOOP 197
(160' WIDE, THIS LOCATION)

AREA = 0.9102 ACRES

CALLLED 34.50 AC. MORE OR LESS "RIGHT-OF-WAY EASEMENT" 1150' x 10.014' (INDUSTRIAL DRAINAGE CANAL) FROM UNIV. OF TX. TO GAL. CO. IN CONNECTION W/ CALLED TX. CITY HURRICANE FLOOD PROTECTION PROJECT" PER BOOK 1687, PG. 205. G.C.C.D. (2-3-1985) (DESCRIPTION DOES NOT MATHEMATICALY CLOSE - DISCREPANCY)

CALLLED 0.825 AC. UNION CARBIDE CORP. STRIP TO HWT. DEPT. PER BOOK 2533, PG. 621. G.C.C.D. 111 26-741

REMAINDER AREA PER BOOK 1963, PG. 748-754, G.C.C.D. (UNIV. OF TX. TO UNION CARBIDE CORP., 7-10-68) "EXCEPTING & EXCLUDING" THAT PORTION OF CALLED SWAN LAKE.

CALLLED SWAN LAKE 65.325 AC. TR. FROM STATE OF TEXAS TO CITY OF TX. CITY, NO. 107.674 DIST. CT. 122 JUDICIAL D. FEB. 10, 1970 (LOCATION PER JOHNSON SUR., 7-24-74)

REMAINDER AREA PER BOOK 1963, PG. 748-754, G.C.C.D. (UNIV. OF TX. TO UNION CARBIDE CORP., 7-10-68) "EXCEPTING & EXCLUDING" THAT PORTION OF CALLED SWAN LAKE.

CALLLED 235.29 AC. TR. "LEASE AGREEMENT" (UNIVERSITY OF TX. TO UNION CARBIDE & CARBON CORP., PER BOOK 984, PG. 304) P.C.D. # 136-30-52, UNION CARBIDE & CARBON CORP. ACQUIRED FROM U. OF TX. 9-21-62, BOOK 1435, PG. 496, G.C.C.D.

NOTE 1
AREA SHOWN HEREON FOR SUBJECT TRACT DESCRIPTIVE PURPOSES ONLY. SEE LAND DATA SURVEY DWG. # 01-0118 FOR ADDITIONAL INFORMATION.

Owners/ CONVEYED TO CITY OF TEXAS CITY

Plat

of Property Known as
0.9102 AC. TR. OUT OF THE H.B. LITTLEFIELD SURVEY, A - 143.

LAND DATA SURVEYS, INC.
DON DENSON
Registered Professional Land Surveyor
State of Texas

IN & NEAR CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

P.O. Box 890027
Houston, Texas 77289
-0027

Office 1715164-8385
(281) 285-8445
Fax (281) 285-8462

SCALE: 1" = 100' FILE # 01-0118

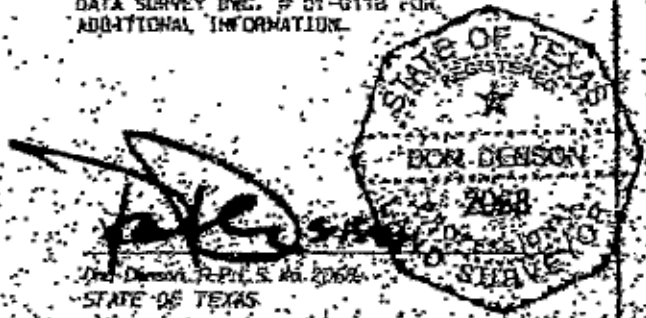


Exhibit B

22.825 acres - Tract G

LAND DATA SURVEYS, INC.



DON DENSON

Registered Professional Land Surveyor

File No. 01-011G2

February 9, 2004

METES AND BOUNDS DESCRIPTION 22.825 ACRE TRACT

A tract of land containing 22.825 acres being part of and out of that called 235.29 Acre Tract described under "Lease Agreement" as recorded in Book 964, Page 304 of the Galveston County Deed Records (GCDR) and also referenced in Book 1495, Page 496, GCDR, said tract also being part of and out of that certain tract of land conveyed to Union Carbide Corporation as described in Book 1963, Page 748 to 754, GCDR, and being part of and out of a 150 foot wide drainage canal right-of-way or easement granted to Galveston County in instrument recorded in Book 1687, Page 205, GCDR, in the H.B. Littlefield Survey, Abstract No. 143, contains in part "state submerged land", in Galveston County, Texas; said 22.825 acres being more particularly described by metes and bounds as follows with all bearings and coordinates referenced to the Texas Coordinate System, South Central Zone, as referenced from 1997 GPS established coordinates on marker numbers C-1237, M-1, M-2, and Y-170 (Galveston County Engineering Dept.) based on NAD 83 ("93-HARN"):

COMMENCING at a point with coordinates of N = 13,699,578.5790 and E = 3,267,027.3948, same being the intersection of the easterly right-of-way line of State Highway Loop 197 (based on a width of 160 feet) with the southerly line of said 150 foot wide canal;

THENCE, N 88 deg. 00' 43" E, along the southerly line of said 150 foot wide canal, for a distance of 5,023.39 feet to a point for corner;

THENCE, N 01 deg. 59' 17" W, along the westerly line of said tract described in Book 1963, page 748 to 754, GCDR, for a distance of 119.98 feet (grid distance) to a point for corner;

THENCE, N 88 deg. 00' 43" E, along a line being parallel to and 30 feet southerly from the northerly line of said 150 foot canal (cited by deed), for a distance of 4,836.02 feet to a point for corner;

THENCE, N 59 deg. 56' 14" E, for a distance of 298.09 feet to a point for corner, on the westerly line of a called 31.8 Acre Tract as described in City of Texas per Cause No. 107,674 in District Court, Galveston County;

THENCE, S 02 deg. 24' 28" E, for a distance of 340.28 feet to a point for corner;

(2)

THENCE, S 88 deg. 00' 43" W, for a distance of 1,684.18 feet to a point for corner, on the easterly line of a called 65.325 Acre Tract (called Swan Lake) from State of Texas to City of Texas City as described in Cause No. 107,674 in District Court 122, Judicial District;

THENCE, N 28 deg. 39' 43" E, along the easterly line of said Swan Lake, for a distance of 38.34 feet to a point for corner;

THENCE, N 61 deg. 20' 17" W, along the northerly line of said Swan Lake, for a distance of 310.86 feet to a point for corner;

THENCE, S 36 deg. 39' 43" W, continuing along the northerly line of said Swan Lake, for a distance of 245.15 feet to a point for corner;

THENCE, S 88 deg. 00' 43" W, for a distance of 3,016.35 feet to a point for corner, on the westerly line of the aforementioned tract described in Book 1963, Page 748 to 754, GCDR;

THENCE, N 01 deg. 59' 17" W, along the westerly line of said tract per Book 1963, Page 748, to 754, GCDR, same being the easterly line of a called 165.65 Acre Tract as described in Book 2231, Page 504, GCDR (and corrected in Book 2567, Page 837, GCDR), for a distance of 80.00 feet to the POINT OF BEGINNING, and containing 22.825 acres.



A handwritten signature in black ink, appearing to read "Don Denson", written over a horizontal line.

Date: 2-9-04

Don Denson,
Registered Professional Land Surveyor No. 2068;
STATE OF TEXAS

ST HWY LOOP 197



34.50 AC. MORE OR LESS
"RIGHT-OF-WAY EASEMENT"
(150' x 10,014') (INDUSTRIAL
DRAINAGE CANAL FROM UNIV. OF TX.
TO GAL. CO. IN CONNECTION W/ CALLED
"TX. CITY HURRICANE FLOOD PROTECTION
PROJECT" PER BOOK 1687, PG. 205,
G.C.D.R., (12-5-1965) (DESCRIPTION
DOES NOT MATHEMATICALLY
CLOSE - DISCREPANCY)

(TRACT "G")
AREA =
22.825
ACRES

CALLED 235.29 AC. TR., "LEASE
AGREEMENT" (UNIVERSITY OF
TX. TO UNION CARBIDE & CARBON
CORP.) PER BOOK 954, PG. 304
G.C.D.R., 6-30-52, UNION CARBIDE
& CARBON CORP. ACQUIRED FROM
U. OF TX. 5-21-62, BOOK 1495,
PG. 496, G.C.D.R.

CALLED 31.8
AC. TR., CITY
OF TX. CITY
NO. 107,674
DIST. CT. 122
JUDICIAL D.
FEB. 10, 1970
(PER JOHNSON
SUR., 7-24-74)

119.98'
N01°59'17"W

119.98'
N01°59'17"W

P.O.D.
SET 5/8/1.R.
113,699, 578, 579
E=3,267, 027, 3948
P.O.C.

CALLED DRILL
SITE PER BOOK
1495, PG. 496,
G.C.C.O.

CALLED WEST
SHORE LINE
OF GAL. BAY
(BK. 1687/205)

4836.02'
N88°00'43"E

310.86'
N61°20'17"W

298.09'
N59°56'14"E

340.28'
S02°24'28"E

5023.39
N88°00'43"E

0.825
AC. UNION
CARBIDE CORP.
STRIP TO HWY.
DEPT. PER BOOK
2538, PG. 623,
G.C.C.O.
(1-26-74)

PROPOSED 130'
- WIDE STRIP

3016.35'
S88°00'43"W

80.00'
N01°59'17"W

REMAINDER AREA
PER BOOK 1963, PG.
748-754, G.C.C.O.
(UNIV. OF TX. TO
UNION CARBIDE CORP.,
7-10-68) "EXCEPTING
& EXCLUDING" THAT
PORTION OF CALLED
SWAN LAKE.

245.15'
S36°39'43"W

38.34'
N28°39'43"E

1684.18'
S88°00'43"W

REMAINDER AREA
PER BOOK 1963, PG.
748-754, G.C.C.O.
(UNIV. OF TX. TO
UNION CARBIDE CORP.,
7-10-68) "EXCEPTING
& EXCLUDING" THAT
PORTION OF CALLED
SWAN LAKE.

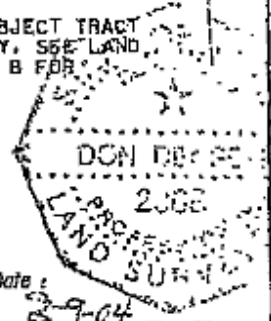
165.65 AC.
TR. PER BOOK 2231,
PG. 504, G.C.C.O.
(UNION CARBIDE
CORP. TO GULF COAST
WASTE DISPOSAL
AUTHORITY, 12-22-71)
CORRECTED IN
BOOK 2567, PG.
837, G.C.D.R.,
4-21-75

65.325 AC.
TR., FROM STATE
OF TEXAS TO CITY
OF TX. CITY, NO.
107,674 DIST. CT.
122 JUDICIAL D.
FEB. 10, 1970
(LOCATION PER
JOHNSON SUR.,
7-24-74)

UNION CARBIDE TRACT EAST
LINE CALLED TO BE WEST
SHORELINE OF BAY PER DEED.
SHORELINE NOT VISIBLE TO
DATE LOCA. OF OLD SHORELINE
SHOWN PER JOHNSON SURVEY
OF 7-24-74

NOTE :

AREA SHOWN HEREON FOR SUBJECT TRACT
DESCRIPTIVE PURPOSES ONLY, SEE LAND
DATA SURVEY DWG. # 01-011 B FOR
ADDITIONAL INFORMATION.



Plat

of Property Known as

22.825 AC. TR. OUT
OF THE H.B. LITTLEFIELD
SURVEY, A - 143,

IN & NEAR
CITY OF TEXAS CITY,
GALVESTON COUNTY,
TEXAS

Owners/ CONVEYED TO DOW (UNION CARBIDE CORP.)

LAND DATA SURVEYS, INC.

DON DENSON

Registered Professional Land Surveyor
State of Texas

18201 Gulf Freeway, Ste. 125 Office (713)643-8585
Webster, Texas, 77598 (281)286-8445
Fax (281)286-8462

SCALE : 1" = 600'

FILE # 01 - 011 G

Don Denson, R.P.L.S. No. 2068,
STATE OF TEXAS

REV. 2-9-04, TO
CHANGE PROP. LINES
(NO FIELD STAKING
THIS DATE!)

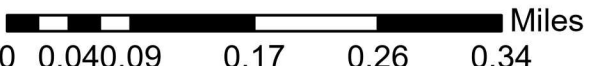


Tract G

Tract F

 Tract

Exhibit and shape based on Don Densen Survey, 04-09-04



Road Easement Agreement

GCDR Book 1687

Datum: NAD 1983
Projection: State Plane TX-SC 4204 (US Feet)



The data is only a representation of features on the earth compiled by computer program from raw data obtained from different sources and is not necessarily, in whole or in part, based upon any physical recording, study or survey, professional or otherwise, of the covered property. This information is not intended as a substitute for a field survey by a licensed professional or any other use or application that requires legal or engineering accuracy.

RESOLUTION NO. 2023-035

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A ROAD EASEMENT AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS (USACE); AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the USACE performs regular maintenance of the Port of Texas City Channel for the purpose of maintaining and improving navigability throughout the Channel. The proposed non-exclusive agreement would allow the United States Army Corps of Engineers (USACE) the right of ingress to and egress from the Easement over the City's land so long as USACE does not unreasonably interfere with the City's operations.

WHEREAS, the term of the agreement is for twenty-five (25) years and would enable them to carry out their maintenance responsibilities on the Texas City Channel; and

WHEREAS, the Management Services Department is requesting the approval of a Road Easement Agreement with the United States Army Corps of Engineers (USACE) granting them a non-exclusive Road Easement upon, over and through property owned by the City of Texas as further described in **Exhibit "A"**, and **Exhibit "B"** and Area Overview attached hereto.

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

SECTION 1: That the City Commission hereby approves a a Road Easement Agreement with the United States Army Corps of Engineers (USACE) granting them a non-exclusive Road Easement upon, over and through property owned by the City of Texas.

SECTION 2: That the Mayor is hereby authorized to execute a a Road Easement Agreement with the United States Army Corps of Engineers (USACE) granting them a non-exclusive Road Easement upon, over and through property owned by the City of Texas, in the form attached hereto as **Exhibit "A"** and **Exhibit "B"** made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(8) (a)

Meeting Date: 03/01/2023

Amend fiscal year 2022-2023 budget

Submitted For: Laura Boyd, Finance

Submitted By: Laura Boyd, Finance

Department: Finance

Information

ACTION REQUEST

Consider and take action on Ordinance No. 2023-04, amending the City's fiscal year 2022-2023 budget to create a fund and funding for the Texas City Commission Grant program.

BACKGROUND (Brief Summary)

The Texas City Commission Community Grant program was initiated in late Fiscal Year 2021-2022. Each member of the Commission can grant, to a qualifying entity with Commission approval, a total of \$5,000 per fiscal year. This equates to a grand total of \$35,000 available per fiscal year. Funding was made possible through a transfer from the Texas City Dike Fund to the General Fund. In Fiscal Year 2021-2022, grants totaling \$6,000 were issued. In Fiscal Year 2022-2023, grants totaling \$18,500 have been issued.

RECOMMENDATION

For increased transparency, creation of a new fund is recommended. Budget amendment:

Texas City Dike Fund (Fund 279):

Transfer to Fund 220 (279-000-59101)	\$35,000.00
Unassigned Fund Balance (279-000-39000)	(\$35,000.00)

Texas City Commission Community Grant (Fund 220) Administration (Department 101):

Grants (220-101-54901)	\$35,000.00
Transfer from Dike Fund (220-000-49036)	(\$35,000.00)

Fiscal Impact

Attachments

Ordinance

ORDINANCE NO. 2023-04

AN ORDINANCE AMENDING ORDINANCE NO. 2022-22 ADOPTING THE 2022-2023 FISCAL YEAR BUDGET TO CREATE A FUND AND FUNDING FOR THE TEXAS CITY COMMISSION GRANT PROGRAM; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, by Ordinance No. 2022-22 the City Commission of the City of Texas City, Texas, adopted its budget for Fiscal Year 2022-2023; and

WHEREAS, a budget amendment is needed to create a fund and funding for the Texas City Commission Grant program.

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

SECTION 1: That the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2: That the budget for Fiscal Year 2022-2023 of the City of Texas City, Texas, is hereby amended as follows:

Texas City Dike Fund (Fund 279):

Transfer to Fund 220 (279-000-59101)	\$35,000.00
Unassigned Fund Balance (279-000-39000)	(\$35,000.00)

Texas City Commission Community Grant (Fund 220) Administration (Department 101):

Grants (220-101-54901)	\$35,000.00
Transfer from Dike Fund (220-000-49036)	(\$35,000.00)

SECTION 3: That the chief executive officer shall file or cause to be filed a copy of this budget amendment in the office of the Galveston County Clerk.

SECTION 4: That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of all members of the City Commission.

SECTION 5: That this Ordinance shall be finally passed and adopted on the date of its introduction and shall become effective from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas
APPROVED AS TO FORM:

ATTEST:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(8) (b)

Meeting Date: 03/01/2023

Amend fiscal year 2022-2023 budget

Submitted For: Laura Boyd, Finance

Submitted By: Laura Boyd, Finance

Department: Finance

Information

ACTION REQUEST

Request City Commission approval to amend the 2022-2023 Fiscal Year Budget to account for bridge replacement grant from Texas Department of Transportation.

BACKGROUND (Brief Summary)

City Commission approved, via Resolution No. 2022-121 at their November 16, 2022, meeting, an advanced funding agreement with Texas Department of Transportation. Total project cost for bridge replacement at 8th Avenue (Dike Rd.) at Unnamed Lagoon is \$580,800. The City's total participation amount is \$58,080.

The City's portion of this project will be accounted for in the Texas City Dike Fund and will be funded from the Dike Fund's unassigned fund balance.

RECOMMENDATION

Recommend approval of the budget amendment to track City expenses related to this grant.

Texas City Dike Fund (Fund 279); Public Works (Dept. 301):

Park Improvements-bridge replacement-city portion \$58,080.00

Unassigned Fund Balance (\$58,080.00)

Fiscal Impact

Attachments

TXDoT agreement

Pay request 1

Purchase Order

Ordinance

RESOLUTION NO. 2022-121

A RESOLUTION AUTHORIZING AN ADVANCE FUNDING AGREEMENT WITH THE STATE OF TEXAS DEPARTMENT OF TRANSPORTATION FOR BRIDGE REPLACEMENT OR REHABILITATION LOCATED AT EIGHTH AVENUE AND UNNAMED LAGOON; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state system; and the City of Texas City owns a bridge located at Eighth Avenue at Unnamed Lagoon; and

WHEREAS, a project to remedy this bridge is included in the currently approved program of projects, authorized by Texas Transportation Commission Minute Order Number 116292 dated August 30, 2022. The fund participation ratio for projects on this program is 80 percent federal, 10 percent state, and 10 percent Local Government; and the City of Texas City's participation requirement for this bridge is **\$58,080.00**.

PO Amount

WHEREAS, it is the recommendation of the Public Works Department enter into an Advance Funding Agreement with the Texas Department of Transportation.

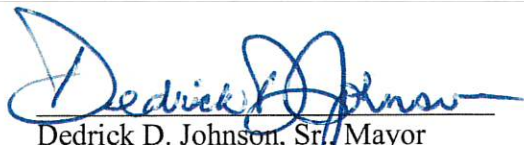
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby approves an Advance Funding Agreement with the Texas Department of Transportation for bridge rehabilitation or replacement located at Eighth Avenue to Unnamed Lagoon.

SECTION 2: That the Mayor is authorized to execute an agreement in substantially the same form as attached as **Exhibit "A"**, attached hereto and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 16th day of November 2022.

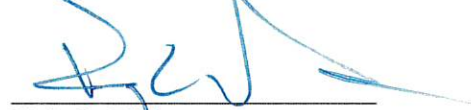

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:



Rhomari D. Leigh
City Secretary

APPROVED AS TO FORM:



Kyle L. Dickson
City Attorney

TxDOT:				NBI Structure #	12-085-0-C00208-052
CSJ #	0912-73-227			Federal Highway Administration:	
District #	12	AFA ID	Z00004331	CFDA No.	20.205
Code Chart 64 #	42300			CFDA Title	Highway Planning and Construction
Project Name	Eighth Avenue (Dike Rd) at Unnamed Lagoon			<i>AFA Not Used For Research & Development</i>	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System**

THIS Advance Funding Agreement (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the City of Texas City, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Texas Transportation Code Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

WHEREAS, the Local Government owns one or more bridges on a public road or street located at Eighth Avenue (Dike Road) at Unnamed Lagoon, and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number 116292, dated August 30, 2022; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance, which is attached to and made a part of this agreement as Attachment D for the development of the specific programmed replacement or rehabilitation project, called the "Project". The Project is identified in the location map shown as Attachment A, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth, it is agreed as follows:

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AGREEMENT

1. Period of this Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for one-hundred percent (100%) of its reasonable actual direct and indirect costs incurred for the project; or
- D. The project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may at its discretion terminate the agreement.

3. Amendments

Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties. Amendments shall be enacted through a mutually agreed upon written amendment executed by all parties to this Agreement.

4. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridges identified in the recitals of this Agreement. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this Agreement and which are incorporated in this agreement by reference.

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6. Right of Way and Real Property

- A. The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.
- B. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

7. Adjustment of Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- B. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment C, Estimate of Direct Costs.
- C. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation,

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under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

11. Construction Responsibilities

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

12. Project Maintenance

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

13. Local Project Sources and Uses of Funds

- A. A Project Cost Estimate is provided in Attachment C, Estimate of Direct Costs.
- B. Attachment C provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- C. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or

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portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.

- D. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- E. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment C for the Local Government's contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.
- F. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owed.
- G. If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation". The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied to the State Project.
- I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

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- J.** The State will not pay interest on any funds provided by the Local Government.
- K.** The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.
- L.** The amounts shown on Attachment C are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- M.** Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to N/A percent (N/A%).
- N.** The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- O.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- P.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

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14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)

- A. Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment C, Estimate of Direct Costs, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a PWP and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the EMPs. Attachment B to this Agreement shows a list of EMPs under this Agreement.
- B. Project Cost Estimate for PWP.** Attachment C to this Agreement shows the estimated direct preliminary engineering, construction engineering, and construction costs for the PWP in total and local match fund participation being waived or partially waived.
- C. Credit Against EMP Work.** Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit will be reflected in Attachment C to this Agreement.
- D. Responsibilities of the Local Government on EMPs.**
1. The Local Government shall be responsible for all engineering and construction, related costs, and compliance with all applicable state and federal environmental regulations and permitting requirements.
 2. The structural or safety improvement work on the EMPs shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWPs.
 3. Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMPs shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related to those items, whichever is longer. A notice of completion of work on the EMPs shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMPs.
 4. Failure by the Local Government to adequately complete the EMPs within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- E. Funding of Ineligible or Additional Work Not Waived.** Regardless of any waiver of eligible program costs, the Local Government shall pay the State one-hundred percent (100%) of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and one-hundred percent

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(100%) of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

State: Director, Bridge Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701

Local Government: The Honorable Dedrick Johnson, Sr.
Mayor, City of Texas City
1801 9th Avenue N
Texas City, Texas 77590

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

20. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this Agreement.

21. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

22. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

23. Inspection of Books and Records

The parties to the Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA) and the U.S. Office of the Inspector General, or their duly authorized representatives, for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation or claims are resolved. Additionally, the State, the

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Local Government, the FHWA, and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

24. Civil Rights Compliance

- A. Compliance with Regulations:** The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.
- B. Nondiscrimination:** The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports:** The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the contract, in whole or in part.
- F. Incorporation of Provisions:** The Local Government will include the provisions of

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paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

25. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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Project Name	Eighth Avenue (Dike Rd) at Unnamed Lagoon				AFA Not Used For Research & Development

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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Project Name	Eighth Avenue (Dike Rd) at Unnamed Lagoon			<i>AFA Not Used For Research & Development</i>	

- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State, a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: *****sam.gov/SAM/pages/public/index.jsf;
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website *****fedgov.dnb.com/webform; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

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30. Local Government Restrictions

In the case that the Local Government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

31. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.

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- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

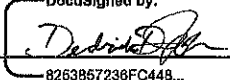
TxDOT:				NBI Structure #	12-085-0-C00208-052
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33. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

DocuSigned by:

 Signature _____
8263867238FC448...

Dedrick D. Johnson, Sr.

 Typed or Printed Name

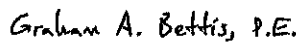
Mayor

 Title

12/21/2022

 Date

THE STATE OF TEXAS

DocuSigned by:


 Graham A. Bettis, P.E.

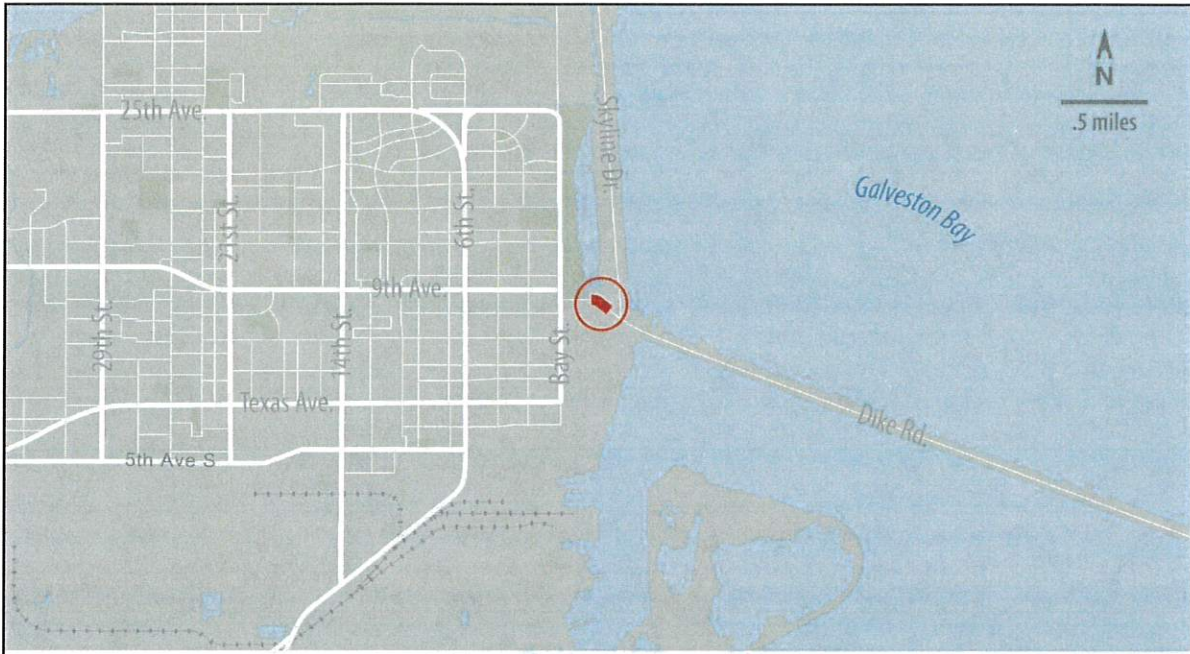
Bridge Division Director
 Texas Department of Transportation

1/13/2023

 Date

TxDOT:				NBI Structure #	12-085-0-C00208-052
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ATTACHMENT A PROJECT LOCATION MAP



CSJ: 0912-73-227
NBI: 12-085-0-C00208-052
Location: Eighth Ave. (Dike Rd.)
 at Unnamed Lagoon
Description of Work:
 Replace Bridge and Approaches
Entity: City of Texas City



TxDOT:				NBI Structure #	12-085-0-000208-052
CSJ #	0912-73-227			Federal Highway Administration:	
District #	12	AFA ID	Z00004331	CFDA No.	20.205
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ATTACHMENT C ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	<u>(1) \$48,000</u>	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation		<u>(3) 4,800</u>
Construction	<u>\$480,000</u>	
Engineering and Contingency (E&C)	<u>\$52,800</u>	
The Sum of Construction and E&C	<u>(2) \$532,800</u>	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		<u>(4) \$53,280</u>
Amount of Advance Funds Paid by Local Government *		<u>(5)</u>
Amount of Advance Funds to be Paid by Local Government *		<u>(6) \$58,080</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP		<u>(3+4-5-6)</u>
Total Project Direct Cost	<u>(1+2) \$580,800</u>	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment B. N/A

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**ATTACHMENT D
RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**



P.O. BOX 1386, HOUSTON, TEXAS 77251-1386 | 713.802.5000 | WWW.TXDOT.GOV

January 18, 2023

Titilayo Smith, GMBA
Community Development/Grants
Administrator
City of Texas City
928 5th Avenue N.
Texas City, TX 77590

Re: Request for Initial Payment
CSJs: **0912-73-227** –Eighth Avenue (Dike Rd) at Unnamed Lagoon
Bridge Replacement Project

Ms. Smith,


In accordance with Attachment C of the attached, fully executed Advance Funding Agreement for the subject project, payment is due to the State in the amount of \$4,800.00.

Please remit a check made payable to the **Texas Department of Transportation** in the amount of **\$4,800.00**. Mail the check directly to:

Texas Department of Transportation
ATTN: Kirsten Lozano
Transportation Planning & Development
P.O. Box 1386
Houston, Texas 77251-1386

Please reference the project number (CSJ 0912-73-227) when transmitting your payment.
Feel free to contact me at 713-802-5413 if you have any questions.

Sincerely,

DocuSigned by:

1305A935194C4ED...

Kirsten Lozano
Transportation Planner
Houston District – Transportation Planning & Development

Attachment
cc: David Nitsch

OUR VALUES: *People • Accountability • Trust • Honesty*
OUR MISSION: *Connecting You With Texas*

An Equal Opportunity Employer

Purchase Order

Fiscal Year 2023

Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.

Purchase Order # **22302775-00**

The City of Texas City is exempt from sales tax. Collect shipments or C.O.D. are not acceptable.



B I L L T O

CITY OF TEXAS CITY
ATTENTION: ACCOUNTS PAYABLE
1801 9TH AVENUE NORTH
TEXAS CITY TX 77590

V E N D O R

TEXAS DEPARTMENT OF TRANSPORTATION
PO BOX 1386
HOUSTON TX 77251-1386

S H I P T O

7800 EMMETT F LOWRY EXPRESSWAY
TEXAS CITY TX 77591

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
713-722-8897				12302988		J.HARALSON RES.2022-121 ATTACH	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms			Department/Location	
02/17/2023	1072					STREET & BRIDGE	
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	TEXAS CITY'S PORTION OF THE DIKE RD BRIDGE REPLACEMENT VIA TX DOT ADVANCED FUNDING AGREEMENT FOR BRIDGE REPLACEMENT OR REHABILITATION OFF THE STATE SYSTEM <i>PLEASE SEND PO TO MIKE MCKINLEY PW RESOLUTION 2022-121 ATTACHED ADVANCED FUNDING AGREEMENT ATTACHED ***** GL SUMMARY *****</i>			58080.0	DOL	\$1.000	\$58,080.00
279301 - 55650 - 27904				58,080.00			

ACCOUNTING COPY

PO Total

\$58,080.00

ORDINANCE NO. 2023-05

AN ORDINANCE AMENDING ORDINANCE NO. 2022-22 ADOPTING THE 2022-2023 FISCAL YEAR BUDGET TO ACCOUNT FOR BRIDGE REPLACEMENT GRANT FROM TEXAS DEPARTMENT OF TRANSPORTATION; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, by Ordinance No. 2022-22 the City Commission of the City of Texas City, Texas, adopted its budget for Fiscal Year 2022-2023; and

WHEREAS, a budget amendment is needed to account for bridge replacement grant from Texas Department of Transportation.

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

SECTION 1: That the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2: That the budget for Fiscal Year 2022-2023 of the City of Texas City, Texas, is hereby amended as follows:

Texas City Dike Fund (Fund 279); Public Works (Dept. 301):

Park Improvements-bridge replacement-city portion	\$58,080.00
Unassigned Fund Balance	(\$58,080.00)

SECTION 3: That the chief executive officer shall file or cause to be filed a copy of this budget amendment in the office of the Galveston County Clerk.

SECTION 4: That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of all members of the City Commission.

SECTION 5: That this Ordinance shall be finally passed and adopted on the date of its introduction and shall become effective from and after its passage and adoption.

PASSED AND ADOPTED this 1st day of March 2023.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney