



BAY CITY

REVISED MINUTES • JUNE 26, 2014

Council Chambers

Regular Meeting

7:00 PM

1901 5TH STREET
BAY CITY, TX 77414

1. CALL TO ORDER & CERTIFICATION OF QUORUM

Attendee Name	Title	Status	Arrived
Chrystal Folse	Councilwoman	Present	
Steven Johnson	Councilman	Excused	
Mark Bricker	Mayor	Present	
Carolyn Thames	Mayor Pro-Tem	Present	
Julie Estlinbaum	Councilwoman	Present	
William Cornman	Councilman	Present	

2. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILWOMAN JULIE ESTLINBAUM

Texas State Flag Pledge:

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

3. PUBLIC COMMENTS

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

Bay City resident Eric Schroeder stated that Council should familiarize themselves with the Texas Penal Code relating to official oppression.

4. CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

The following items may be acted upon in a single motion. No separate discussion or action on any of these items will be held unless requested by a member of the City Council. Public comment on consent agenda items may be heard without removing the item from the consent agenda. Each person providing public comment will be limited to 3 minutes.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Thames, Estlinbaum, Cornman
EXCUSED:	Johnson

1. Contract

CONSIDER AND/OR APPROVE THE HOUSTON-GALVESTON AREA COUNCIL (H-GAC) FY15 SOLID WASTE IMPLEMENTATION PROGRAM CONTRACT FOR BAY CITY'S C.O.R.E.

Marla Jasek, Assistant Director of Public Works

Enacted and approved this 26th day of June, 2014, at Bay City

2. Contract

CONSIDER AND/OR APPROVE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BAY CITY AND CIVILCORP, LLC, FOR ENGINEERING SERVICES FOR A STRIPING PROJECT ON VARIOUS STREETS.

Marla Jasek, Assistant Director of Public Works

Enacted and approved this 26th day of June, 2014, at Bay City

5. REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:

1. Public Hearing

PUBLIC HEARING ON THE PROPOSED ANNEXATION OF APPROXIMATELY 12 PLATTED LOTS WITHIN THE MOORE ESTATES SUBDIVISION GENERALLY LOCATED SOUTH OF 2ND STREET AND WEST OF MOORE AVENUE.

Mayor opened the Public Hearing at 7:04 p.m.

There were no comments.

Mayor closed the Public Hearing at 7:05 p.m.

2. Ordinance

CONSIDER AND/OR APPROVE AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2014; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO.

Phill Conner, Interim Finance Director
Mr. Conner introduced Mr. Jim Gilley.

Mr. Gilley informed Mayor and Council that the \$4 million was accepted and came with an interest rate of 3.088%. He explained to Mayor and Council the reason behind the City going out for bond, and what the funds would be used for. Mr. Gilley stated that one of the reasons the City received a great interest rate was due to the upgrade in the City's bond rating to a AA-. Mr. Gilley recommended accepting the bid from First Southwest. Katherine Milton of Bracewell & Giuliani, explained that the ordinance was considered the contract with the bidder First Southwest.

Council was polled.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Julie Estlinbaum, Councilwoman
AYES:	Folse, Thames, Estlinbaum, Cornman
EXCUSED:	Johnson

ORDINANCE

Enacted and approved this 26th day of June, 2014, at Bay City

3. Property

CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, RATIFYING THE MAYOR'S DECLARATION OF AN EMERGENCY AND DECLARING THE LETTING OF A CONTRACT FOR SEWER LINE REPAIR WORK FOR THE SEWER LINE LOCATED IN THE ALLEYWAY NORTH OF WILLOW STREET BETWEEN AVENUE F (ALSO KNOWN AS STATE HIGHWAY 60) AND MULBERRY STREET TO BE A PROCUREMENT NECESSARY TO PRESERVE AND PROTECT THE PUBLIC HEALTH AND SAFETY OF THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SUCH REPAIR WORK UPON APPROVAL OF THE CONTRACT BY THE CITY ATTORNEY.

Barry Calhoun, Director of Public Works

Mr. Calhoun provided Mayor and Council with screen shots of the line that had been TV'd. It was a 15 inch clay sewer line. The shots showed where the pipe had failed and cracked, had roots, and where it was completely blocked. Mr. Calhoun explained that the sewer line went directly to the sewer plant.

Councilman Cornman asked if the line was back in service. Mr. Calhoun stated that what was in place was a bypass to divert it.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Thames, Estlinbaum, Cornman
EXCUSED:	Johnson

Enacted and approved this 26th day of June, 2014, at Bay City

4. Bid

CONSIDER AND/OR APPROVE AWARDED THE MANAGED PRINT SERVICES BID TO BAY CITY OFFICE SUPPLY FOR MANAGING AND MAINTAINING COPY AND PRINT SERVICES FOR THE CITY OF BAY CITY, TEXAS.

Barry Calhoun, Director of Public Works

Mr. Calhoun explained that it was to consolidate the printer, toner, etc. He added that it would also help the City determine what we had. Bay City Office Supply was the low bidder.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Thames, Estlinbaum, Cornman
EXCUSED:	Johnson

Enacted and approved this 26th day of June, 2014, at Bay City

5. Report

PROVIDE STATUS UPDATE ON THE COUNTRY CLUB .

Mayor Mark A. Bricker

Mayor informed Council that the property had been surveyed. Mr. Calhoun added that the survey had been completed.

Council asked for the cost of the survey and that the City get the property appraised. Council also asked that they receive the survey, so that they can discuss it at a later date. Mr. Calhoun stated that he would send the survey to the City Secretary and have her provide it to Council.

It was the consensus of Council to get an estimated value of the property and then go back to the Country Club to determine the next step. The Mayor was asked to handle this portion. Council asked that the survey be placed on the next agenda, so that they can discuss it.

6. Report

RECEIVE A PRESENTATION ON THE QUARTERLY SAFETY REPORT FOR THE PUBLIC WORKS DEPARTMENT AND THE PARKS AND RECREATION DEPARTMENT FOR JANUARY 2014 TO MARCH 2014.

Marla Jasek, Assistant Director of Public Works

Mrs. Jasek reviewed the members of the Safety Committee, as well as the incidents during the months of January through March. There were 8 reports that were reviewed, some were minor, but they were reviewed anyway. Mrs. Jasek also reviewed the safety topics for the quarter. She provided some additional updates as well. Mrs. Jasek informed Mayor and Council that there were not reportable spills during the quarter.

6. EXECUTIVE SESSION

Mayor adjourned from Open Session at 7:33 p.m.

Mayor entered into Executive Session at 7:36 p.m.

Mayor adjourned from Executive Session at 7:43 p.m.

1. Budget

CITY COUNCIL SHALL CONVENE IN CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY REGARDING LEGAL ISSUES RELATED TO AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BAY CITY AND THE LOWER COLORADO RIVER AUTHORITY (LCRA) PURSUANT TO TEXAS GOVERNMENT CODE § 551.071(2)

George Hyde, City Attorney and Barry Calhoun, Director of Public Works

RESULT: WITHDRAWN

7. OPEN SESSION

Mayor reconvened into Open Session at 7:44 p.m.

1. Report

CITY COUNCIL SHALL RECONVENE IN OPEN SESSION AND MAY CONSIDER AND/OR TAKE ACTION ON ANY ITEM LISTED ABOVE FOR CONSIDERATION/DISCUSSION IN EXECUTIVE SESSION (IF NECESSARY).

No action was taken.

8. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Councilman Cornman wanted to give some recognition to the Library on their Summer Programs.

9. ADJOURNMENT**AGENDA NOTICES:****Action by Council Authorized:**

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Attendance By Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be Agenda City Council August 8, 2013 in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

This is to certify that the above notice of a Workshop Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on Monday, June 26, 2014 before 7:00 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

Rhonda Clegg
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1524)

Meeting: 06/26/14 07:00 PM
Department: Public Works
Category: Contract
Prepared By: Marla Jasek
Initiator: Marla Jasek
Sponsors:
DOC ID: 1524

CONSIDER AND/OR APPROVE THE HOUSTON-GALVESTON AREA COUNCIL (H-GAC) FY15 SOLID WASTE IMPLEMENTATION PROGRAM CONTRACT FOR BAY CITY'S C.O.R.E.

The City has been awarded grant funds to implement Bay City's C.O.R.E. (Cooking Oil Recycling Effort.) The grant funds provide for educational materials, the deposit for a cooking oil collection container and 50% of the salary to hire an employee to help implement and run the program.

RESULT:	APPROVED BY CONSENT VOTE [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman
EXCUSED:	Steven Johnson

HOUSTON-GALVESTON AREA COUNCIL FY15 SOLID WASTE IMPLEMENTATION PROGRAM CONTRACT

Contractor Project Manager

Entity City of Bay City
 Street Address 1217 Ave J
 City, State Zip Bay City, TX 77414
 Contact: Marla Jasek
 Telephone: 979-323-1672
 Fax: 979-323-1660
 Email: mjasek@cityofbaycity.org

Contractor Financial Contact

Entity City of Bay City
 Street Address 1901 5th Street
 Bay City, TX 77414
 Contact: Mark Bricker
 Telephone: 979-323-1626
 Fax: 979-245-2137
 Email: mayor@cityofbaycity.org

H-GAC

Community and Environmental Planning Department
 Houston-Galveston Area Council
 3555 Timmons Lane, Suite 120
 Post Office Box 22777
 Houston, Texas 77227-2777
 tel. 713.627.3200
 fax. 713. 993.4503

Staff Contacts:

Staff Contact Cheryl Mergo
 Title Sustainable Development Program Manager
 Phone 713-993-4520
 Email cheryl.mergo@h-gac.com

TCEQ FY15 Solid Waste Implementation Grants

Project Description: Bay City's C.O.R.E.
 Contract Number: 15-16-G09
 Contract Amount: \$15,498.12
 Grant Period: September 1, 2014 to June 30, 2015

Attachment: FY15 Bay City--revised (1524 : HGAC FY15 Grant Contract)

**HOUSTON-GALVESTON AREA COUNCIL
FY15 SOLID WASTE IMPLEMENTATION PROGRAM CONTRACT**

TABLE OF CONTENTS

General Contract Provisions: Intergovernmental Agreement
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Article 1	Legal Authority
Article 2	Applicable Laws
Article 3	Independent Contractor
Article 4	Whole Agreement
Article 5	Scope of Services
Article 6	Performance Period
Article 7	Reporting Requirements
Article 8	Payments
Article 9	Non Funding Clause
Article 10	Insurance
Article 11	Repayments
Article 12	Subcontracts
Article 13	Audit
Article 14	Examination of Records
Article 15	Retention of Records
Article 16	Changes and Amendments
Article 17	Termination Procedures
Article 18	Severability
Article 19	Copyrights
Article 20	Ownership of Materials
Article 21	Force Majeure
Article 22	Non-Discrimination and Equal Opportunity
Article 23	Conflict of Interest
Article 24	Political Activity; Lobbying
Article 25	Sectarian Involvement Prohibited
Article 26	Criminal Provisions and Sanctions
Article 27	Titles Not Restrictive
Article 28	Acknowledgment of Funding Source
Article 29	Disputes
Article 30	Governing Law; Venue
Article 31	Order of Priority
	Signatures

Special Contract Provisions

Article 1	Period of Performance
Article 2	Contract Documents
Article 3	Scope of Services
Article 4	Legal Authority
Article 5	H-GAC Obligations
Article 6	Summary and Results Reporting Requirements
Article 7	Financial Administration of Pass-Through Grants
Article 8	Standards for Contractor's Performance
Article 9	Standards Applicable to Pass-through Grant Projects
Article 10	Supplemental Funding Standards
Article 11	Title to and Management of Real Property and Equipment
Article 12	Insurance
Article 13	Historically Underutilized Businesses (HUBs)
Article 14	Energy Efficiency Standards
Article 15	Laws and Regulations
Article 16	Uniform Grant and Contract Management Act
Article 17	Data and Publicity
Article 18	Acknowledgement of Financial Support
Article 19	Design Review
Article 20	Permits and Approvals
Article 21	Requirement of Registration of Designers
Article 22	Municipal Solid Waste Disposal and Transportation Revenue Fee
Article 23	Safety and Protection
Article 24	Hazardous Substances, Waste Disposal and Manifests
Article 25	Intellectual Property Requirements
Article 26	Accounting Systems
Article 27	Survival of Obligations
Article 28	Contractual Costs
Article 29	Authorized Representatives

Attachments

- A. Scope of Services
- B. Contract Budget
- C. Grant Application

**HOUSTON-GALVESTON AREA COUNCIL
GENERAL PROVISIONS
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement is made and entered into this 1st day of September, 2014, by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and City of Bay City hereinafter referred to as the Contractor, having its principal place of business 1217 Ave J, Bay City, TX 77414.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1 LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2 APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Agreement. Such standards and laws shall include, to the extent applicable, the Uniform Grant Management Standards (UGMS) promulgated by the State of Texas and the state and federal statutes referenced therein.

ARTICLE 3 INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom. The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the

Contractor pertaining to this Agreement or which would adversely affect the contractor's ability to perform services under this Agreement.

ARTICLE 4 WHOLE AGREEMENT

The General Provisions, Special Provisions and Attachments, copy of H-GAC FY15 Solid Waste Grant Application, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5 SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in the Special Provisions of this Agreement.

ARTICLE 6 PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins September 1, 2014 and ends June 30, 2015.

ARTICLE 7 REPORTING REQUIREMENTS

Reporting requirements are set forth in the Special Provisions of this Agreement. If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may withhold payments otherwise due and owing the Contractor hereunder. If H-GAC withholds such payments, it shall notify the Contractor of its decision and the reasons therefore. Payments withheld pursuant to this Article may be held by H-GAC until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

ARTICLE 8 PAYMENTS

The Contractor agrees that payments are predicated upon properly documented and verified proof of performance delivered and costs incurred by the Contractor in accordance with the terms of this Agreement and shall be paid in accordance with the Compensation Schedule in the Special Provisions.

ARTICLE 9 NON FUNDING CLAUSE

Each payment obligation of H-GAC created by this Agreement is conditioned upon the availability of state or federal funds appropriated or allocated for the payment of such obligations. H-GAC shall not be otherwise obligated or liable for any future payments due or for any damages as a result of interruption of payment or termination under this Article. If sufficient state or federal

funds are not allocated or otherwise available from H-GAC, Contractor shall have no further obligation to perform its duties under this Contract once available funds have been expended.

ARTICLE 10 INSURANCE

The Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as specified in the Special Provisions.

ARTICLE 11 REPAYMENTS

The Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to H-GAC any amounts determined by H-GAC, its independent auditors, or any agency of state or federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 12 SUBCONTRACTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC.

The Contractor acknowledges that H-GAC is not liable to any subcontractor(s) of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor.

ARTICLE 13 AUDIT

As a recipient of state or federal assistance through this Agreement, the Contractor acknowledges that it is subject to the Single Audit Act Amendments of 1996 (hereinafter referred to as "Audit Act"), OMB Circular No. A-133, and the State of Texas Single Audit Circular incorporated in UGMS.

The Contractor shall have an audit made in accordance with the Single Audit, requirements of the most recently adopted UGMS and OMB Circular A-133 for any of its fiscal years in which Contractor expends more than \$500,000 in state or federal financial assistance.

The Contractor will provide H-GAC a copy of the single audit, including management letter and reporting package required by federal and state rules within 30 days after receipt of the auditor's report, or nine months after the end of the audit period.

H-GAC reserves the right to conduct or cause to be conducted an independent audit of all funds received under this Agreement which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by the H-GAC. Such audit will be conducted in accordance with State law, regulations, and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any costs disallowed or overpayment as a result of audit or inspection of records kept by the Contractor on work performed under this Agreement.

ARTICLE 14 EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work, complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas and the United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by it. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees to include in all its subcontracts permitted pursuant to Article 12 hereof, a provision to the effect that the subcontractor agrees that H-GAC and its duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

ARTICLE 15 RETENTION OF RECORDS

The Contractor shall maintain all records pertinent to this Agreement, including but not limited to those records enumerated in Article 14, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than three (3) calendar years from the later of the date of acceptance of the final contract closeout or the date of the final audit required under Article 13 of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3) year period, whichever is later.

ARTICLE 16 CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal law or regulations are automatically incorporated into this Agreement without

written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the contractor may terminate its participation herein as authorized by Article 17.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between H-GAC and the Contractor in writing shall be incorporated into this Agreement.

ARTICLE 17 TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated under the following circumstances:

A. Convenience

H-GAC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within 30 days of such termination reflecting the services actually performed which have not appeared on any prior invoice, such invoice shall be satisfactory to the Executive Director or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of H-GAC, less payment of any compensation previously paid.

The Contractor may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to H-GAC. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC. In the event of such termination prior to completion of the Agreement provided for herein, H-GAC agrees to pay services herein specified on a prorated basis for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreement that completion of the services herein specified within the agreement

term is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, all services of the Contractor and its employees and subcontractors shall cease and the Contractor shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement which have not appeared on any prior invoice. Such invoice must be satisfactory to the Executive Director of H-GAC or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of H-GAC as reflected on said invoice, less payment of any compensation previously paid and less any costs or damages incurred by H-GAC as a result of such default, including incremental costs that H-GAC will incur to have the Agreement completed by a person other than the contractor.

ARTICLE 18 SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 19 COPYRIGHTS

The state or federal awarding agency and H-GAC reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or federal government or H-GAC purposes:

- (a) The copyright of all maps, data, reports, research or other work developed under this Agreement; and
- (b) Any copyrights or rights of use to copyrighted material which the Contractor purchases with funding under this Agreement. All such data and material shall be furnished to H-GAC on request.

ARTICLE 20 OWNERSHIP OF MATERIALS

Except as may be specified in the Special Provisions, all data, reports, research, etc., developed by the Contractor as a part of its work under this Agreement shall become the property of the H-GAC upon completion of this Agreement, or in the event of termination or cancellation hereof, at the time of payment under ARTICLE 8 for work performed. All such data and material shall be furnished to H-GAC on request.

ARTICLE 21 FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of

or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the H-GAC.

ARTICLE 22 NON-DISCRIMINATION AND EQUAL OPPORTUNITY

The Contractor agrees to comply with all state and federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

ARTICLE 23 CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractors, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 24 POLITICAL ACTIVITY; LOBBYING

No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislators. The Contractor, if a recipient of federal assistance exceeding \$100,000 through an H-GAC subcontract, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

ARTICLE 25 SECTARIAN INVOLVEMENT PROHIBITED

The Contractor shall ensure that no funds under this Agreement are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

ARTICLE 26 CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees that it will perform the Agreement activities in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of the funding entity. The Contractor agrees to promptly notify H-GAC of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof and to notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence.

Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

ARTICLE 27 TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 28 ACKNOWLEDGEMENT OF FUNDING SOURCE

The Contractor shall give credit to H-GAC and the Texas Commission on Environmental Quality (TCEQ) as the funding source for this Agreement in all oral presentations, written documents, publicity, and advertisements regarding any of the Contractor's activities which arise from this Agreement.

ARTICLE 29 DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Agreement which are not disposed of by agreement shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

ARTICLE 30 GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas, unless the laws of the State of Texas specifically establish venue in some other City.

ARTICLE 31 ORDER OF PRIORITY

In the case of any conflict between the General Provisions, the Special Provisions, and Attachments to this Agreement, the following order of priority shall be utilized: Special Provisions, General Provisions, and Attachments.

H-GAC and the Contractor have executed the Agreement as of the date first written above.

 Jack Steele, Executive Director
 Houston-Galveston Area Council

 Mark Bricker, Mayor
 City of Bay City

 Date

 Date

**HOUSTON-GALVESTON AREA COUNCIL
FY15 SOLID WASTE IMPLEMENTATION PROGRAM
SPECIAL CONTRACT PROVISIONS**

ARTICLE 1 PERIOD OF PERFORMANCE

The period of performance of this Agreement begins on September 1, 2014 and ends on June 30, 2015.

ARTICLE 2 CONTRACT DOCUMENTS

1. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be completed or constructed in accordance with the total Agreement. Any work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical industry or trade meaning are used to describe work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning.
2. The Contract Documents which comprise the entire Agreement between H-GAC and CONTRACTOR concerning the work, listed in the order of preference in the event of a conflict, consist of the following: the Special Provisions, the General Provisions, and Attachments A – C (Scope of Services, Budget and Application).
3. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: all Written Amendments and other documents amending, modifying or supplementing the Agreement pursuant to the General or Special Provisions. These documents will be attached to the Agreement following execution thereof.

ARTICLE 3 SCOPE OF SERVICES

All parties agree that the CONTRACTOR, in consideration of the compensation hereinafter described, shall provide the services with H-GAC approval and/or supervision as specifically described in Scope of Services, Attachment A, which is attached hereto and incorporated herein for all purposes.

The CONTRACTOR agrees to implement the Project according to the agreed upon budget shown in Contract Budget, Attachment B.

ARTICLE 4 LEGAL AUTHORITY

The CONTRACTOR warrants and assures H-GAC that it has adequate legal authority to enter into this Agreement. The CONTRACTOR's governing body where applicable has authorized the signatory official(s) to enter into this Agreement and bind the CONTRACTOR to the terms of this Agreement and any subsequent amendments hereto. The activities funded under this Agreement shall be in accordance with all provisions of this Agreement, all applicable state and local laws, rules, regulations, and guidelines. The main governing standards included, but may not be limited to the following:

1. §361.014 of the TEX. HEALTH & SAFETY CODE ANN.;
2. Title 30 Texas Administrative Code (30 TAC) Chapter 330, Section 330.649, TCEQ Rules and 30 TAC Chapter 14, TCEQ Rules;
3. The Uniform Grant and Contract Management Act, TEX GOV'T CODE ANN., §§783.001 et. Seq., and
4. The Interlocal Contract between the Texas Commission on Environmental Quality (TCEQ) and H-GAC.

This Agreement is entered into by and between the CONTRACTOR and H-GAC. Neither Texas Commission on Environmental Quality (TCEQ) nor the State of Texas is a party to this Agreement.

ARTICLE 5 H-GAC OBLIGATIONS

A. Measure of Liability

In consideration of full and satisfactory performance hereunder, H-GAC will be liable to CONTRACTOR in an amount equal to the actual costs incurred by CONTRACTOR in rendering such performance, subject to the following limitations:

1. H-GAC is not liable for expenditures made in violation of "Supplemental Funding Standards", Article 9 which outlines prohibited activities as defined by the TCEQ and the Uniform Grant and Contract Management Standards Act.
2. H-GAC is not liable for any costs incurred by CONTRACTOR in the performance of this Agreement which have not been billed to H-GAC within thirty (30) days following termination of this Agreement.
3. H-GAC is not liable to CONTRACTOR for costs incurred or performance rendered by CONTRACTOR before commencement of this Agreement or after termination of this Agreement.
4. Except as specifically authorized by H-GAC in writing, H-GAC is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Federal OMB Circular A-87 as incorporated into UGMS.

5. Notwithstanding any other provisions of this Agreement, it is understood and agreed by the parties hereto that H-GAC's obligation under this Agreement are contingent upon actual receipt of funds from the Texas Commission on Environmental Quality to meet H-GAC liabilities hereunder. If sufficient state or federal funds are not allocated or otherwise available from H-GAC Contractor shall have no further obligation to perform its duties under this Contract once available funds have been expended.

B. Method and Schedule of Payment

1. Financial reporting. Except when submitting the Final Financial Report (see Section C), CONTRACTOR must submit to H-GAC a report detailing allowable expenditures incurred during the previous month no later than the **tenth** day following the end of each month of the period of performance for this Agreement. Allowable expenditures are set forth in Attachment B of this Agreement and are made on a reimbursement basis only. This report must be submitted on H-GAC Financial Report Form together with such reporting documentation as H-GAC may require. *(A monthly financial report is due each month even if there are no expenses to report.)*
2. Payments. Upon review and approval of each such H-GAC Financial Report Form, H-GAC will make payment to CONTRACTOR against H-GAC liabilities to be accrued hereunder.
3. If sufficient state or federal funds are not allocated or otherwise available from H-GAC, Contractor shall have no further obligation to perform its duties under this Contract once available funds have been expended. By the end of the first four months of the contract year (December 31, 2014), CONTRACTOR must have expended at least 25.0% of total funds available in the Agreement. If CONTRACTOR does not meet that expenditure level target, H-GAC may, at its discretion, de-obligate funds, with the maximum amount of the de-obligation being the difference between what the expenditures would have been at a 50.0% expenditure rate and the actual expenditure level. By the end of the sixth month of the contract year (February 28, 2015), CONTRACTOR must have expended at least 40.0% of the total funds available in the Agreement. If CONTRACTOR does not meet that expenditure level target, H-GAC may at its discretion de-obligate funds, with the maximum amount of the de-obligation being the difference between what the expenditures would have been at a 67.0% expenditure rate and the actual expenditure level. If sufficient state or federal funds are not allocated or otherwise available from H-GAC, Contractor shall have no further obligation to perform its duties under this Contract once available funds have been expended.
4. If CONTRACTOR fails to expend funds in accordance with Section 3 above, H-GAC may, through unilateral action, de-obligate funds from the Agreement, in an amount that would bring CONTRACTOR'S expenditures into line with the expenditure goals in Section 3. In addition to de-obligation of funds, H-GAC may at its discretion impose performance improvement plans upon CONTRACTOR.

C. CONTRACTOR Final Financial Report

No later than **thirty (30) days** following the termination of this Agreement, the CONTRACTOR must submit to H-GAC a Financial Report Form marked “Final”. The final Financial Report shall notify H-GAC that no further reimbursement requests will be made against this Agreement post the final Financial Report.

ARTICLE 6 GRANT PROGRESS REPORTING REQUIREMENTS

- A. The CONTRACTOR shall prepare and submit to H-GAC, *written grant progress reports* concerning performance under this Agreement documenting accomplishments, units of work and program results performed/accomplished under Attachment A of this agreement. Grant progress reports are due on the following **December 10, 2014 (covering September–November), March 10, 2015 (covering December –February), June 10, 2015 (covering March –May), July 31, 2015 (covering June)**.
- B. The July 2015 report will serve as the End of Grant Term final report. End of Grant Term final grant progress report shall be provided to H-GAC at the end of the Contract period of performance. The End of Grant Term final grant progress report shall certify that the satisfactory completion of all activities and deliverables required under this Agreement. In addition, the CONTRACTOR shall submit a Follow Up Report due to H-GAC on or near September 1, 2016. Payments (reimbursements) required under this Agreement may be withheld by H-GAC until such time as any past due grant progress reports, not including Follow Up Report, are received.
- C. The CONTRACTOR’s *grant progress reports* required under Part A of this Article contain descriptions of activities and results for H-GAC to ensure that the provisions of this Agreement are being complied with. In particular, any legal research and related legal activities shall be clearly detailed in the quarterly grant progress reports in order to assure H-GAC that the activities are not prohibited under Article 10 of this Agreement (relating to Supplemental Funding Standards). The CONTRACTOR shall comply with any reasonable request by H-GAC for additional information on activities conducted in order for H-GAC to adequately monitor the CONTRACTOR progress in completing the requirements of and adhering to the provisions of this Agreement.
- D. The CONTRACTOR agrees to document the results of the grant-funded project and to provide those results to H-GAC for use in evaluating program effectiveness and for providing regional results information to the TCEQ.
- E. The CONTRACTOR’s failure to comply with the requirements of this Article shall constitute a breach of this Agreement.

ARTICLE 7 FINANCIAL ADMINISTRATION OF PASS-THROUGH GRANTS

In administering a financial management system, the CONTRACTOR shall adhere to the specific standards and requirements set forth in this Section and in the UGMS, except that the requirements and processes may be more stringent than what is set forth in this Section.

- A. This Agreement accounts for expenses incurred and request reimbursement of outlays under either a cash or an accrual basis, as defined and authorized under the UGMS. To be eligible for reimbursement under this Agreement, a cost must have been incurred and either paid by the CONTRACTOR prior to claiming reimbursement from H-GAC or incurred by the last day of the time period indicated on a request for reimbursement form and liquidated no later than thirty-one (31) days after the end of that time period.
- B. Payments by H-GAC to CONTRACTOR shall be solely for reimbursement of actual allowable costs utilizing the same standards and requirements for cost reimbursement payments from the TCEQ to H-GAC. H-GAC shall reimburse the actual incurred costs of CONTRACTOR with no payments in advance.
- C. The CONTRACTOR shall utilize a standard reimbursement form supplied to the CONTRACTOR by H-GAC. The CONTRACTOR shall submit expense documentation records as deemed necessary by H-GAC, in accordance with H-GAC's financial monitoring plan and program, to ensure that the outlays by the CONTRACTOR are authorized and appropriate.
- D. H-GAC shall not reimburse or otherwise make payment to the CONTRACTOR for an expenditure that is not authorized under this Agreement. If it is determined, by either the CONTRACTOR, H-GAC, or the TCEQ that an expenditure that was reimbursed is not an authorized expense, H-GAC shall request return and reimbursement of those funds from the CONTRACTOR or, where appropriate, the application of those funds to other authorized expenses, and shall not provide any additional reimbursement to the CONTRACTOR until the funds are returned or are applied to other authorized expenses.
- E. In general, expenditure documentation to be submitted to H-GAC along with the H-GAC Financial Report Form should be whatever is necessary to show that the work was indeed performed and that the expense was, in fact, incurred. In addition, the documentation should also support the fact that the expenditure was reasonable and necessary to this Agreement.

Documents that should be submitted to H-GAC, as appropriate for the expenses, include by category, the records listed below.

- 1. Salary/Wages. The CONTRACTOR shall either summarize the salary charges by listing them on the H-GAC Financial Form or submit signed and approved time sheets for each salary charge.
- 2. Travel. Travel expenses must be consistent with the CONTRACTOR's locally adopted travel policies. The expenses must be supported and documented receipts for all expenses such as meals, public transportation, hotel accommodations, and airline receipts. If the CONTRACTOR does not have an approved travel policy in place, the CONTRACTOR shall use the UGMS travel policy.

3. Equipment. Documentation should support conformance with required procurement policies and procedures. Expenditures should be supported by purchase orders (if issued), invoices, and copies of cancelled checks. An H-GAC controlled asset (formerly known as equipment inventory) form must be completed for each equipment purchase and submitted with other supporting documentation.
 4. Supplies. Supply expenses should be supported by purchase orders (if issued), invoices, and copies of cancelled checks.
 5. Construction. Documentation should support conformance with required procurement policies and procedures. Expenditures should be supported by purchase orders (if issued), invoices, and copies of cancelled checks. An executed contract or other agreement is also needed for initial payment. Documentation should demonstrate that costs were reasonable and necessary.
 6. Contractual. Contractual costs should be supported by all the documentation described above, e.g. labor charges by time and attendance or similar records, travel charges supported by receipts. Copies of cancelled checks for contractual payments must be submitted. An executed contract or other agreement is also needed for initial payment. Documentation should demonstrate that costs were reasonable and necessary.
 7. Other. Other expenses should be supported by purchase orders (if issued), invoices, and copies of cancelled checks.
 8. Indirect. The CONTRACTOR shall comply with OMB Circular A-87 as set forth in UGMS relating to Indirect Cost Rates. In accordance with the UGMS, indirect charges are authorized if the CONTRACTOR has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. Alternatively, the CONTRACTOR may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If the CONTRACTOR has an approved cost allocation plan, the CONTRACTOR must submit documentation of the approved indirect rate to H-GAC prior to the initial request for reimbursement.
- F. If requested by H-GAC, the CONTRACTOR agrees to provide to H-GAC, copies of the appropriate cancelled checks and the additional expense records and documentation materials, as listed in Section (E) of this Article and appropriate for the expense, for the time period requested by H-GAC, except that the CONTRACTOR will not be asked to submit records that have already been provided to H-GAC with a Financial Report Form. H-GAC will provide reasonable time for the CONTRACTOR to comply with a request for additional records. If H-GAC requests to review additional records to be provided by the CONTRACTOR under H-GAC's financial monitoring program, H-GAC will review those records and provide the CONTRACTOR a written summary of the findings of that review. H-GAC will also allow the CONTRACTOR reasonable time to respond to any findings of noncompliance or other problems identified by the records review.

G. The CONTRACTOR shall notify and obtain written approval by H-GAC of the specific details of an expense or purchase set forth in this Section, if those expenses were not already authorized under this Agreement.

1. Changes in personnel whose salaries will be funded under this Agreement.
2. Out-of state travel to training events and conferences.
3. Equipment, construction, or contractual expenses.
4. Other category expenses not specifically authorized in this Agreement.

ARTICLE 8 STANDARDS FOR CONTRACTOR'S PERFORMANCE

1. In accordance with TCEQ guidance, H-GAC is required to monitor the CONTRACTOR's performance under this Agreement. Therefore, CONTRACTOR agrees that the following are appropriate standards for CONTRACTOR's performance during the Agreement as set forth in this Section.
 - a. Timeliness of Work. Standard: Work is provided on schedule.
 - b. Quality of Work. Standard: CONTRACTOR's Work conforms to the requirements of the contract and is technically accurate.
 - c. Subcontract Activities. Standard: CONTRACTOR's subcontract and subgrant activities comply with all H-GAC Agreement requirements regarding subcontracts especially competitive procurement methods for goods and services, use of required subcontract provisions, and monitoring performance of subcontractors and SUBPERFORMING PARTYS.
 - d. Administrative and Financial Operations. Standards: CONTRACTOR's administrative and financial operations comply with all obligations in law and in the contract especially record-keeping, reimbursement requests, audits, allowable costs, and restricted expenditures.
2. Performance Measures. H-GAC will monitor CONTRACTOR's performance and evaluate the level of compliance with the standards utilizing the following performance measures:
 - Satisfactory: CONTRACTOR generally complied with the standard consistently; occasional deficiencies may have occurred which were corrected on a timely basis.
 - Unsatisfactory: Significant deficiencies have occurred, or CONTRACTOR frequently or substantially failed to comply with the standard.
3. Schedule Of Remedies Available to H-GAC. The following Schedule of Remedies applies to this contract in the event of substandard performance or other failure to conform to the requirements of the contract or applicable law as set forth in this Section.

- a. Reject substandard performance and request corrections without charge to H-GAC.
- b. Issue notice of substandard performance or other non-conforming act or omission.
- c. Request and receive return of any over payments or inappropriate payments.
- d. Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity.
- e. Suspend all or part of the work and/or payments pending accepted revision of substandard performance or non-conformity.
- f. Reject reimbursement requested and withhold all or partial payments. Funds may be retained by H-GAC for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
- g. Terminate the contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of expended funds.

If H-GAC evaluation finds CONTRACTOR's performance to be substandard, H-GAC may provide its written evaluation report to other governmental entities at any time. H-GAC may also provide its written evaluation report to the public as authorized by law.

- 4. Cumulative Remedies. H-GAC may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses arising from or caused by the CONTRACTOR's substandard performance or any non-conformity with the Agreement or the law. The remedies and sanctions available to H-GAC in this Agreement shall not limit the remedies available to H-GAC under law.

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the Schedule of Remedies, obligations imposed upon CONTRACTOR by these General Conditions, and all other rights and remedies available to H-GAC thereunder, are in addition to, and are not to be in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by Laws or Regulations, by special warranty or guarantee or by other provisions of the Agreement, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right and remedy to which they apply.

ARTICLE 9 STANDARDS APPLICABLE TO PASS-THROUGH GRANT PROJECTS

The standards and requirements set forth in this Article shall apply to all pass-through grant projects selected for funding under this Agreement. The CONTRACTOR shall be responsible for ensuring that the pass-through grant projects and activities under this Agreement comply with these standards.

A. Eligible Pass-through Grant Recipients.

Only those local and regional political subdivisions located within the State of Texas as listed below are eligible to receive funding from H-GAC as a pass-through grant:

- Cities;
- Counties;
- Public school districts (does not include Universities or post secondary educational institutions); and
- Other general and special law districts created in accordance with state law, and with the authority and responsibility for water quality protection or municipal solid waste management, to include river authorities.

B. Pass-through Grant Project Categories.

The category specific funding limitations outlined for each category shall apply to all uses of funds under pass-through grant projects conducted for that category.

1. **Local Enforcement.** This category consists of projects that contribute to the prevention of illegal dumping of municipal solid waste, including liquid wastes. Under this category, grant recipients may investigate illegal dumping problems; enforce laws and regulations pertaining to the illegal dumping of municipal solid waste, including liquid waste; establish a program to monitor the collection and transport of municipal liquid wastes, through administration of a manifesting system; and educate the public on illegal dumping laws and regulations.
2. **Litter and Illegal Dumping Cleanup and Community Collection Events:** Litter and illegal dumping cleanup may include both ongoing and periodic activities to clean up litter and illegal dumping of MSW, excluding cleanup of scrap tire dumping sites. Projects under this category may support Lake and River Cleanup events, conducted in conjunction with the TCEQ's and Keep Texas Beautiful Lake and River Cleanup program. Eligible expenses include waste removal, disposal or recycling of removed materials, fencing and barriers; and signage. Placement of trash collection receptacles in public areas with chronic littering problems may also be funded. Reuse or recycling options should be considered for managing the materials collected through these efforts, to the extent feasible. Cleanup of hazardous waste will not be eligible for funding.

Periodic community collection events to provide for collection of residential waste materials for which there is not a readily available collection alternative, may also be funded. This type of project may not include regular solid waste collection efforts, such as weekly waste collection. Collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system. Funds may not be used for the disposal of collected wastes.

3. **Source Reduction and Recycling.** This category may include projects that are intended to provide a direct and measurable effect on reducing the amount of MSW going into landfills, by diverting materials from the MSW disposal stream for recycling or reuse, or by reducing waste generation at the source. This category does not include the collection, processing, and/or recycling of scrap tires. Funded activities may include: diversion from the waste stream and/or collection, processing for transport, and transportation of materials for reuse and/or recycling; implementation of efficiency improvements in order to increase source reduction and recycling, to include full-cost accounting systems and cost-based rate structures, establishment of a solid waste services enterprise fund, and mechanisms to track and assess the level of recycling activity in the community on a regular basis; and educational and promotional activities to increase source reduction and recycling.
4. **Local Solid Waste Management Plans.** This category includes projects to develop and/or amend local solid waste management plans by local governments, in accordance with Subchapter D, Chapter 363, Texas Health & Safety Code, as implemented by state rule, Subchapter O, 30 TAC Chapter 330.
5. **Citizens' Collection Stations and "Small" Registered Transfer Stations.** This category includes projects to construct and equip MSW collection facilities in areas of the state that are underserved by collection services or lack public access to proper disposal facilities. Projects funded under this category include citizens' collection stations, as these facilities are defined under the TCEQ's MSW regulations (30 TAC Chapter 330); and construction of small municipal solid waste and liquid waste transfer stations that qualify for registration under §330.9(b)(1) through §330.11(e)(4) of the regulations. Funds may not be used for the disposal of collected wastes. Projects funded for these types of facilities shall include consideration of an integrated approach to solid waste management, to include providing recycling services at the site, if appropriate to the management system in place.
6. **Household Hazardous Waste Management.** This category includes projects that provide a means for the collection, recycling, reuse, and/or proper disposal of household hazardous waste, including household chemicals, used oil and oil filters, antifreeze, lead-acid batteries, household electronics, and other materials. This category does not include programs and facilities for collecting, recycling, or disposing of scrap tires, except as may be an ancillary part of the overall program or facility. Funded activities can include: collection events; consolidation and transportation costs associated with collection activities; recycling or reuse of materials; proper disposal of materials; permanent collection facilities, and education and public awareness programs.
7. **Technical Studies.** This category includes projects for the collection of pertinent data, analysis of issues and needs, evaluation of alternative solutions, public input, and recommended actions to assist in making solid waste management decisions at the local or regional level. Projects under this category may also include research and investigations to determine the location, boundaries, and contents of closed municipal

solid waste landfills and sites, and to assess possible risks to human health or the environment associated with those landfills and sites.

8. Educational and Training Projects. Educational components are encouraged under the other categories in order to better ensure public participation in projects; those educational components should be funded as part of those projects and not separately under this category. This category may be used for “stand-alone” educational projects dealing with a variety of solid waste management topics.
9. Other Types of Projects. Other types of projects, not specifically prohibited from funding under the more detailed funding standards and restrictions set forth in Article 10, may be funded on a case-by-case basis. The project or project category must be included in H-GAC’s amended regional solid waste management plan.

ARTICLE 10 SUPPLEMENTAL FUNDING STANDARDS

Unless authorization is specifically provided in accordance with the special provisions of this Agreement or in accordance with Attachment B of this Agreement, the CONTRACTOR shall ensure that funds provided under this Agreement are not used for the following activities, programs, or projects:

- The provision of the UGMS issued by the Office of the Governor apply to the use of these funds, as well as the supplement financial administration guidance established by TCEQ to be applied under all contracts, *TCEQ Allowable Expenditures Guidelines*.
- Recipients of funds under this Agreement, including subcontractors, shall comply will all applicable state and local laws and regulations pertaining to the use of state funds, including laws concerning the procurement of goods and services and competitive purchasing requirements.
- Funds may not be provided through a subcontract to any public or private entity that is barred from participating in state contract by the Texas Building and Procurement Commission, under the provisions of §2155.077, Government Code.
- Public and private entities subject to payment of state solid waste disposal fees and whose payments are in arrears, as determined by TCEQ, may not receive funds under this Agreement through a subcontract.
- In accordance with §361.014(b), Texas Health and Safety Code, a project or service funded under this Agreement must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry included non-profit and not-for-profit non-governmental entities.

- All equipment and facilities purchased or constructed with funds provided under this Agreement shall be used for the purpose intended in the funding agreement.
- A project or service funded under this Agreement must be consistent with the H-GAC approved regional solid waste management plan, and must be intended to implement the goals, objectives, and priorities established in the regional plan.
- Funds may not be used to acquire land or an interest in land.
- Funds may not be used to supplant existing funds. In particular, staff positions where the assigned functions will remain the same and that were active at the time of the funding application or proposal, and were funded from a source other than a previous solid waste grant, may not be funded.
- Funds may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized employee per diem expenses for food cost incurred while on travel status.
- Funds may not be used for payment of salaries to any employee who uses alcoholic beverages on active duty. Funds may not be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.
- Funds may not be used for employment or otherwise contracts for services of a lobbyist or for dues to an organization which employs or otherwise contracts for the services of a lobbyist.
- Funds may only be used for projects or programs for managing municipal solid waste. Funds may not be used for programs dealing with wastes that are not considered municipal solid waste, including programs dealing with industrial or hazardous waste.
- Except as may be specifically authorized in this Article or elsewhere in this Agreement, funds may not be used for expenses related to projects or facilities that require a permit from the TCEQ and/or that are located within the boundaries of a permitted facility, including landfills, wastewater treatment plants, and other facilities. This provision, however, may be waived by the TCEQ, at its discretion, for otherwise eligible activities to be located at a closed permitted facility and/or for recycling activities that will take place within the boundaries of an open facility. Recycling activities that may qualify for such a waiver may include recyclables collection, composting, and land application of bio-solids for beneficial use. The applicant and/or H-GAC will request a preliminary determination from the TCEQ as to the eligibility of the project prior to consideration for funding.
- Projects or facilities requiring a registration from the TCEQ, and which are otherwise eligible for funding must have received the registration before the project funding is awarded.

- Except as may be specifically authorized in this Article or elsewhere in this Agreement, funds may not be used for activities related to the collection or disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; landfills and landfill-related facilities, equipment, or activities, including closure or post-closure care of a permitted landfill unit; or other activities and facilities associated with the disposal of municipal solid waste. This provision does not apply to activities specifically included under an authorized project category.
- Funds may not be used to assist an entity or individual to comply with an existing or pending federal, state, or local agreement or enforcement action. This restriction includes assistance to an entity to comply with an order to clean up and/or remediate problems at an illegal dumpsite. However, the TCEQ may waive this restriction, at its discretion and on a limited case-by-case basis, to address immediate threats to human health or the environment, and where it is demonstrated that the responsible party does not have the resources to comply with the order.
- Funds may not be used to pay penalties imposed on an entity for violation of federal, state, or local laws and regulations. This restriction includes expenses for conducting a supplemental environmental project (SEP) under a federal or state order or penalty. Funds may be used in conjunction with SEP funds to support the same project.

Local Enforcement

- As provided by the General Appropriations Act (80th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Texas Commission on Law Enforcement certifies that the requesting agency is in the process of achieving compliance with such rules.
- When funding is to be provided for salaries of local enforcement officers, the funds recipient must certify that at least one of the officers has attended or will attend within the term of the funding the TCEQ's Criminal Environmental Law Enforcement Training or equivalent training.
- Local enforcement vehicles and related enforcement equipment purchased entirely with funds provided under this program may only be used for activities to enforce laws and regulations pertaining to littering and illegal dumping, and may not be used for other code enforcement or law enforcement activities. Vehicles and equipment that are only partially funded must be dedicated for use in local enforcement activities for a percentage of time equal to the proportion of the purchase expense funded.
- Entities receiving funds for a local enforcement officer, enforcement vehicles, and/or related equipment for use by an enforcement officer, must investigate major illegal dumping problems, on both public and private property, in addition to investigating

general litter problems on public property.

- Entities receiving funds to conduct a local enforcement program must cooperate with the TCEQ's regional investigative staff in identifying and investigating illegal dumping problems. Lack of cooperation with the TCEQ staff may constitute a reason to withhold future funding to that entity for local enforcement activities.
- Funds may not be used for investigation and enforcement activities related to the illegal dumping of industrial and/or hazardous waste. Instances where industrial or hazardous waste is discovered at a site do not preclude the investigation of that site, so long as the intent and focus of the investigation and enforcement activities are on the illegal dumping of municipal solid waste.
- Grant funds may not be used for either the cleanup of illegal disposal sites or the transportation and/or disposal of wastes collected during such cleanups.

Litter and Illegal Dumping Cleanup and Community Collection Events

- Lake and River Cleanup events must be coordinated with the TCEQ's cleanup program staff and/or the Keep Texas Beautiful organization, which is contracted by the TCEQ to administer the Lake and River Cleanup program.
- Projects funded to clean up the litter or illegal dumping on private property must be conducted through a local government sponsor or H-GAC. Funds may not be provided directly to a private landowner or other private responsible party for cleanup expenses. The local government sponsor or H-GAC must either contract for and oversee the cleanup work, or conduct the work with its own employees and equipment.
- The costs for cleanup of hazardous waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment.
- The costs of cleanup of Class 1 nonhazardous industrial waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment. The cleanup of Class 2 and 3 nonhazardous industrial waste that may be found at a municipal solid waste site may be funded in conjunction with the cleanup of the municipal solid waste found at a site.
- All notification, assessment, and cleanup requirements pertaining to the release of wastes or other chemicals of concern, as required under federal, state, and local laws and regulations, including 30 TAC Chapter 330, TCEQ's MSW Regulations, and 30 TAC Chapter 350, TCEQ's Risk Reduction Regulations, must be complied with as part of any activities funded under this program.
- All materials cleaned up using funds provided under this Agreement must be properly disposed of or otherwise properly managed in accordance with all applicable laws and

regulations. To the extent feasible, it is recommended that the materials removed from a site be reused or recycled. For projects to clean up large amounts of materials, H-GAC will consider withholding at least ten (10%) percent of the reimbursements under a pass-through grant or subcontract, until documentation is provided that the cleanup work has been completed and the materials properly managed.

- Periodic community collection events, to provide for collection and proper disposal of non-recyclable residential waste materials for which there is not a readily-available collection alternative, may be funded. This type of project may not include regular solid waste collection activities, such as weekly waste collection. Funded collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system, and might otherwise be illegally dumped by residents.

Source Reduction and Recycling

- Any program or project funded under this Agreement with the intent of demonstrating the use of products made from recycled and/or reused materials shall have as its primary purpose the education and training of residents, governmental officials, private entities, and others to encourage a market for using these materials.

Local Solid Waste Management Plans

- All local solid waste management plans funded under this Agreement must be consistent with H-GAC's regional solid waste management plan, and prepared in accordance with Subchapter O of the TCEQ's Municipal Solid Waste regulations (30 TAC Subchapter O, Chapter 330) and the Content and Format Guidelines provided by the TCEQ. At least one year should be allowed for the completion and adoption of the local plan.

Citizens' Collection Stations and "Small" Registered Transfer Stations

- The design and construction of citizens' collection stations, as those facilities are defined under 30 TAC Chapter 330, TCEQ Regulations, may be funded. The costs associated with operating a citizens' collection station once it is completed may not be funded.
- The design and construction of small municipal solid waste and liquid waste transfer stations that qualify for registration under §330.9(b) or a notification under §330.11(e), TCEQ Rules, may be funded. Other permitted or registered transfer stations may not be funded. A municipal solid waste transfer facility may be eligible for a registration if it serves a municipality with a population of less than 50,000, or a City with a population of less than 85,000, or is used in the transfer of 125 tons or less of municipal solid waste per day. A liquid waste transfer station may qualify for a registration if it will receive less than 32,000 gallons or less per day. The costs associated with operating a transfer station once it is completed may not be funded. A Citizens' Collection Station funded and constructed under the solid waste grants program which does not charge customers for services rendered qualifies to pursue implementation project funding under this agreement to cover periodic maintenance costs associated with the free services provided.

Household Hazardous Waste Management

- All household hazardous waste collection, recycling, and/or disposal activities must be coordinated with the TCEQ's HHW program staff, and all applicable laws, regulations, guidelines, and reporting requirements must be followed.
- First-time applicants may request funds for disposal costs. Second and subsequent year requests will be considered at the discretion of the Solid Waste Management Committee (SWMC).

Technical Studies

- All technical studies funded under this program must be consistent with H-GAC's regional solid waste management plan, and prepared in accordance with guidelines provided by the TCEQ.

Educational and Training Projects

- Educational and training programs and projects funded under this Agreement must be primarily related to the management of municipal solid waste, and funds applied to a broader education program may only be used for those portions of the program pertaining to municipal solid waste.

ARTICLE 11 TITLE TO AND MANAGEMENT OF REAL PROPERTY AND EQUIPMENT

Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement will vest, upon acquisition or construction, throughout the term of this Agreement, in the name of the CONTRACTOR.

Subject to the provisions of this Agreement and as otherwise provided by state statutes, property acquired or replaced under this Agreement or a pass-through grant contract shall be used for the duration of its normally expected useful life to support the purposes of this Agreement whether or not the original projects or programs continue to be supported by state funds.

The CONTRACTOR shall not grant or allow to a third party a security interest in any original or replacement property purchased or constructed with funds made available to the CONTRACTOR under this Agreement.

The use of property acquired under this Agreement, both during the term of this Agreement and for the useful life of the property or until compensation is provided to H-GAC/TCEQ for the applicable percentage share of the fair market value of the property, shall be in compliance with §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN., which directs that a project or service funded under this program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

The CONTRACTOR may develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for property owned by the CONTRACTOR is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the CONTRACTOR must meet the requirements set forth in this Section.

- Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - A physical inventory of all equipment acquired or replaced under this Agreement shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the CONTRACTOR shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The CONTRACTOR shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.
 - Certain types of equipment are classified as “controlled assets” and are subject to annual revision. In accordance with the UGMS, the CONTRACTOR should contact the Texas Comptroller of Public Accounts’ property accounting staff or review the Comptroller’s State Property Accounting User’s Guide available on the Internet, for the most current listing. Firearms shall be maintained on the CONTRACTOR’s inventory system irrespective of cost, and the following equipment with costs between \$500 and \$4,999.99 shall be maintained on the inventory system: (1) stereo systems, (2) still and video cameras, (3) facsimile machines, (4) video recorders (VCRs), laserdisc players, camcorders, and VCR/TV combinations , (5) desktop CPUs, printers, data projectors, portable CPU laptops; and (6) cellular and portable telephones. All single unit acquisitions greater than \$5,000.00 shall be maintained on the inventory system.
5. The CONTRACTOR, respectively, may for the purpose of replacing property acquired under this Agreement, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.
 6. The CONTRACTOR agrees that if a determination is made that any property acquired with funds provided under this Agreement with a current per-unit fair market value of \$5,000 or more is no longer needed for the originally authorized purpose, H-GAC/TCEQ

has the right to require disposition of the property by the CONTRACTOR in accordance with the provisions of this Article.

7. When, during the useful life of property acquired with grant funds under this Agreement by the CONTRACTOR and with a current per-unit fair market value of \$5,000 or more, the property is no longer needed for the originally authorized purpose, the CONTRACTOR agrees to request disposition instructions from H-GAC/TCEQ. The CONTRACTOR shall request authorization from H-GAC/TCEQ to provide disposition instructions to the pass-through grant recipient. Disposition instructions shall solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The assessment of whether to authorize the proposed disposition of the property must include a determination that the disposition plan will comply with the private industry provisions of §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN. In cases where the CONTRACTOR fails to take appropriate disposition actions, H-GAC/TCEQ may direct the CONTRACTOR to take disposition actions. The disposition instructions may provide for one of the alternatives as set forth in this Section.
 - Retain title, sell, or otherwise disposed of with no obligation to compensate H-GAC/TCEQ.
 - Retain title after compensating H-GAC/TCEQ. The amount due will be computed by applying the percentage of state-funded participation in the cost of the original purchase to the fair market value of the property.
 - Sell the property and compensate H-GAC/TCEQ. The amount due will be calculated by applying H-GAC/TCEQ's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When the CONTRACTOR is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
 - Transfer title to H-GAC/TCEQ, or to a third-party designated/approved by H-GAC/TCEQ. If the CONTRACTOR participated financially in the original purchase of the property, the CONTRACTOR may be authorized payment from the receiving party of an amount calculated by applying the percentage of the participation in the original purchase of the property to the current fair market value of the property.
8. Items of property with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the CONTRACTOR with no further obligation to H-GAC/TCEQ. Methods used to determine per-unit fair market value must be documented, kept on file and made available to H-GAC/TCEQ upon request.

9. Real property must be maintained on an Inventory and is subject to the requirements of UGMS, Part III, Subpart C,_.31. Subject to the obligations and conditions set forth in this Agreement, title to real property acquired under this Agreement by the CONTRACTOR will vest upon acquisition or construction in the CONTRACTOR respectively.

ARTICLE 12 INSURANCE

H-GAC understands that CONTRACTOR is governed by the Texas Tort Claims Act, Chapter 101.001 et seq., Texas Civil Practice and Remedies Code Ann., as amended, which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of CONTRACTOR. H-GAC further understands that CONTRACTOR in effect has either adequate coverage to meet claims under the Act or is self-insured for all claims falling within the Texas Tort Claims Act. H-GAC further understands that CONTRACTOR is self-insured for workers compensation insurance as provided by Chapter 504, Texas Labor Code Ann., as amended.

ARTICLE 13 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

The CONTRACTOR agrees that qualified Historically Underutilized Businesses (HUBs) shall have the maximum practicable opportunity to participate in the performance of this Agreement.

ARTICLE 14 ENERGY EFFICIENCY STANDARDS

The CONTRACTOR shall follow standards and policies on energy efficiency which are contained in the Texas State Energy Conservation Plan.

ARTICLE 15 LAWS AND REGULATIONS

The CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable Laws and Regulations, H-GAC shall not be responsible for monitoring Agreement's compliance with any Laws or Regulations.

If the CONTRACTOR performs any work knowing or having reason to know that it is contrary to Laws or Regulations, the CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

ARTICLE 16 UNIFORM GRANT AND CONTRACT MANAGEMENT ACT

The provisions of Uniform Grant and Contract Management Act, TEXAS GOVERNMENT CODE, Chapter 783 applies to this Agreement, all amendments thereto, and all subcontracts and sub-agreements. Compliance with the conditions and requirements contained therein is necessary for the satisfactory performance of the services and work required under this Agreement.

ARTICLE 17 DATA AND PUBLICITY

All data and other information developed under this Agreement shall be furnished to H-GAC and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, TEX. GOV'T CODE Chapter 552 ("Act"). Upon termination of this Agreement, all copies of data and information shall be furnished, at no charge to H-GAC and TCEQ, upon request, to include databases prepared using funds provided under this Agreement, and become the property of H-GAC and TCEQ. Except as otherwise provided by the Agreement or the Act, the CONTRACTOR shall not provide data generated or otherwise obtained in the performance of its responsibilities under this Agreement to any party other than the State of Texas and its authorized agents.

ARTICLE 18 ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The CONTRACTOR shall acknowledge the financial support of H-GAC and the TCEQ and the State of Texas whenever work funded, in whole or part, by this Agreement is publicized or reported in news media or publications. All reports and other documents completed as a part of this Agreement, other than documents prepared exclusively for internal use within the CONTRACTOR, shall carry the following notation on the front cover or title page.

PREPARED IN COOPERATION WITH THE HOUSTON-GALVESTON AREA COUNCIL AND TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.

The preparation of this report was financed through grants from the State of Texas through the Texas Commission on Environmental Quality and the Houston-Galveston Area Council.

ARTICLE 19 DESIGN REVIEW

The CONTRACTOR shall comply with and incorporate into the applicable design and related data all H-GAC review comments and subsequent design instructions. Compliance will be assumed, unless H-GAC is advised in writing over the signature of the CONTRACTOR to the contrary, giving detailed and complete justification for such proposed exception.

ARTICLE 20 PERMITS AND APPROVALS

The CONTRACTOR shall obtain applicable drawing and specification approvals and permits from government authorities and governing bodies as may be required for the design of the Project. All changes that may be required, to the drawings, specifications, or both of these that are necessary to obtain these approvals, are within the scope of services of the Agreement.

Unless otherwise provided in the Agreement, the CONTRACTOR shall obtain and pay for all construction permits and licenses. The CONTRACTOR shall pay all charges of utility owners for connections to the work, and the CONTRACTOR shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

ARTICLE 21 REQUIREMENT OF REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular profession field involved in the State of Texas.

ARTICLE 22 MUNICIPAL SOLID WASTE DISPOSAL AND TRANSPORTATION REVENUE FEE

It is the understanding of the parties that the source of the funds provided by H-GAC and TCEQ is the Municipal Solid Waste Disposal and Transportation Revenue Fee (MSWDTRF). Due to demands upon that source for funds necessary to protect the health and safety of the public, it is possible that the funds contained in the MSWDTRF will be depleted prior to completion of this Agreement. The parties agree that all funding arranged under this Agreement is subject to sufficient funds in the MSWDTRF.

ARTICLE 23 SAFETY AND PROTECTION

Where applicable, the CONTRACTOR shall be responsible for requiring subcontractors and subgrantees to maintain and supervise all necessary safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary safety precautions.

ARTICLE 24 HAZARDOUS SUBSTANCES, WASTE DISPOSAL AND MANIFESTS

The CONTRACTOR, subcontractors and sub-grantees must comply with all applicable Laws and Regulations, including but not limited, to those relating to hazardous substances, waste disposal and manifests.

ARTICLE 25 INTELLECTUAL PROPERTY REQUIREMENTS

Intellectual Property requirements as set forth in this Section.

1. Royalties and Patent Fees. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use or possession in the performance of the work or the incorporation in the work of any Intellectual Property.
2. Disclosure of Intellectual Property Produced during the work. CONTRACTOR shall promptly notify H-GAC of all Intellectual Property which CONTRACTOR or CONTRACTOR's employees, subcontractors, or subcontractor's employees may *produce*, either solely or jointly with others, during the course of the work. In addition, CONTRACTOR shall promptly notify H-GAC of all Intellectual Property to which CONTRACTOR may acquire rights in connection with the performance of the work. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publication, sale, public use, or impending publication. Promptly upon request, CONTRACTOR shall supply such additional information as H-GAC may request.

3. Grant of License. With respect to such Intellectual Property as is (i) incorporated in the work (other than Intellectual Property for which H-GAC/TCEQ already possesses equal or greater Intellectual Property Rights by virtue of this Agreement or otherwise), (ii) *produced* by CONTRACTOR or CONTRACTOR's employees, subcontractors, or subcontractor's employees during the course of performing the work, or (iii) specifically identified in the Supplemental Conditions as Intellectual Property to which Intellectual Property Rights are granted pursuant to this paragraph, CONTRACTOR hereby grants to H-GAC and TCEQ (i) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (ii) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for H-GAC and TCEQ's purposes.
4. Modification; Derivative Works. H-GAC and/or TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for H-GAC and/or TCEQ's own purposes and use, through the services of its own employees or independent contractors. H-GAC and/or TCEQ shall own all Intellectual Property Rights to such modifications. CONTRACTOR shall not incorporate any such modifications into its Intellectual Property for distribution to third parties unless it first obtains a license from H-GAC and/or TCEQ.
5. CONTRACTOR shall comply with all Laws and Regulations relating to Intellectual Property. CONTRACTOR represents and warrants to H-GAC that CONTRACTOR will not infringe any Intellectual Property Right of any third party. CONTRACTOR further represents and warrants to H-GAC that in the course of performing the work it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. CONTRACTOR warrants that it has full title in and ownership of the Intellectual Property and any enhancements, updates or other modifications, or that it has full power and authority to grant all licenses granted herein, and that such license use by H-GAC will in no way constitute an infringement or other violation of any Intellectual Property right of any third party. The CONTRACTOR warrants that it shall have, throughout any applicable license term hereunder, free and clear title to, or the right to possess, use sell, transfer, assign, license, or sublicense, products that are licensed or provided hereunder to H-GAC by CONTRACTOR. Except as permitted in the Agreement, CONTRACTOR shall not create or permit the creation of any lien, encumbrance, or security interest in the work or any part thereof, or any product licensed or provided hereunder to H-GAC for which title has not yet passed to H-GAC, without the prior written consent of H-GAC. CONTRACTOR represents and warrants to H-GAC that neither it nor any other company or individual performing the work is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to H-GAC, or reserved by H-GAC, pursuant to the Agreement.
6. CONTRACTOR expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements under section 2157.003 of the Government Code,

relating to accessibility by persons with visual impairments. Accordingly, the CONTRACTOR represents and warrants to H-GAC that the technology provided to H-GAC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

7. The CONTRACTOR shall include provisions adequate to effectuate the purposes of this paragraph in all subcontracts and sub-grants under this Agreement in the course of which Intellectual Property may be produced or acquired.

ARTICLE 26 ACCOUNTING SYSTEMS

The CONTRACTOR shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with applicable State law, regulations, and policies relating to accounting standards or principles. The CONTRACTOR must account for costs in a manner consistent with such standards or principles.

ARTICLE 27 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

ARTICLE 28 CONTRACTUAL COSTS

CONTRACTOR’s contractual costs must comply with allowable cost requirements. CONTRACTORS which are governmental entities must engage in contractor selection on a competitive basis in accordance with their established policies. If CONTRACTOR has no competitive procurement policy or is a private entity, CONTRACTOR must generally select contractors by evaluation and comparison of price, quality of goods or services and past performance. All subgrants awarded by the CONTRACTOR under this Agreement shall be in accordance with Subpart C, Sec. __.37, Subsection (b) of the State Uniform Administrative Requirements for Grants and Cooperative Agreements as set forth in Part III of the ***Uniform Grant Management Standards*** adopted by the Governor’s Office of Budget and Planning.

ARTICLE 29 AUTHORIZED REPRESENTATIVES

- A. H-GAC hereby designates the person in Exhibit 1, Project Representative, as the individual authorized to give direction to the CONTRACTOR for the purposes of this Agreement. The H-GAC Project Representative shall not be deemed to have authority to bind H-GAC in Agreement unless the EXECUTIVE DIRECTOR of H-GAC has delegated such authority.
- B. Immediately upon receiving the Purchase Order or Notice of Award, the CONTRACTOR shall identify, as its Project Representative, the person authorized to receive direction from H-GAC, to manage the work being performed, and to act on behalf of the CONTRACTOR. The CONTRACTOR Project Representative shall be deemed to have authority to bind the CONTRACTOR in Agreement unless the CONTRACTOR, in writing, specifically limits or denies such authority to the CONTRACTOR Project Representative.
- C. Either party may change its Project Representative. In addition, the Project Representative of either party may further delegate his or her authority as necessary, including any delegation of authority to a new Project Representative. The party making the change in Project Representative shall provide written notice of the change to the other party.
- D. The CONTRACTOR shall ensure that its Project Representative, or his or her delegate, is available at all times for consultation with H-GAC.

Exhibit 1

H-GAC hereby designates the individuals named below as the person authorized to receive direction from the TCEQ, to manage the work being performed, and to act on behalf of H-GAC as a Project Representative:

Primary: Cheryl Mergo
 Sustainable Development Program Manager
 Houston-Galveston Area Council
 P.O. Box 22777
 Houston, Texas 77227-2777
 TEL - 713-993-4520 FAX 713- 993-4503
 Email address: cheryl.mergo@h-gac.com

ATTACHMENT A

City of Bay City

Project Description: The City of Bay City will use grant funds to partially fund an Assistant Manager for the recycling center, to pay a deposit on a used cooking oil container, and to purchase educational items.

Task I: Participate in Mandatory Grants Administration Workshop

Activity and/or Deliverable – A Mandatory Grants Administration Workshop will be hosted by H-GAC in July 2014 for FY15 Solid Waste Implementation Grant program and financial staff. Both program and financial representatives are required to participate.

Schedule of Activity and/or Deliverable (in weeks or months) – 1 month.

Task II: Hire Assistant Manager

Activity and/or Deliverable – Hire an Assistant Manager for the recycling center to advertise and run the new used cooking oil collection program.

Schedule of Activity and/or Deliverable (in weeks or months) – 1-3 months.

Task III: Obtain Cooking Oil Collection Container

Activity and/or Deliverable – Obtain a 300 gallon double wall container to be used for the collection of used cooking oil from WVO. Place the container into operation at the city's recycling center.

Schedule of Activity and/or Deliverable (in weeks or months) – 2-3 months.

Task IV: Design and Purchase Education Materials

Activity and/or Deliverable – Design and purchase rack cards, refrigerator magnets, and bookmarks. Get approval from H-GAC Grant Manager prior to finalizing the design. Make sure to follow all City procurement procedures. Distribute the bookmarks to students during presentations and distribute the rack cards and magnets to new utility customers and apartment dwellers.

Schedule of Activity and/or Deliverable (in weeks or months) – 2-10 months.

Task V: Progress Reporting

Activity and/or Deliverable – Progress Reports will be submitted to H-GAC. H-GAC will provide the appropriate reporting forms. Forms must be submitted even if there is no activity to report. Follow-up report will be submitted at a later date to be determined.

- Due dates for Progress Reports

December 10, 2014 (September – November)

March 10, 2014 (December – February)

June 10, 2015 (March – May)

July 31, 2015 (June)

Follow Up Report – September 2016

Schedule of Activity and/or Deliverable (in weeks or months) – As scheduled above. If the 10th day of the month falls on a weekend or holiday the report is due the following business day.

Attachment: FY15 Bay City--revised (1524 : HGAC FY15 Grant Contract)

Task VI: Financial Reporting

Activity and/or Deliverable - Financial reporting with appropriate documentation will be submitted monthly to H-GAC for reimbursement. H-GAC will provide the appropriate financial forms. Forms must be submitted even if no reimbursement is requested.

Schedule of Activity and/or Deliverable (in weeks or months) – Monthly on the 10th. Final reimbursement request is due 31 days after grant termination. If the 10th day of the month falls on a weekend or holiday the report is due the following business day.

Task VII: Additional Reporting

Activity and/or Deliverable – The City will respond to surveys and/or other requests from H-GAC or TCEQ for information on municipal solid waste management activities.

Schedule of Activity and/or Deliverable (in weeks or months) – As requested.



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/26/14 07:00 PM
Department: Public Works
Category: Contract
Prepared By: Marla Jasek
Initiator: Marla Jasek
Sponsors:
DOC ID: 1523

ADOPTED

AGENDA ITEM (ID # 1523)

CONSIDER AND/OR APPROVE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BAY CITY AND CIVILCORP, LLC, FOR ENGINEERING SERVICES FOR A STRIPING PROJECT ON VARIOUS STREETS.

Agreement includes preparation of plans and bid documents to restripe various roadways including sections of 6th Street, Nichols Avenue, and Baywood Drive.

RESULT:	APPROVED BY CONSENT VOTE [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman
EXCUSED:	Steven Johnson

Professional Services Agreement between the City of Bay City and CivilCorp, LLC, for Engineering Services for a Striping Project on Various Streets

OWNER: THE CITY OF BAY CITY, TEXAS, 1901 5th Street, Bay City, TX 77414

OWNER'S REPRESENTATIVE: Barry Calhoun, Director of Public Works, City of Bay City

ENGINEER: CivilCorp, LLC, 1501 E. Mockingbird Lane, Suite 406, Bay City, TX 77904

PROJECT: Professional will prepare plans, specifications and bid documents for a striping project at the following locations:

Street	From	To
Courthouse Square Parking		
6th Street	Avenue F	7th Street
Nichols Ave.	Carey Smith Blvd.	Lova Dr.

PAYMENT:

PAYMENT FOR BASIC SERVICES--OWNER agrees to pay the following amounts for Basic Services rendered pursuant to this Agreement, a total fixed amount not to exceed **\$6,780.00** as follows:

Phase	Amount
Preliminary Design	
Final Design	
Bidding	
Total Basic Services	\$6,780.00

PAYMENT FOR ADDITIONAL SERVICES--OWNER shall pay ENGINEER for Additional Services requested by Owner's REPRESENTATIVE in writing and rendered as follows:

- (1) Payment for Additional Services of Engineer rendered under this Agreement and or referenced under paragraphs 2.1.1. Through 2.1.17. inclusive shall be paid for at the following rates when supported by invoices:

Senior Project Manager	\$160.00
Registered Professional Engineer	\$130.00
Engineer-in-Training	\$ 90.00
Survey Technician	\$ 80.00
CADD Technician	\$ 75.00
Clerical	\$ 65.00

Mileage Expense (outside 50 mile radius of Bay City) \$0.56/mile
Actual cost of materials required for the job and expenses shall be charged at cost plus 10%. Overnight Expense/man -- Actual Expenses plus 10%.

- (2) For expenses for Additional Services, ENGINEER shall be compensated at the actual cost to ENGINEER based on rates referenced above or as previously agreed upon in writing. Where field parties are used, expenses shall include charges for the use of any special instruments and equipment, including marine equipment, and expendable items such as stakes and monuments.

PAYMENT SCHEDULE:

ENGINEER shall submit monthly statements for Basic and Additional Services rendered. For Basic Services, the statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall pay for all services within 30 days based on the proportion of total services estimated by OWNER to have been actually completed at the time of billing. Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount as may be necessary to bring total compensation paid on such phase to the percentages of total compensation payable for all phases of Basic Services, as listed above. OWNER agrees to pay a charge of ½% per month on all invoiced and owed amounts not paid within 30 days of the date of the invoice, calculated from the date of the invoice. In addition, after giving seven days' written notice to OWNER, ENGINEER may suspend services under this Agreement until the ENGINEER has been paid in full all amounts due for services and expenses.

1. **BASIC SERVICES OF ENGINEER**--ENGINEER shall perform professional engineering services as hereinafter stated which include customary incidental engineering services.

1.1. **Preliminary Design Phase.** ENGINEER shall:

- 1.1.1. Consult with OWNER to clarify and define OWNER'S requirements for the Project and review available data.
- 1.1.2. Advise OWNER of the need to provide or obtain from others data or additional services, and act as OWNER'S representative in connection with any such services acquired from others.
- 1.1.3. Prepare preliminary design documents consisting of final design criteria, preliminary drawings including locations where existing striping will be modified and outline specifications.
- 1.1.4. Based on the information contained in the preliminary design documents; submit a revised opinion of probable Project Cost.
- 1.1.5. Furnish one copy of the above preliminary design documents and review them in person with OWNER'S REPRESENTATIVE.

1.2. **Final Design Phase.** ENGINEER shall:

- 1.2.1. Prepare final Drawings and Specifications for incorporation into the Contract showing the character and extent of the Project based on the accepted preliminary design documents and the revised opinion of probable Project Cost.
- 1.2.2. Maintain all relevant Project records for three years after the OWNER has made final payment to the Contractor and all other pending matters are closed.
- 1.2.3. Assist OWNER'S REPRESENTATIVE in the preparation of required documents so that OWNER may apply for approvals of governmental

authorities having jurisdiction over the Project, and assist in negotiations with appropriate authorities.

- 1.2.4. Advise OWNER'S REPRESENTATIVE of any adjustments to the revised opinion of probable Project Cost caused by changes in the Project and furnish a final opinion of probable Project Cost based on the final Drawings and Specifications.
- 1.2.5. Prepare agreement forms, general, special and supplementary conditions, bidding documents, and other related documents to create the Contract for the Project (hereinafter the "Contract"). ENGINEER shall use forms provided by OWNER where applicable.
- 1.2.6. Furnish one copy of the above documents and review them in person with the OWNER'S REPRESENTATIVE.
- 1.3. **Bidding Phase.** ENGINEER shall:
 - 1.3.1. Assist OWNER in obtaining bids for the Contract.
 - 1.3.2. Consult with OWNER'S REPRESENTATIVE as to the acceptability of subcontractors proposed by the prime Contractor (hereinafter called "Contractor") when such acceptability is required by the bidding documents.
 - 1.3.3. Consult with OWNER'S REPRESENTATIVE as to the acceptability of substitute materials and equipment proposed by Contractor when substitution prior to the award of the Contract is allowed by the bidding documents.
 - 1.3.4. Assist OWNER'S REPRESENTATIVE in evaluating bids and in assembling and awarding the Contract.

2. ADDITIONAL SERVICES OF ENGINEER

2.1. General.

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

- 2.1.1. Preparation of applications for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review of the effect on the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2. Services to make detailed investigation of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER, as necessary for the proper design and striping of the Project.

- 2.1.3. Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of striping; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.
- 2.1.4. Providing renderings or models for OWNER'S use.
- 2.1.5. Preparation of any special reports required for marketing of bonds.
- 2.1.6. Soil and foundation tests and borings.
- 2.1.7. All reports and maps to establish or revise Flood Plain boundaries in a format acceptable to FEMA.
- 2.1.8. Detailed mill, shop and/or laboratory inspection of materials or equipment.
- 2.1.9. Investigations involving detailed consideration of operation and maintenance expenses; the preparation of feasibility studies and appraisals; and assistance in obtaining financing for the Project.
- 2.1.10. Services of special consultants for purposes other than the normal engineering incidental to the Project, and providing data or services when OWNER authorizes ENGINEER to provide such data or services in lieu of OWNER furnishing them. For the purposes of this Contract, services of a special consultant will be allowed only when the need is confirmed by the OWNER'S REPRESENTATIVE.
- 2.1.11. Permits from all governmental authorities having jurisdiction over the Project and furnish such approvals and consents from others as may be necessary for completion of the Project.
- 2.1.12. Services resulting from the award of more than one prime Contract for striping materials, equipment or services for the Project, and services resulting from the arranging for performance by persons other than the Contractor and administering OWNER'S Contracts for such services.
- 2.1.13. Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the change in services rendered; services after the award of the Contract in evaluating substitutions proposed by the Contractor which require extensive revisions to Drawings and Specifications; and services resulting from significant delays, changes or price increases occurring as a result of material, equipment or energy shortages.
- 2.1.14. Services during out-of-town travel required of ENGINEER other than visits to the site as required by Section 1.
- 2.1.15. Additional or extended services during striping made necessary by (1) work damaged by fire or other cause during striping, (2) a significant amount of defective or neglected work of Contractor, (3) prolongation of the Contract

time by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor.

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

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

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

3. OWNER'S RESPONSIBILITIES--Owner shall:

- 3.1. Provide information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations, and furnish copies of general design and striping standards which OWNER will require to be included in the Drawings and Specifications.
- 3.2. Arrange for access to public property as required for ENGINEER to perform its services.
- 3.3. Furnish copies of finalized Plans and Specifications for use during bidding and striping.

4. STRIPING COST AND OPINIONS OF COST

4.1. Striping Cost.

The Striping Cost of the Project does not include ENGINEER'S compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, nor does it include OWNER'S legal, accounting, insurance counseling or auditing services, or laboratory of testing services, or interest and financing charges incurred in connection with the Project. Striping Cost is one of the items comprising Project Cost which is defined in paragraph 1.1.4.

4.2. Opinions of Cost.

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

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

- 4.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Striping Cost in excess of the then established cost limit will constitute a corresponding revision in the Striping Cost limit.
- 4.2.2.2. ENGINEER will be permitted to determine what materials, equipment, component systems and types of striping are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.
- 4.2.2.3. If the lowest bona fide bid exceeds the established Striping Cost limit, OWNER shall (1) give written approval to increase cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or character. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents one time as necessary to bring the Striping Cost within the cost limit; subsequent modifications by the ENGINEER shall be paid for as Additional Services.
- 4.2.2.4. If the OWNER does not solicit bids for the Project within six months after completion of the Final Design Phase, the established Striping Cost limit will not be binding on ENGINEER, and ENGINEER'S obligation to modify the Contract Documents one time as necessary to bring the Striping Cost within the cost limit shall be commensurate with any applicable change in the general level of prices in the striping industry between the date of completion of the Final Design Phase and the date on which bids are sought.

5. GENERAL CONDITIONS

- 5.1. **Termination**--Either party may terminate this agreement upon 10 days written notice to the other party with the understanding that all services being performed under this agreement shall cease upon the date specified in such notice. If this agreement is terminated prior to completion, ENGINEER shall invoice OWNER for all services completed and shall be compensated in an amount corresponding to the amount designated as compensation for each phase of the work completed and accepted plus an amount corresponding to the percentage of work completed and accepted for any phase partially completed on the effective date of the termination.
- 5.2. **Ownership of Documents**--All documents prepared and/or assembled by ENGINEER under this Agreement shall become the property of the OWNER and shall be delivered to OWNER without restriction on future use. ENGINEER may make copies of any and all documents for its files and re-use information contained therein.

- 5.3. **Controlling Law**--This Agreement is performable and is to be governed by the law applicable in Matagorda County, Texas. Sole venue for any action arising under this Agreement shall be in Matagorda County, Texas.
- 5.4. **Assignment of Contract**--Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitations, monies that may become due or monies that are due) this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing independent consultants, associates, subcontractors, and employees to assist it in the performance of services hereunder.
- 5.5. **No Third-Party Beneficiaries**--Nothing herein shall be construed to give any rights or benefits to anyone other than OWNER and ENGINEER.
- 5.6. **Independent Contractor**--In performing services under this Agreement, the relationship between OWNER and ENGINEER is that of independent Contractor, and OWNER and ENGINEER by the execution of this Agreement do not change the independent Contractor status of ENGINEER. No term or provision of this Agreement or act of ENGINEER in the performance of this Agreement shall be construed as making ENGINEER or any agent, servant or employee of ENGINEER the agent, servant or employee of OWNER.
- 5.7. **Indemnity**--ENGINEER agrees to defend, release, indemnify, and hold the OWNER whole and harmless against any and all claims, suits and actions for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by or from any negligent act, error or omission of ENGINEER or any officer, agent, servant, employee or subcontractor of ENGINEER in the execution or performance of this Contract. In the event of notice of a claim to which this indemnity might apply, so much of the money due ENGINEER under this Contract as shall be reasonably considered necessary by the City may be retained for the use of the OWNER until all suits, actions, and claims shall have been settled and satisfactory evidence to that effect furnished the OWNER. The ENGINEER further expressly agrees to release from, defend, indemnify and hold harmless the City, its officers, agents, and employees from liability accruing to ENGINEER or any of ENGINEER'S officers, agents, employees, or Contractors regardless of whether the injury or damage is caused in whole or in part by any hidden or apparent condition of property owned or controlled by the OWNER. This indemnity shall not apply to any claim to the extent to which ENGINEER is prohibited from indemnifying a governmental entity pursuant to Tex. Local Gov't Code § 271.904 or other law.
- 5.8. **Entire Agreement**--This Agreement, together with any referenced attachments, constitutes the entire Agreement between OWNER and ENGINEER, and supersedes all prior written or oral understandings.

This Agreement and said attachments may only be amended, supplemented, modified or canceled by a duly executed written instrument.

EXECUTED, this the _____ day of _____, 2014.

OWNER: **CITY OF BAY CITY, TEXAS**

ENGINEER: **CivilCorp, LLC**

Mayor Mark A. Bricker

Ben L. Galvan, PE, RPLS, President

(seal)

ATTEST:

ATTEST:

Rhonda Clegg, City Secretary

Kelly Bena, Marketing Coordinator

Attachment: City of Bay City PSA - CivilCorp - 2014 Striping Project (1523 : CivilCorp Contract--Striping)

EXHIBIT "A"

**STANDARD GOVERNMENTAL CONTRACT AND PURCHASING RIDER
FOR CONTRACTS WITH THE CITY OF BAY CITY, TEXAS**

(Version 5/23/12)

By submitting a response to a solicitation or bid, or by entering into a contract for goods or services and/or by accepting a purchase order, the contracting party identified below agrees that the below terms and conditions shall govern all agreements with the City unless otherwise agreed to by a specifically executed provision within the contract and then, only if permissible by law. Absent a specifically executed provision referencing a modification, the below terms are BINDING and SUPERSEDE any and all other terms and/or conditions whether oral or written.

1. Application. This Governmental Rider applies to, is part of, and takes precedence over any conflicting provision in or attachment to the Contract (Contract) (attached hereto) of CivilCorp, LLC (Vendor). The Contract involved in this Rider is described as follows:

Striping Project on Various Streets

2. Payment Provisions. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. The City reserves the right to modify any amount due to contractor presented by invoice to the City if necessary to conform the amount to the terms of the contract.

3. Multiyear Contracts. If the City does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution) It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving contractor a written notice of termination at the end of its then current fiscal year.

4. Best Value Determination. All competitive bids or proposals received shall be evaluated based on the best value for the City. Best value shall be determined by any relevant criteria specifically listed in the solicitation and by considering all or part of the criteria listed below.

- a. Bid price
- b. Reputation of the bidder and of bidder's goods and services
- c. The quality of the bidder's goods or services
- d. The extent to which the goods or services meet the City's needs
- e. Bidder's past relationship with the City - All vendors shall be evaluated on their past performance and prior dealings with the City to include, but not limited to, failure to meet specifications, poor quality, poor workmanship, and late delivery.

5. Local Preference. The City Council supports the local preference option for purchasing. In accordance with Chapter 271.9051 of the State of Texas Local Government Code, the City Council may choose to award a competitive bid to a bidder whose principal place of business is in the City limits, provided that this bid is within 5% of the lowest bid price received.

6. No Ex-Parte Communications during Competitive Bidding Period. To insure the proper and fair evaluation of a response, the City prohibits ex parte communication (e.g., unsolicited) initiated by the proposed contractor to a City official or employee evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until 5:00 pm on the day specified as the deadline for questions. Any communication between responder and the City after the deadline for questions will be initiated by the appropriate City official or employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex parte communication may be grounds for disqualifying the offending responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

7. Abandonment or Default. A contractor who abandons or defaults the work on the contract and causes the City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

8. Disclosure of Litigation. Each contractor shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the respondent or which has occurred in the past in which the respondent has been judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

9. Cancellation. The City reserves the right to cancel the contract without penalty by providing 30 days prior written notice to the contracting party. Termination under this paragraph shall not relieve the contractor of any obligation or liability that has occurred prior to cancellation. **NOTE: This contract is subject to cancellation, without penalty, at any time the City deems the vendor to be non-compliant with contractual obligations.**

10. Annual Vendor Performance Review. The City reserves the right to review the vendor's performance annually and to cancel all or part of the agreement (without penalty) or continue the contract through the next period.

11. Compliance with other laws and certification of eligibility to contract. Any offer to contract with the City shall be considered an executed certification that the contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested, the contractor shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.

12. Compliance with all Codes, Permitting and Licensing Requirements. The successful contractor shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The successful bidder shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.

13. Liability and Indemnity of City. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives

or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)

14. Indemnity and Independent Contractor Status of Contractor. Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that the contractor and any employee or sub-contractor of contractor shall not be considered an employee of the City. The contractor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all contractor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

15. Liens. Contractor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request the contractor or subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.

16. Confidentiality. Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

17. Tax Exemption. The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code), and federal excise tax (Subtitle D of the Internal Revenue Code) for certain purchases. Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.

18. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

19. Sovereign Immunity. Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.

20. Governing Law and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Travis County, Texas.

CITY OF BAY CITY, TEXAS

VENDOR

By:_____

Mayor or Designee with Authority to bind City

Title:_____

Date:_____

Date:_____

Attachment: City of Bay City PSA -CivilCorp - 2014 Stripping Project (1523 : CivilCorp Contract--Striping)

EXHIBIT "B"**INSURANCE**

1. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self- insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Contractor's insurance and shall not contribute to it. Further, the Contractor shall include the City as an additional insured under its. All coverages for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before work commences.
2. Standard Insurance Policies Required:
 - a. Commercial General Liability Policy
 - b. Automobile Liability Policy
 - c. Workers' Compensation Policy
3. General Requirements Applicable to All Policies:
 - a. General Liability and Automobile Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
 - b. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
 - c. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
 - d. "Claims Made" policies will not be accepted.
 - e. The City of Bay City, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
 - f. A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.
 - g. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Bay City.

- h. Upon request, certified copies of all insurance policies shall be furnished to the City of Bay City.
- 4. Commercial General liability
 - a. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
 - b. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- 5. Automobile Liability
 - a. Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.
- 6. Worker's Compensation
 - a. Employer's Liability limits of \$100,000.00 for each accident is required.
- 7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:
 - a. The company is licensed and admitted to do business in the State of Texas.
 - b. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
 - c. All endorsements and insurance coverage according to requirements and instructions contained herein.
 - d. The form of the notice of cancellation, termination, or change in coverage provisions to the City of Bay City.
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/26/14 07:00 PM
Department: City Secretary
Category: Public Hearing
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1535

DISCUSSION ITEM (ID # 1535)

**PUBLIC HEARING ON THE PROPOSED ANNEXATION OF
APPROXIMATELY 12 PLATTED LOTS WITHIN THE MOORE
ESTATES SUBDIVISION GENERALLY LOCATED SOUTH OF
2ND STREET AND WEST OF MOORE AVENUE.**



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

ORDINANCE (ID # 1530)

Meeting: 06/26/14 07:00 PM
Department: City Secretary
Category: Bond
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1530

**CONSIDER AND/OR APPROVE AN ORDINANCE
AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF
BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF
OBLIGATION, SERIES 2014; LEVYING A TAX AND
PROVIDING FOR THE SECURITY AND PAYMENT THEREOF;
AUTHORIZING THE EXECUTION AND DELIVERY OF A
PAYING AGENT/REGISTRAR AGREEMENT; AND ENACTING
OTHER PROVISIONS RELATING THERETO.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Julie Estlinbaum, Councilwoman
AYES:	Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman
EXCUSED:	Steven Johnson

ORDINANCE NO. _____

AUTHORIZING THE
ISSUANCE OF

CITY OF BAY CITY, TEXAS
TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2014

Adopted: June 26, 2014

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.1.	Definitions.....	2
Section 1.2.	Findings.....	4
Section 1.3.	Table of Contents, Titles, and Headings	4
Section 1.4.	Interpretation.....	4

ARTICLE II

TAX LEVY; DEBT SERVICE FUND; PLEDGE OF REVENUES

Section 2.1.	Tax Levy	4
Section 2.2.	Debt Service Fund.....	5
Section 2.3.	Pledge of Revenues.....	5

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS
REGARDING THE CERTIFICATES

Section 3.1.	Authorization	6
Section 3.2.	Date, Denomination, Maturities, and Interest	6
Section 3.3.	Medium, Method, and Place of Payment.....	7
Section 3.4.	Execution and Registration of Certificates	7
Section 3.5.	Ownership	8
Section 3.6.	Registration, Transfer, and Exchange	9
Section 3.7.	Cancellation	9
Section 3.8.	Replacement Certificates	10
Section 3.9.	Book-Entry-Only System.....	11
Section 3.10.	Successor Securities Depository; Transfer Outside Book-Entry- Only System.....	12
Section 3.11.	Payments to Cede & Co.....	12

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.1.	Limitation on Redemption	12
Section 4.2.	Optional Redemption	12
Section 4.3.	[Mandatory Sinking Fund Redemption	13
Section 4.4.	Partial Redemption.....	13

Section 4.5.	Notice of Redemption to Owners	14
Section 4.6.	Payment Upon Redemption	14
Section 4.7.	Effect of Redemption	15
Section 4.8.	Lapse of Payment.....	15

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.1.	Appointment of Initial Paying Agent/Registrar	15
Section 5.2.	Qualifications	16
Section 5.3.	Maintaining Paying Agent/Registrar	16
Section 5.4.	Termination	16
Section 5.5.	Notice of Change to Owners	16
Section 5.6.	Agreement to Perform Duties and Functions.....	16
Section 5.7.	Delivery of Records to Successor	16

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.1.	Form Generally	17
Section 6.2.	Form of the Certificates	17
Section 6.3.	CUSIP Registration.....	23
Section 6.4.	Bond Insurance	24
Section 6.5.	Legal Opinion	24

ARTICLE VII

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

Section 7.1.	Sale of Certificates	24
Section 7.2.	Deposit of Proceeds	24
Section 7.3.	Control and Delivery of Certificates	25
Section 7.4.	Official Statement	25

ARTICLE VIII

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 8.1.	Payment of the Certificates	25
Section 8.2.	Other Representations and Covenants	25
Section 8.3.	Qualified Tax-Exempt Obligations.....	26
Section 8.4.	Provisions Concerning Federal Income Tax Exclusion.....	26

ARTICLE IX

DISCHARGE

Section 9.1.	Discharge	28
--------------	-----------------	----

ARTICLE X

CONTINUING DISCLOSURE UNDERTAKING

Section 10.1.	Annual Reports	28
Section 10.2.	Event Notices	29
Section 10.3.	Limitations, Disclaimers and Amendments	30

ARTICLE XI

MISCELLANEOUS

Section 11.1.	Changes to Ordinance	32
Section 11.2.	Partial Invalidity.....	32
Section 11.3.	Repealer	32
Section 11.4.	Individuals Not Liable	32
Section 11.5.	Related Matters	32
Section 11.6.	Force and Effect.....	32

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2014; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO

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

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

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

WHEREAS, the City Council has found and determined that it is necessary and in the best interests of the City and its citizens that it issue such certificates of obligation authorized by this Ordinance; and

WHEREAS, pursuant to a resolution previously passed by this governing body, notice of sale of certificates of obligation of the City payable as provided in this Ordinance was published in a newspaper of general circulation in the City in accordance with the laws of the State of Texas, which notice provided that the principal amount of such certificates of obligation would be in an amount not to exceed \$4,175,000 and the proceeds would be used for the purpose of paying contractual obligations to be incurred for the purposes set forth in Section 3.1 hereof; and

WHEREAS, such notice provided that the City tentatively planned to consider the passage of an ordinance authorizing the issuance of the Certificates on June 12, 2014; and

WHEREAS, the City Council was unable to authorize the issuance of the Certificates on the date tentatively set in such notice and postponed the sale of the Certificates to the date of this meeting; and

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

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

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

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.1. Definitions.

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

“Bond Counsel” means Bracewell & Giuliani LLP.

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

“Certificate” or “Certificates” means the City’s certificates of obligation entitled, “City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2014” authorized to be issued by Section 3.1 of this Ordinance.

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

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

“Code” means the Internal Revenue Code of 1986, as amended.

“Dated Date” means July 1, 2014.

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

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

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

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

“EMMA” means the Electronic Municipal Market Access system.

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

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

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

“Interest Payment Date” means the date or dates upon which interest on the principal of the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being March 1 and September 1 of each year, commencing on March 1, 2015.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” means the revenues to be derived from the System, after the payment of all operation and maintenance expenses thereof.

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

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

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

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

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

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

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

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

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

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

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

Section 1.2. Findings.

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

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

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

Section 1.4. Interpretation.

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

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

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

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

ARTICLE II

TAX LEVY; DEBT SERVICE FUND; PLEDGE OF REVENUES

Section 2.1. Tax Levy.

(a) Pursuant to the authority granted by the Texas Constitution and the laws of the State of Texas, there shall be levied and there is hereby levied for the current year and for each succeeding year thereafter while any of the Certificates or any interest thereon is outstanding and

unpaid, an ad valorem tax on each one hundred dollars valuation of taxable property within the City, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Certificates, being (i) the interest on the Certificates, and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% per annum (whichever amount is greater), when due and payable, full allowance being made for delinquencies and costs of collection.

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

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Debt Service Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Certificates when and as due and payable in accordance with their terms and this Ordinance and associated expenses.

Section 2.2. Debt Service Fund.

(a) The City hereby establishes a special fund or account to be designated the “City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2014 Debt Service Fund” (the “Debt Service Fund”) with said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

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

Section 2.3. Pledge of Revenues.

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

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.1. Authorization.

The City's "City of Bay City, Texas Tax and Revenue Certificates of Obligation, Series 2014" are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, specifically Subchapter C, Chapter 271, Texas Local Government Code, as amended. The Certificates shall be issued in the aggregate principal amount of \$4,000,000 for (i) the costs associated with the construction of improvements to streets, sidewalks and related infrastructure, the construction of improvements to the City's water and sewer system, the purchase of public works equipment, and (ii) the cost of professional services related thereto.

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

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

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

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2015	\$500,000	_____%	2025	\$155,000	_____%
2016	530,000	_____	2026	160,000	_____
2017	150,000	_____	2027	165,000	_____
2018	150,000	_____	2028	170,000	_____
2019	130,000	_____	2029	180,000	_____
2020	135,000	_____	2030	185,000	_____
2021	135,000	_____	2031	195,000	_____
2022	140,000	_____	2032	200,000	_____
2023	145,000	_____	2033	210,000	_____
2024	150,000	_____	2034	215,000	_____

(c) Interest shall accrue and be paid on each Certificate respectively until the principal amount thereof has been paid or provision for such payment has been made, from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rate per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on each Interest Payment Date, computed on the basis of a 360-day year composed of twelve 30-day months.

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

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

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

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

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

(e) In the event of a nonpayment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the special payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Certificate appearing on the books of the Paying Agent/Registrar at the close of business on the fifteenth day next preceding the date of mailing of such notice.

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

Section 3.4. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the City by the Mayor or Mayor Pro Tem and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the

Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

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

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

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

Section 3.5. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the Owner as the absolute owner of such Certificate for the purpose of making and receiving payment of the principal thereof, for the purpose of making and receiving payment of the interest thereon (subject to the provisions herein that the interest is to be paid to the person in whose name the Certificate is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

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

Section 3.6. Registration, Transfer, and Exchange.

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

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

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

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

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

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

Section 3.7. Cancellation.

All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper

records made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall dispose of such cancelled Certificates in the manner required by the Securities Exchange Act of 1934, as amended.

Section 3.8. Replacement Certificates.

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

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

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

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

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

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

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

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the

benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.9. Book-Entry-Only System.

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

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

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

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

In the event that the City determines that it is in the best interest of the City and the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Certificates and cause the Paying Agent/Registrar to transfer one or more separate registered Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.11. Payments to Cede & Co.

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

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.1. Limitation on Redemption.

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

Section 4.2. Optional Redemption.

(a) The City has reserved the right to redeem at its option the Certificates maturing on and after September 1, 2024, in whole or from time to time in part before their respective scheduled maturity dates, on September 1, 2023, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption.

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

Section 4.3. [Mandatory Sinking Fund Redemption].

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

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

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

Section 4.4. Partial Redemption.

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

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

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

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

Section 4.5. Notice of Redemption to Owners.

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

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

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

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.6. Payment Upon Redemption.

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

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

Section 4.7. Effect of Redemption.

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

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

Section 4.8. Lapse of Payment.

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

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.1. Appointment of Initial Paying Agent/Registrar.

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

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates, and of all conversions, exchanges and replacements of such Certificates, as provided in the Ordinance.

(c) The form of Paying Agent/Registrar Agreement is hereby approved. The City hereby approves and the Mayor or Mayor Pro Tem and the City Secretary are hereby authorized

to execute and deliver a Paying Agent/Registrar Agreement, specifying the duties and responsibilities of the City and the Paying Agent/Registrar.

Section 5.2. Qualifications.

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

Section 5.3. Maintaining Paying Agent/Registrar.

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

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

Section 5.4. Termination.

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

Section 5.5. Notice of Change to Owners.

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

Section 5.6. Agreement to Perform Duties and Functions.

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

Section 5.7. Delivery of Records to Successor.

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

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.1. Form Generally.

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

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

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

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

Section 6.2. Form of the Certificates.

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

(a) Form of Certificate.REGISTERED
NO. _____REGISTERED
\$ _____UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF MATAGORDACITY OF BAY CITY, TEXAS
TAX AND REVENUE CERTIFICATE OF OBLIGATION
SERIES 2014

<u>INTEREST RATE:</u> _____ %	<u>MATURITY DATE:</u> September 1, 20__	<u>DATED DATE:</u> July 1, 2014	<u>CUSIP NUMBER:</u> _____
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The City of Bay City (the "City"), in the County of Matagorda, State of Texas, for value received, hereby promises to pay to

or registered assigns, on the maturity date specified above, the sum of

_____ DOLLARS

and to pay interest on such principal amount from the later of the Dated Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on September 1 and March 1 of each year, commencing on March 1, 2015.

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

date for such interest payment (a “Special Record Date”) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the special payment date of the past due interest (the “Special Payment Date,” which date shall be fifteen days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each owner of a Certificate appearing on the books of the Paying Agent/Registrar at the close of business on the last day next preceding the date of mailing of such notice.

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

This Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$4,000,000, (herein referred to as the “Certificates”), issued pursuant to a certain ordinance of the City (the “Ordinance”) for (i) the costs associated with the construction of improvements to streets, sidewalks and related infrastructure, the construction of improvements to the City’s water and sewer system, the purchase of public works equipment, and (ii) the cost of professional services related thereto.

The City has reserved the right to redeem the Certificates maturing on and after September 1, 2024, in whole or from time to time in part before their respective scheduled maturity dates, on September 1, 2023, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption. If less than all of the Certificates are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

[Certificates maturing on September 1, 20__ and September 1, 20__ (the “Term Certificates”) are subject to mandatory sinking fund redemption prior to their scheduled maturity, and will be redeemed by the City, in part at a redemption price equal to the principal amount thereof, without premium, plus interest accrued to the redemption date, on the dates and in the principal amounts shown in the following schedule:

\$ Term Certificates Maturing September 1, 20__

September 1, 20__	\$ _____
September 1, 20__ (Maturity)	\$ _____

\$ Term Certificates Maturing September 1, 20__

September 1, 20__	\$ _____
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September 1, 20__ (Maturity) \$_____

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

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

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

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

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the designated office of

the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

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

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Certificate have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in the City.

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

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

City Secretary
City of Bay City, Texas

Mayor
City of Bay City, Texas

[SEAL]

Attachment: ORDINANCE NO. - Certificate Ordinance (1530 : Certificate of Obligation)

(b) Form of Comptroller's Registration Certificate.REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

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

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Certificate, and that this Certificate has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this _____.

[SEAL]

 Comptroller of Public Accounts
 of the State of Texas

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

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

CERTIFICATE OF PAYING AGENT/REGISTRAR

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

AMEGY BANK NATIONAL ASSOCIATION,
 as Paying Agent/Registrar

Dated: _____

By: _____
 Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

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

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

Dated: _____

Signature Guaranteed By:

Authorized Signatory

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

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

(i) immediately under the name of the Certificate the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below"; and

(ii) in the first paragraph of the Certificate, the words "on the maturity date specified above, the sum of _____ DOLLARS" shall be deleted and the following will be inserted: "on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:"

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

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

Section 6.3. CUSIP Registration.

The City may secure identification numbers through CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of the American Bankers Association, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates or any errors or omissions in the printing of such numbers shall be of no significance or effect in regard to the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section 6.4. Bond Insurance.

If bond insurance is obtained by the Initial Purchaser (hereinafter defined), the certificates may bear an appropriate legend as provided by the insurer.

Section 6.5. Legal Opinion.

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

ARTICLE VII

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

Section 7.1. Sale of Certificates.

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

Section 7.2. Deposit of Proceeds.

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

- (a) Proceeds of the Certificates in the amount of \$_____ shall be used for the purposes set forth in Section 3.1 hereof.
- (b) Premium from the sale of the Certificates in the amount of \$_____ and proceeds of the Certificates in the amount of \$_____ shall be used to pay the costs of issuance.
- (c) Accrued interest on the Certificates in the amount of \$_____ shall be deposited to the Debt Service Fund.
- (d) Any amounts remaining after accomplishing such purposes and paying costs of issuance shall be applied for the purposes described in subsection (a).

Section 7.3. Control and Delivery of Certificates.

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

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

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

Section 7.4. Official Statement.

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

ARTICLE VIII PARTICULAR REPRESENTATIONS AND COVENANTS

Section 8.1. Payment of the Certificates.

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

Section 8.2. Other Representations and Covenants.

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

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

Section 8.3. Qualified Tax-Exempt Obligations.

The City hereby designates the Certificates as “qualified tax-exempt obligations” for purposes of section 265(b) of the Code. In connection therewith, the City represents (a) that the aggregate amount of tax-exempt obligations issued by the City during calendar year 2014, including the Certificates, which have been designated as “qualified tax-exempt obligations” under section 265(b)(3) of the Code does not exceed \$10,000,000, and (b) that the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2014, including the Certificates, will not exceed \$10,000,000. For purposes of this Section, the term “tax-exempt obligation” does not include “private activity bonds” within the meaning of section 141 of the Code, other than “qualified 501(c)(3) bonds” within the meaning of section 145 of the Code. In addition, for purposes of this Section, the City includes all entities which are aggregated with the City under the Code.

Section 8.4. Provisions Concerning Federal Income Tax Exclusion.

(a) General. The City intends that the interest on the Certificates will be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Code, and the applicable regulations promulgated thereunder (the “Regulations”). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would (i) cause the interest on the Certificates to be includable in the gross income, as defined in section 61 of the Code, of the holders thereof for purposes of federal income taxation or (ii) result in the violation of or failure to satisfy any provision of Section 103 and 141 through 150 of the Code and the applicable Regulations that is applicable to the Certificates. In particular, the City covenants and agrees to comply with each requirement of this Section 8.4; provided, however, that the City will not be required to comply with any particular requirement of this Section 8.4 if the City has received an opinion of nationally recognized bond counsel (“Counsel’s Opinion”) that (i) such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates or (ii) compliance with some other requirement set forth in this Section 8.4 will satisfy the applicable requirements of the Code, in which case compliance with such other requirement specified in such Counsel’s Opinion will constitute compliance with the corresponding requirement specified in this Section 8.4.

(b) No Private Use or Payment and No Private Loan Financing. The City will certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “private activity bonds” within the meaning of section 141 of the Code and the Regulations. The City covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further

action as may be required so that the bonds will not be “private activity bonds” within the meaning of section 141 of the Code and the Regulations.

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

(d) Certificates Are Not Hedge Bonds. The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code and the Regulations.

(e) No-Arbitrage Covenant. The City will certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations. Moreover, the City covenants and agrees that it will make such use of the proceeds of the Certificates including interest or other investment income derived from Certificate proceeds, regulate investments of proceeds of the Certificates, and take such other and further action as may be required so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations.

(f) Arbitrage Rebate. If the City does not qualify for an exception to the requirements of Section 148(f) of the Code, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the Certificates (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Certificates as may be required to calculate the amount earned on the investment of the gross proceeds of the Certificates separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issues of the City or moneys which do not represent gross proceeds of any Certificates of the City, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Certificates that is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Certificates or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm’s length and had the yield on the issue not been relevant to either party.

(g) Information Reporting. The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the Regulations.

(h) Record Retention. The City will retain all pertinent and material records relating to the use and expenditure of the proceeds of the Certificates until six years after the last Certificate is redeemed, or such shorter period as authorized by subsequent guidance issued by the Department of Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the City to retrieve and reproduce such books and records in the event of an examination of the Certificates by the Internal Revenue Service.

(i) Registration. The Certificates will be issued in registered form.

(j) Deliberate Actions. The City will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes the Certificates to fail to meet any requirement of Section 141 of the Code after the issue date of the Certificates unless an appropriate remedial action is permitted by section 1.141-12 of the Regulations, the City takes such remedial action and the City receives a Counsel's Opinion that such remedial action cures any failure to meet the requirements of Section 141 of the Code.

(k) Continuing Obligation. Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of this Section 8.4 will survive the defeasance and discharge of the Certificates for so long as such matters are relevant to the exclusion from gross income of interest on the Certificates for federal income tax purposes.

ARTICLE IX

DISCHARGE

Section 9.1. Discharge.

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

ARTICLE X

CONTINUING DISCLOSURE UNDERTAKING

Section 10.1. Annual Reports.

(a) The City agrees to provide to the MSRB, in electronic format, accompanied by identifying information as prescribed by the MSRB, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the City of the general type

included in the final Official Statement under Schedules 1 through 11 in Appendix A and in Appendix C. The information will also include the audited financial statements of the City, if the City commissions an audit and it is completed within the required time. If audited financial statements are not available by the required time, the City will provide audited financial statements when and if the audit report becomes available. Any financial statements so to be provided shall be prepared in accordance with the accounting principles the City may be required to employ from time to time pursuant to State law or regulation. If the audit of such financial statements is not complete within such period, then the City will provide unaudited financial statements within such six month period to the MSRB, and audited financial statements if and when the audit report on such statements becomes available. All such information and operating data shall be provided to the MSRB, in an electronic format, accompanied by identifying information, as prescribed by the MSRB, and will be available via the Electronic Municipal Market Access (“EMMA”) System at www.emma.msrb.org.

(b) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

Section 10.2. Event Notices.

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

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of the holders of the Certificates, if material;

- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the City;

Note to paragraph 12: For the purposes of the event identified in paragraph 12 of this section, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of successor or additional paying agent/registrar or the change of name of a paying agent/registrar, if material.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 10.1 of this Ordinance by the time required by such Section.

Section 10.3. Limitations, Disclaimers and Amendments.

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

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

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

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

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

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (B) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. The provisions of this Article may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent the Underwriter of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 11.1 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Changes to Ordinance.

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

Section 11.2. Partial Invalidity.

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

Section 11.3. Repealer.

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

Section 11.4. Individuals Not Liable.

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

Section 11.5. Related Matters.

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

Section 11.6. Force and Effect.

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

[Signature Page Follows]

DRAFT – 6/20/14

PASSED AND APPROVED this 26th day of June, 2014, by the City Council of the City of Bay City, Texas.

City Secretary
City of Bay City, Texas

Mayor
City of Bay City, Texas

[SEAL]

APPROVED AS TO FORM:

City Attorney
City of Bay City, Texas

Attachment: ORDINANCE NO. - Certificate Ordinance (1530 : Certificate of Obligation)

*Signature Page to Ordinance Authorizing Issuance of
City of Bay City, Texas, Tax and Revenue Certificates of Obligation, Series 2014*

CERTIFICATE FOR ORDINANCE

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

We, the undersigned officers of the City Council of the City of Bay City, Texas, hereby certify as follows:

1. The City Council of the City of Bay City, Texas, convened in a regular meeting on the 26th day of June, 2014, at the regular meeting place thereof, within said City, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Mark Bricker	Mayor
Carolyn Thames	Mayor Pro Tem and Council Member – Position #5
Julie Estlinbaum	Council Member – Position #1
William “Bill” Cornman	Council Member – Position #2
Chrystal Folse	Council Member – Position #3
Steven Johnson	Council Member – Position #4

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

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF BAY CITY, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2014; LEVYING A TAX AND PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO

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

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

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

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

SIGNED AND SEALED this 26th day of June, 2014.

City Secretary
City of Bay City, Texas

Mayor
City of Bay City, Texas

[SEAL]

Attachment: ORDINANCE NO. - Certificate Ordinance (1530 : Certificate of Obligation)



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1527)

Meeting: 06/26/14 07:00 PM
Department: Public Works
Category: Property
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1527

CONSIDER AND/OR APPROVE A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, RATIFYING THE MAYOR'S DECLARATION OF AN EMERGENCY AND DECLARING THE LETTING OF A CONTRACT FOR SEWER LINE REPAIR WORK FOR THE SEWER LINE LOCATED IN THE ALLEYWAY NORTH OF WILLOW STREET BETWEEN AVENUE F (ALSO KNOWN AS STATE HIGHWAY 60) AND MULBERRY STREET TO BE A PROCUREMENT NECESSARY TO PRESERVE AND PROTECT THE PUBLIC HEALTH AND SAFETY OF THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SUCH REPAIR WORK UPON APPROVAL OF THE CONTRACT BY THE CITY ATTORNEY.

The estimated cost to replace the sewer line is \$230,135.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman
EXCUSED:	Steven Johnson

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, DECLARING THE LETTING OF A CONTRACT FOR SEWER LINE REPAIR WORK FOR THE SEWER LINE LOCATED IN THE ALLEYWAY NORTH OF WILLOW STREET BETWEEN AVENUE F (ALSO KNOWN AS STATE HIGHWAY 60) AND MULBERRY STREET TO BE A PROCUREMENT NECESSARY TO PRESERVE AND PROTECT THE PUBLIC HEALTH AND SAFETY OF THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SUCH REPAIR WORK UPON APPROVAL OF THE CONTRACT BY THE CITY ATTORNEY.

WHEREAS, the City Public Works Director has inspected the sewer line located between Avenue F and Mulberry Street and found it to be in need of immediate repair as a breakage in the sewer line was causing significant sewer discharge, which could jeopardize the City's water supply as well as cause unforeseen environmental calamity; and

WHEREAS, in accordance with Texas Local Government Code Section 252/022(a)(2) and (3) Council hereby declares there to be an emergency which requires the City to immediately secure the procurement of services of a contractor to repair the sewer line; and

WHEREAS, the City Public Work's Director has obtained a bid from a contractor to make such repairs:

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

Section one.

The recitals set out above are hereby adopted.

Section two.

The Mayor's action declaring an emergency is hereby ratified.

Section three.

Upon the City Attorney's approval of the contract as to form, the Mayor is hereby authorized to execute such contract for public works improvements necessary to make emergency repairs to the sewer line located between Avenue F and Mulberry Street; and take such action reasonably necessary to alleviate this emergency.

PASSED AND APPROVED AT BAY CITY TEXAS THIS 26th DAY OF JUNE, 2014

Mark Bricker, Mayor
City of Bay City

ATTEST:

APPROVED AS TO FORM:

Rhonda Clegg, City Secretary

George Hyde, City Attorney
City of Bay City
DENTON, NAVARRO, ROCHA,
BERNAL, HYDE & ZECH, P.C.

Ordinance No. _____
Page 2 of 2



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/26/14 07:00 PM
Department: Information Technology
Category: Bid
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1525

ADOPTED

AGENDA ITEM (ID # 1525)

**CONSIDER AND/OR APPROVE AWARDING THE MANAGED
PRINT SERVICES BID TO BAY CITY OFFICE SUPPLY FOR
MANAGING AND MAINTAINING COPY AND PRINT SERVICES
FOR THE CITY OF BAY CITY, TEXAS.**

This service contract will allow the IT Department to better manage the copy/print services for all City Departments. Currently, we have 10 large copiers, each is being leased under its own contract. We have more than 50 different desktop printer models. Many of the copiers and printers are quite old and require constant maintenance. The City will save approximately \$600 per month by consolidating to one managed print service contract. This will also insure that we have access to the latest printing capabilities, routine maintenance and supplies ready available, increased productivity within all City departments, and reduce the demand on IT support staff.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman
EXCUSED:	Steven Johnson

LOW BIDDER: _____

Bios

AWARDED TO: _____

BiosRECOMMENDATION/COMMENTS: Bios is low bidder and city hashad a long positive relationship with them in the past

SIGNED: _____

Ken Elsm

DATE: _____

6/13/17



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/26/14 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1528

DISCUSSION ITEM (ID # 1528)

PROVIDE STATUS UPDATE ON THE COUNTRY CLUB .



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/26/14 07:00 PM
Department: Public Works
Category: Report
Prepared By: Barry Calhoun
Initiator: Marla Jasek
Sponsors:
DOC ID: 1526

DISCUSSION ITEM (ID # 1526)

**RECEIVE A PRESENTATION ON THE QUARTERLY SAFETY
REPORT FOR THE PUBLIC WORKS DEPARTMENT AND THE
PARKS AND RECREATION DEPARTMENT FOR JANUARY
2014 TO MARCH 2014.**

**Public Works (including Community Services)
Quarterly Safety Report
Jan-Mar 2014**

Current safety committee

Jim Hendrickson, Ricky Clinton, Sharon Spiller, William “Jr” Parks, Thomas Duncan, Joan Perez and Marla Jasek (Department heads welcome to attend)

Incidents that were Reviewed (reviewed in month after occurrence)

January

1. Clorox residual in private building after cleaning of sewer backup
2. Knocked hose reel off of front of vactor
3. Dead tree removal—damaged mailbox and sidewalk
4. Back strain from pulling stake in ground required medical attention
5. Cut gas line during utility repair without locates

February

6. Dump truck transmission damage due to operator error (preventable)

March

7. Employee’s hand bit/pricked through glove while cleaning gutter
8. Sweeper contacted parked car on square (preventable)

Monthly safety meeting topics

Personal Protective Equipment—hard hats, safety glasses, and steel toes

Trench excavation and confined space entry

Clean air workspace and ventilation

Fire Safety with fire extinguisher hands-on use for all employees (VFD)

MISC

- Several utility and S&B crews attended annual pipeline safety meeting in Angleton on Feb 27th.
- All employees attended safe driver training in March and 1st week of April.
- Hepatitis shots for select employees in March.
- Marla and Jim working with Local Emergency Planning Committee (LEPC.)
Marla on education and outreach committee—annual lunch on April 24th
and Community Preparedness Expo in conjunction with Market Days on May 17th. Jim on Communication committee due to radio expertise.



City Council
1901 5Th Street
Bay City, TX 77414

WITHDRAWN

Meeting: 06/26/14 07:00 PM
Department: Public Works
Category: Budget
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1532

AGENDA ITEM (ID # 1532)

**CITY COUNCIL SHALL CONVENE IN CLOSED SESSION TO
CONSULT WITH THE CITY ATTORNEY REGARDING LEGAL
ISSUES RELATED TO AN INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BAY CITY AND THE LOWER
COLORADO RIVER AUTHORITY (LCRA) PURSUANT TO
TEXAS GOVERNMENT CODE § 551.071(2)**

RESULT:	WITHDRAWN
----------------	------------------

ORIGINAL

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF BAY CITY, TEXAS and
LOWER COLORADO RIVER AUTHORITY**

This agreement is entered into by and between the City of Bay City, Texas (herein called City), and the Lower Colorado River Authority (herein called LCRA), pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Govt. Code, Section 791.001 et seq.

WITNESSETH

WHEREAS, the parties to this agreement desire to jointly provide certain governmental functions and services in which the parties have a mutual interest, and

WHEREAS, the City and LCRA are both political subdivisions of the State of Texas, and

WHEREAS, all parties agree that it is in their best interest and in the best interest of their respective constituents to participate in this agreement, and

WHEREAS, LCRA has of event date herewith conveyed to City three (3) tracts of land in Matagorda County, Texas, consisting of 11.455 acres (Tract I), 18.829 acres (Tract II), and 2.774 acres (Tract III), more or less, (herein together called the Land), and

WHEREAS, the conveyance of the Land is made at City's request for the purpose of allowing City to construct a portion of its proposed bypass from State Highway 60 to Farm Market 2668 (herein called the Bypass), and

WHEREAS, City has of even date herewith conveyed to LCRA a canal easement over and across Tract I, and

WHEREAS, the City has agreed to provide in-kind services to LCRA in exchange for the conveyance of the Land by LCRA to City, and

Attachment: Interlocal Agreement Between the City & LCRA -2009 (1532 : Interlocal Agreement - LCRA)

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

ARTICLE I

STATEMENT OF SERVICES TO BE PERFORMED

In consideration of the conveyance of the Land to City, City agrees to provide the in-kind services listed on Exhibit A attached hereto and incorporated herein. All such work shall be completed within eighteen months from the effective date hereof.

The City shall be responsible for providing all equipment (including vehicles for transporting equipment), supervision, training, and supplies necessary for employees of the City to perform the services contemplated under this agreement without cost to LCRA. LCRA shall not reimburse or replace any equipment or supplies which are used, destroyed, or damaged as a result of providing the services.

ARTICLE II

RESPONSIBILITY

It is understood and agreed that, under the terms of this agreement, employees of the City are not employees of LCRA for any purpose. This agreement does not create any partnership, employee, fiduciary, insurance, or agency relationship between the parties or any of their agents, employees, volunteers, or officers. No party to this agreement will be responsible for the acts of the other party or any agent or officer of the other party by virtue of this agreement, except as may be decreed against that party by a judgment of a court of competent jurisdiction. It is expressly understood and agreed that in the execution of this agreement, no party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it

against any claims by third parties. Each party to this agreement waives all claims against every other party to the agreement for compensation or any loss, damage, personal injury, or death, occurring as a consequence of the performance of this agreement, except for acts in violation of the criminal laws.

ARTICLE III

AMENDMENTS

This agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. No official, representative, or employee of either party has any authority to modify this agreement, except pursuant to such express authority as may be granted by the governing body of the party.

ARTICLE IV

LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE VI

NOTICE

Any notice given hereunder by any party to the other party shall be in writing and may be effected by personal delivery in writing, by registered or certified mail, return receipt requested, when mailed to the address of the parties indicated below, in care of the official signing this agreement, or by facsimile transmission as stated below and as evidenced by a confirming return facsimile transmission:

Clark H. Young
 Director Public Works
 City of Bay City, Texas
 1901 Fifth Street
 Bay City, Texas 77414
 Fax: (979) 245-0756

Suzanne Zarling
 Executive Manager, Water Services
 Lower Colorado River Authority
 3700 Lake Austin Blvd.
 Austin, Texas 78703
 Fax: (512) 473-3300

ARTICLE VI

ENTIRE AGREEMENT

This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the purposes stated herein. Nothing in this agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this agreement.

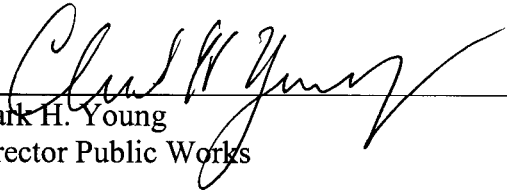
ARTICLE VIII

CERTIFICATION

The parties to this agreement certify that: (1) the services specified above are necessary and essential for activities that are properly within their statutory functions, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, (3) each party has the necessary authority to enter into this agreement, and (4) the services, supplies or materials contracted for are not required by Section 21 or Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

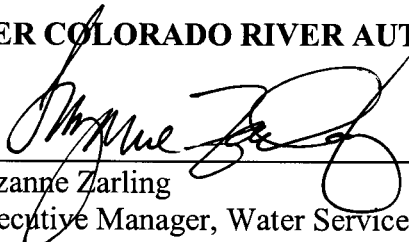
EXECUTED in duplicate originals, each of which shall have the full force and effect of an original. This agreement shall be effective on July 9th, 2009.

CITY OF BAY CITY, TEXAS

By: 
Clark H. Young
Director Public Works

Date signed: July 9th, 2009

LOWER COLORADO RIVER AUTHORITY

By: 
Suzanne Zarling
Executive Manager, Water Services

Date signed: 8/12, 2009

Approved as to Form and Substance

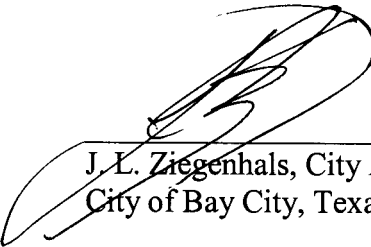

J. L. Ziegenhals, City Attorney
City of Bay City, Texas

EXHIBIT A
TO INTERLOCAL AGREEMENT

1. Pave 2,320 square yards of parking lot behind the LCRA's Bay City office located at 100 7th Street, Bay City, Texas, including, but not limited to, rip existing base, roll sub-grade, level and compact existing base, and apply a one-course surface treatment. All work is to be performed in compliance with Texas Department of Transportation specifications.
2. Construct a metal storage building with a minimum size of 20 foot by 30 foot at LCRA's Bay City office, said building is to be comparable to a Mueller Inc. metal building with a Texas Windstorm wind load rating of 20/10/120. Foundation drawings shall be designed by a Professional Engineer and approved by LCRA prior to construction.
3. Between the dates of October 15, 2009 and March 1, 2010, replace the 60-inch corrugated pipe on LCRA's Hillard flume on Lateral A Canal and replace it with a 54-inch polymer coated corrugated pipe or steel pipe. The existing concrete bulkhead and creosote piling will be reused. The new pipe will be regouted into the headwall with a non-shrink grout.
4. Between the dates of October 15, 2009 and March 1, 2010 clean canal and remove trees on LCRA Lateral A Canal from the new flume on Cottonwood Creek to the Colorado and Gulf Railroad track. Total distance is approximately 1.2 miles.
5. Install a two (2) inch water line and meter terminating on the east side of LCRA's Bay City office to allow LCRA to receive potable water service from the City (subject to the terms and conditions of a separate water service agreement).

CHARLIE KALKOMEY SURVEYING, INC.
A JONES & CARTER COMPANY

6415 Reading Road
 ROSENBERG, TEXAS 77471
 281 342-2033

TRACT I

FIELD NOTES FOR A 11.455 ACRE TRACT OF LAND OUT OF A 33.058 ACRE TRACT OF LAND IN THE ELISHA HALL LEAGUE, ABSTRACT 45, CITY OF BAY CITY, MATAGORDA COUNTY, TEXAS, SAID 33.058 ACRE TRACT BEING A PORTION OF COLORADO CANAL SECTION TRACT NO. 7 AND A PORTION OF GRAVITY IRRIGATION AND POWER SECTION TRACT NO. 7, LATERAL A, DESCRIBED IN DEED GULF COAST RICE FARMERS INC. TO GULF COAST WATER COMPANY RECORDED IN VOLUME 232, PAGE 38, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING CONVEYED TO LOWER COLORADO RIVER AUTHORITY IN DEED RECORDED IN VOLUME 334, PAGE 706, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS: WITH ALL BEARINGS BEING BASED ON THE SOUTH LINE OF THE SAID 33.058 ACRE TRACT, SAME BEING THE NORTH LINE OF THE STANLEY H. ROSENTHAL CALLED 94.508 ACRE TRACT (VOLUME 731, PAGE 472, DEED RECORDS, MATAGORDA COUNTY, TEXAS) AS BEING SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST (CALLED SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST) [SCALE FACTOR = 0.99988483; ROTATE BEARINGS 01 DEGREE 32 MINUTES 32 SECONDS COUNTER-CLOCKWISE FOR GRID BEARINGS].

BEGINNING at a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,937,399.99' Y = 13,548,254.83') set in the east right-of-way line of State Highway 60 (100-foot wide right-of-way) and in the south line of a certain adjoining called 1.0579 acre tract (Volume 461, Page 688, Deed Records, Matagorda County, Texas), said point also being in the occupied north line of the aforementioned Colorado Canal Section Tract 7, for the northwest corner and **Place of Beginning** of the herein described 11.455 acre tract, said point being located North 89 degrees 01 minute 27 seconds East (adjoiner called East) 13.92 feet from the southwest corner of the aforementioned adjoining called 1.0579 acre tract in the east right-of-way line of State Highway 60 (80-foot wide right-of-way);

THENCE North 89 degrees 01 minute 27 seconds East (adjoiner called East) along the common line of the herein described 11.455 acre tract and the aforementioned adjoining 1.0579 acre tract, same being the occupied north line of the Colorado Canal Section Tract 7, 271.77 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at the southeast corner of the aforementioned adjoining called 1.0579 acre tract for corner, said point being in the west line of Southmoreland Addition (Volume 1, Page 75, Plat Records, Matagorda County, Texas);

THENCE South 00 degrees 58 minutes 33 seconds East along the west line of Southmoreland Addition, 37.09 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for a re-entry corner to the herein described 11.455 acre tract, said point being the southwest corner of a tract labeled Park Reserve on said plat of Southmoreland Addition;

THENCE South 89 degrees 34 minutes 54 seconds East along the south line of said Park Reserve, same being the occupied north line of the Colorado Canal Section Tract 7, at 445.14 feet pass a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at the southeast corner of said Park Reserve, Southmoreland Addition, same being the southwest corner of a certain adjoining called 1.1908 acre tract (Volume 60, Page 366, Official Records, Matagorda County, Texas), and continuing for a total distance of 862.14 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for angle point in the north line of the herein described 11.455 acre tract, same being the southeast corner of the aforementioned adjoining called 1.1908 acre tract;

THENCE South 81 degrees 01 minute 41 seconds East along the line establishing the north line of the herein described 11.455 acre tract, same being the occupied north line of the Colorado Canal Section Tract 7, 268.61 feet to a ½ inch iron pipe set with cap marked “Kalkomey Surveying” for an angle point in the north line of the herein described 11.455 acre tract, said point being the southwest corner of Hillcrest Addition (Volume 3, Page 10, Plat Records, Matagorda County, Texas) from said point a found 3/8 inch iron rod bears South 82 degrees 27 minutes 45 seconds East, 26.40 feet;

THENCE North 88 degrees 39 minutes 17 seconds East (adjoiner called South 88 degrees 46 minutes East) along the north line of the herein described tract, same being the south line of Hillcrest Addition, same being the occupied north line of the Colorado Canal Section Tract 7, at 531.13 feet pass a ½ inch iron rod found at the southeast corner of Lot 17 and the southwest corner of Lot 18, Block 2, Hillcrest Addition, and continuing for a total distance of 978.00 feet (adjoiner called 978.00 feet) to a ½ inch iron rod found at the southeast corner of Hillcrest Addition, same being the southeast corner of Lot 23, Block 2, Hillcrest Addition, said point also being the southwest corner of Briar Meadow Addition (Volume 4, Page 11, Plat Records, Matagorda County, Texas), same being the southwest corner of Lot 1, Briar Meadow Addition, for an angle point in said line;

THENCE North 88 degrees 40 minutes 33 seconds East (adjoiner called North 88 degrees 49 minutes East) along the common line of the herein described tract and the aforementioned adjoining Briar Meadow Addition, same being the occupied north line of the Colorado Canal Section Tract 7, 455.16 feet (adjoiner called 455.0 feet) to a ½ inch iron rod found at the southeast corner of said Briar Meadow Addition, same being the southeast corner of Lot 6, Briar Meadow Addition, said point also being the southwest corner of Marymount Subdivision (Volume 4, Page 28-29, Plat Records, Matagorda County, Texas), same being the southwest corner of Lot 25, Marymount Subdivision, for an angle point in said line;

THENCE North 89 degrees 27 minutes 01 second East (adjoiner called North 86 degrees 39 minutes East) along the common line of the herein described tract and the aforementioned adjoining Marymount Subdivision, same being the occupied north line of the Colorado Canal Section Tract 7, 590.82 feet (adjoiner called 592.4 feet) to a ½ inch iron rod found at the southeast corner of Marymount Subdivision, same being the southeast corner of Lot 19, Marymount Subdivision, same being the southwest corner of Valhalla Section III (County Clerk's File No. 374A and 374B, Plat Records, Matagorda County, Texas), same being the southwest corner of Lot 10, Valhalla Section III, for an angle point in said line;

THENCE North 88 degrees 45 minutes 11 seconds East (adjoiner called North 87 degrees 10 minutes 07 seconds East) along the common line of the herein described tract and the aforementioned adjoining Valhalla Section III, at 98.36 feet pass a ½ inch iron rod found at the southeast corner of Lot 10 and the southwest corner of Lot 9, Valhalla Section III, at 196.79 feet pass a 3/8 inch iron rod found at the southwest corner of Lot 8 and the southeast corner of Lot 9, Valhalla Section III, and, continuing for a total distance of 578.21 feet (adjoiner called 579.06 feet) to a ½ inch iron rod found at an angle point in said line;

THENCE North 79 degrees 06 minutes 57 seconds East (adjoiner called North 87 degrees 40 minutes 32 seconds East) continuing along said common line, 5.29 feet (adjoiner called 5.00 feet) to a ½ inch iron rod found at the southeast corner of Valhalla Section III, same being the southeast corner of Lot 6, Valhalla Section III and the southwest corner of Valhalla Section II (Volume 8, Page 12, County Clerk's File No. 355B, 356A and 356B, Plat Records, Matagorda County, Texas), same being the southwest corner of Lot 8, Valhalla Section II, for an angle point in said line;

THENCE North 89 degrees 12 minutes 40 seconds East (adjoiner called North 87 degrees 38 minutes 12 seconds East) along the common line of the herein described tract and the aforementioned adjoining Valhalla Section II, at 294.37 feet pass a ½ inch iron rod found at the southeast corner of Lot 9, Valhalla Section II, same being the southwest corner of Lot 16, Valhalla Section II, and continuing for a total distance of 374.87 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" (X = 2,941,779.96', Y = 13,548,349.99') set on said line for the upper northeast corner of the herein described 11.455 acre tract, same being the northwest corner of a certain adjoining 2.774 acre tract being a part of the said 33.058 acre tract surveyed this date by the undersigned;

THENCE South 00 degrees 48 minutes 14 seconds East along the common line of the herein described tract and the aforementioned adjoining 2.774 acre tract, 64.93 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set for an angle point in said line;

THENCE South 43 degrees 08 minutes 44 seconds East continuing along said common line, 117.41 feet to ½ inch iron pipe with cap marked "Kalkomey Surveying" set on said line at the southwest corner of said adjoining 2.774 acre tract;

THENCE North 88 degrees 39 minutes 33 seconds East continuing along said common line, same being the common line of the Colorado Canal Section Tract 7 and the aforementioned Gravity Irrigation and Power Section Tract 7, Lateral A, 222.80 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" (X= 2,942,087.67', Y= 13,548,212.86') set for the lower northeast corner of the herein described 11.455 acre tract, said point being the most westerly northeast corner of a certain adjoining called 94.508 acre tract (Volume 731, Page 472, Deed Records, Matagorda County, Texas);

THENCE South 01 degree 24 minutes 01 second East (adjoiner called South 01 degree 24 minutes 01 second East) along the common line of the herein described tract and the aforementioned adjoining called 94.508 acre tract, 100.00 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set for the lower southeast corner of the herein described 11.455 acre tract, same being the lower northeast corner of a certain adjoining called 18.829 acre tract being a part of the said 33.058 acre tract surveyed this date by the undersigned;

Field Notes – 11.455 Acre Tract (cont'd)

THENCE South 88 degrees 39 minute 33 seconds West along the common line of the herein described 11.455 acre tract and the aforementioned adjoining 18.829 acre tract, 294.46 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set at an angle point in said line;

THENCE North 43 degrees 08 minutes 44 seconds West continuing along said common line, 204.18 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" (X=2,941,655.18', Y=13,548,243.34') set for the upper southeast corner of the herein described 11.455 acre tract, same being the upper northeast corner of the aforementioned adjoining 18.829 acre tract;

THENCE South 88 degrees 54 minutes 12 seconds West continuing along the common line of the herein described 11.455 acre tract and the aforementioned adjoining 18.829 acre tract, 2,861.44 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set at an angle point in said line;

THENCE North 81 degrees 01 minute 41 seconds West continuing along said line, 269.94 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set in an angle in said line;

THENCE North 89 degrees 34 minutes 54 seconds West continuing along said common line, 854.66 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" set at an angle point in said line;

THENCE South 89 degrees 01 minute 27 seconds West continuing along said common line, 268.40 feet to a ½ inch iron pipe with cap marked "Kalkomey Surveying" (X= 2,937,406.94', Y= 13,548,117.96') set in the east right-of-way line of State Highway 60 (100-foot wide right-of-way) for the southwest corner of the herein described 11.455 acre tract, same being the northwest corner of the aforementioned adjoining 18.829 acre tract;

THENCE North 01 degree 22 minutes 00 seconds West along the east right-of-way line of State Highway 60, 137.06 feet to the **Place of Beginning** and containing 11.455 acres of land, more or less.

For reference and further description see Survey Plat No. R0017-002-00 prepared by the undersigned on same date.



Charles A. Kalkomey, R.P.L.S.
Texas Registration Number 2506
March 10, 2008
Revised January 6, 2009

Job Number R0017-002-00

CHARLIE KALKOMEY SURVEYING, INC.

A JONES & CARTER COMPANY

6415 Reading Road

ROSENBERG, TEXAS 77471

281 342-2033

TRACT II

FIELD NOTES FOR A 18.829 ACRE TRACT OF LAND OUT OF A 33.058 ACRE TRACT OF LAND IN THE ELISHA HALL LEAGUE, ABSTRACT 45, CITY OF BAY CITY, MATAGORDA COUNTY, TEXAS, SAID 18.829 ACRE TRACT BEING A PORTION OF COLORADO CANAL SECTION TRACT NO. 7 AND A PORTION OF GRAVITY IRRIGATION AND POWER SECTION TRACT NO. 7, LATERAL A, DESCRIBED IN DEED GULF COAST RICE FARMERS INC. TO GULF COAST WATER COMPANY RECORDED IN VOLUME 232, PAGE 38, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING CONVEYED TO LOWER COLORADO RIVER AUTHORITY IN DEED RECORDED IN VOLUME 334, PAGE 706, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS: WITH ALL BEARINGS BEING BASED ON THE SOUTH LINE OF THE SAID 33.058 ACRE TRACT, SAME BEING THE NORTH LINE OF THE STANLEY H. ROSENTHALL CALLED 94.508 ACRE TRACT (VOLUME 731, PAGE 472, DEED RECORDS, MATAGORDA COUNTY, TEXAS) AS BEING SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST (CALLED SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST) [SCALE FACTOR = 0.99988483; ROTATE BEARINGS 01 DEGREE 32 MINUTES 32 SECONDS COUNTER-CLOCKWISE FOR GRID BEARINGS].

COMMENCING at a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,937,399.99' Y = 13,548,254.83') set in the east right-of-way line of State Highway 60 (100-foot wide right-of-way) and in the south line of a certain called 1.0579 acre tract (Volume 461, Page 688, Deed Records, Matagorda County, Texas), said point also being in the north line of the aforementioned Colorado Canal Section Tract 7, said point being the northwest corner of a certain adjoining 11.455 acre tract being a part of said 33.058 acre tract surveyed this date by the undersigned, said point being located North 89 degrees 01 minute 27 seconds East (adjoiner called East) 13.92 feet from the southwest corner of the aforementioned called 1.0579 acre tract in the east right-of-way line of State Highway 60 (80-foot wide right-of-way);

THENCE South 01 degree 22 minutes 00 seconds East along the east right-of-way line of State Highway 60, 137.06 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,937,406.94' Y = 13,548,117.96') set for the northwest corner and **Place of Beginning** of the herein described 18.829 acre tract, said point being the southwest corner of the aforementioned adjoining 11.455 acre tract;

THENCE North 89 degrees 01 minute 27 seconds East along the common line of the herein described 18.829 acre tract and the aforementioned adjoining called 11.455 acre tract, 268.40 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in an angle point in said line;

Attachment: Interlocal Agreement Between theCity & LCRA -2009 (1532 : Interlocal Agreement - LCRA)

THENCE South 89 degrees 34 minutes 54 seconds East continuing along said common line, 854.66 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at an angle point in said line;

THENCE South 81 degrees 01 minute 41 seconds East continuing along said common line, 269.94 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for an angle point in said line;

THENCE North 88 degrees 54 minutes 12 seconds East continuing along the common line of the herein described 18.829 acre tract and the aforementioned adjoining 11.455 acre tract, 2,861.44 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,941,655.18', Y = 13,548,243.34') set for the upper northeast corner of the herein described 18.829 acre tract, same being the upper southeast corner of the aforementioned adjoining 11.455 acre tract;

THENCE South 43 degrees 08 minutes 44 seconds East continuing along said common line, 204.18 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at an angle point in said line;

THENCE North 88 degrees 39 minutes 33 seconds East continuing along said common line, 294.46 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in the upper west line of a certain adjoining called 94.508 acre tract (Volume 731, Page 472, Deed Records, Matagorda County, Texas) for the lower northeast corner of the herein described 18.829 acre tract, same being the lower southeast corner of the aforementioned adjoining 11.455 acre tract;

THENCE South 01 degree 24 minutes 01 second East (adjoiner called South 01 degree 24 minutes 01 second East) along the common line of the herein described tract and the aforementioned adjoining called 94.508 acre tract, 20.89 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,942,093.88', Y = 13,548,092.14') set for the southeast corner of the herein described 18.829 acre tract, same being a re-entry corner to the aforementioned adjoining called 94.508 acre tract;

THENCE South 88 degrees 39 minutes 33 seconds West (adjoiner called South 88 degrees 39 minutes 33 seconds West) along the common line of the herein described tract and the aforementioned adjoining 94.508 acre tract, same being the occupied south line of the aforementioned Gravity Irrigation and Power Section Tract 7, Lateral A, at 85.48 feet pass a 1 inch iron pipe found on said line, and continuing for a total distance of 1,807.39 feet (adjoiner called 1,807.39 feet) to a 3 inch iron pipe found for a re-entry corner to the herein described 18.829 acre tract;

THENCE South 11 degrees 18 minutes 11 seconds West (adjoiner called South 12 degrees 32 minutes 46 seconds West) continuing along the common line of the herein described tract and the aforementioned adjoining called 94.508 acre tract, 20.54 feet (adjoiner called 20.79 feet) to a ¾ inch iron pipe found at a re-entry corner to the aforementioned adjoining called 94.508 acre tract;

THENCE South 88 degrees 37 minutes 54 seconds West (adjoiner called South 88 degrees 39 minutes 33 seconds West) continuing along the common line of the herein described 18.829 acre tract and the aforementioned adjoining called 94.508 acre tract, same being the occupied south line of the aforementioned Gravity Irrigation and Power Section Tract 7 Lateral A, 987.93 feet (adjoiner called 987.82 feet) to a 2 inch iron pipe with cap marked “S Rosenthal” for a re-entry corner to the herein described 18.829 acre tract;

Field Notes – 18.829 Acre Tract (cont'd)

THENCE North 14 degrees 29 minutes 37 seconds East leaving the north line of the aforementioned adjoining called 94.508 acre tract, 21.33 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for a re-entry corner to the herein described 18.829 acre tract, said point being in the north line of the residue of an adjoining called 209.46 acre tract (203.44 acre tract net) (Volume 81, Page 535, Deed Records, Matagorda County, Texas) for corner:

THENCE South 63 degrees 39 minutes 33 seconds West (adjoiner called South 65 degrees West) along the common line herein described tract and the aforementioned residue of the said adjoining called 209.46 acre tract, 185.00 feet (called 185 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at an angle point in said line;

THENCE South 76 degrees 09 minutes 33 seconds West (called South 77 1/4 degrees West) continuing along said common line, at 18.57 feet pass the fence line on the occupied northeast line of Lot 24, Block 1, Baywood Addition, Section I (Volume 3, Page 42, Plat Records, Matagorda County, Texas), at 33.45 feet pass a fence on the occupied northwest line of Lot 24, Block 1, Baywood Addition, Section I, and continuing for a total distance of 227.00 feet (adjoiner called 227 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in an angle point in said line;

THENCE North 77 degrees 50 minutes 27 seconds West (adjoiner called South 76 1/2 degrees West) continuing along said common line, 208.00 feet (adjoiner called 208 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at an angle point in said line;

THENCE North 62 degrees 50 minute 27 seconds West (adjoiner called North 61 1/2 degrees West) continuing along said common line, 300.00 feet (adjoiner called 300 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in an angle in said line;

THENCE North 67 degrees 35 minutes 27 seconds West (adjoiner called North 66 1/4 degrees West) continuing along said common line, 98.00 feet (adjoiner called 98 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for an angle point in said line;

THENCE North 86 degrees 20 minutes 27 seconds West (adjoiner called North 85 degrees West) continuing along said common line, 205.00 feet (adjoiner called 205 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for an angle point in said line;

THENCE South 88 degrees 39 minutes 32 seconds West (adjoiner called West) continuing along said common line, 737.07 feet (adjoiner called 745 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in the east right-of-way line of State Highway 60 (100-foot right-of-way) for the southwest corner of the herein described 18.829 acre tract, said point being located North 01 degree 22 minutes 00 seconds West, 27.77 feet from a ¾ inch iron pipe found at the northwest corner of a certain called 5.0596 acre tract (Volume 473, Page 708, Official Records, Matagorda County, Texas);

THENCE North 01 degree 22 minutes 00 seconds West along the east right-of-way line of State Highway 60, 139.83 feet to the **Place of Beginning** and containing 18.829 acres of land, more or less.

For reference and further description see Survey Plat No. R0017-002-00 prepared by the undersigned on same date.



A handwritten signature in black ink, appearing to read "Charles A. Kalkomey".

Charles A. Kalkomey, R.P.L.S.
Texas Registration Number 2506
March 10, 2008
Revised April 9, 2008
Revised June 18, 2008
Revised October 14, 2008
Revised January 6, 2009

Job Number R0017-002-00

E:\Jones & Carter Jobs\Engineering\R0017-002-00 Bay City Nile Valley Phase 3\Field Notes\R0017-02-00_18.829acres_Tract2.doc

Attachment: Interlocal Agreement Between the City & LCRA -2009 (1532 : Interlocal Agreement - LCRA)

CHARLIE KALKOMEY SURVEYING, INC.

A JONES & CARTER COMPANY

6415 Reading Road

ROSENBERG, TEXAS 77471

281 342-2033

TRACT III

FIELD NOTES FOR A 2.774 ACRE TRACT OF LAND OUT OF A 33.058 ACRE TRACT OF LAND IN THE ELISHA HALL LEAGUE, ABSTRACT 45, CITY OF BAY CITY, MATAGORDA COUNTY, TEXAS, SAID 2.774 ACRE TRACT BEING A PORTION OF COLORADO CANAL SECTION TRACT NO. 7 AND A PORTION OF GRAVITY IRRIGATION AND POWER SECTION TRACT NO. 7, LATERAL A, DESCRIBED IN DEED GULF COAST RICE FARMERS INC. TO GULF COAST WATER COMPANY RECORDED IN VOLUME 232, PAGE 38, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING CONVEYED TO LOWER COLORADO RIVER AUTHORITY IN DEED RECORDED IN VOLUME 334, PAGE 706, DEED RECORDS, MATAGORDA COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS: WITH ALL BEARINGS BEING BASED ON THE SOUTH LINE OF THE SAID 30.058 ACRE TRACT, SAME BEING THE NORTH LINE OF THE STANLEY H. ROSENTHALL CALLED 94.508 ACRE TRACT (VOLUME 731, PAGE 472, DEED RECORDS, MATAGORDA COUNTY, TEXAS) AS BEING SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST (CALLED SOUTH 88 DEGREES 39 MINUTES 33 SECONDS WEST) [SCALE FACTOR = 0.99988483; ROTATE BEARINGS 01 DEGREE 32 MINUTES 32 SECONDS COUNTER-CLOCKWISE FOR GRID BEARINGS].

BEGINNING at a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,942,613.65' Y = 13,548,241.36') set in the west right-of-way line of F.M. Highway 2668 (100-foot right-of-way) at the northeast corner of a certain adjoining called 1.054 acre tract (Volume 5, Page 34, County Land Records, Matagorda County, Texas), same being the southeast corner of a certain called 0.852 acre tract (Volume 453, Page 67, Deed Records, Matagorda County, Texas), for the southeast corner and **Place of Beginning** of the herein described 2.774 acre tract, said point also being in the occupied south line of the aforementioned Colorado Canal Section Tract 7;

THENCE South 88 degrees 26 minutes 23 seconds West (adjoiner called South 87 degrees 44 minutes West) along the common line of the herein described 2.774 acre tract and the aforementioned adjoining called 1.054 acre tract, same also being the common line of the aforementioned called 0.852 acre tract and said adjoining called 1.054 acre tract, same being the occupied south line of the Colorado Canal Section Tract 7, at 377.00 feet pass a ½ inch iron pipe with cap marked “Kalkomey Surveying” set on said line, at 448.72 feet pass a 2 inch iron pipe with cap marked “S Rosenthal” found on said line at the most easterly northeast corner of a certain adjoining called 94.508 acre tract (Volume 731, Page 472, Deed Records, Matagorda County, Texas), and continuing for a total distance of 526.81 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,942,087.67', Y = 13,548,212.86') set for an angle point in the south line of the herein described 2.774 acre tract, said point being the lower northeast corner of a certain adjoining 11.455 acre tract being a part of said 33.058 acre tract surveyed this date by the undersigned, said point also being the most westerly northeast corner of the aforementioned adjoining called 94.508 acre tract;

Attachment: Interlocal Agreement Between the City & LCRA -2009 (1532 : Interlocal Agreement - LCRA)

Field Notes – 2.774 Acre Tract (cont'd)

THENCE South 88 degrees 39 minutes 33 seconds West along the common line of the herein described 2.774 acre tract and the aforementioned adjoining 11.455 acre tract, same being the occupied common line of the Colorado Canal Section Tract 7 of the Gravity Irrigation and Power Section Tract 7, Lateral A, 222.80 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set for the southwest corner of the herein described 2.774 acre tract;

THENCE North 43 degrees 08 minutes 44 seconds West continuing along the common line of the herein described 2.774 acre tract and the aforementioned adjoining 11.455 acre tract, 117.41 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set at an angle point in said line;

THENCE North 00 degrees 48 minutes 14 seconds West continuing along said common line, 64.93 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” (X = 2,941,779.96', Y = 13,548,349.99') set in the south line of Lot 16, Valhalla Section II (Volume 8, Page 12, County Clerk's File No. 355B, 356A and 356B, Plat Records, Matagorda County, Texas) for the northwest corner of the herein described 2.774 acre tract, same being the upper northeast corner of the aforementioned adjoining 11.455 acre tract, said point also being the occupied north line of Colorado Canal Section Tract 7;

THENCE North 89 degrees 12 minutes 40 seconds East along the common line of the herein described tract and the aforementioned adjoining Valhalla Section II, same being the occupied north line of the Colorado Canal Section Tract 7, at 115.00 feet pass a ½ inch iron rod found at the southeast corner of Lot 16, Valhalla Section II, same being the southwest corner of a Park Reserve, Valhalla Section II, at 385.12 feet pass a ½ inch iron pipe with cap marked “Kalkomey Surveying” set on said line in the channel of Cottonwood Creek Cut-off, and continuing for a total distance of 398.32 feet to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in the channel of Cottonwood Creek Cut-off for the southwest corner of a certain adjoining called 1.933 acre tract (Volume 251, Page 543, Deed Records, Matagorda County, Texas) for an angle point in said line;

THENCE North 88 degrees 08 minutes 47 seconds East (adjoiner called North 87 degrees 06 minutes 40 seconds East) along the common line of the herein described tract and the aforementioned adjoining called 1.933 acre tract, same being the occupied north line of Colorado Canal Section Tract 7, at 39.87 feet pass a ½ inch iron rod found on said line, and continuing for a total distance of 431.76 feet (adjoiner called 431.76 feet) to a ½ inch iron pipe with cap marked “Kalkomey Surveying” set in the west right-of-way line of F.M Highway 2668 for the northeast corner of the herein described 2.774 acre tract, same being the southeast corner of the aforementioned adjoining called 1.933 acre tract, said point being in a curve to the left with a radius bearing South 89 degrees 54 minutes 17 seconds East;

Field Notes – 2.774 Acre Tract (cont'd)

Page 3

THENCE along said curve to the left having a central angle of 00 degrees 44 minutes 57 seconds, a radius of 11,509.20 feet, a length of 150.48 feet, and a chord bearing South 00 degrees 16 minutes 46 seconds East, 150.48 feet to the **Place of Beginning** and containing 2.774 acres of land, more or less.

For reference and further description see Survey Plat No. R0017-002-00 prepared by the undersigned on same date.



A handwritten signature in black ink, appearing to read "Charles A. Kalkomey".

Charles A. Kalkomey, R.P.L.S.
 Texas Registration Number 2506
 March 10, 2008
 Revised April 9, 2008
 Revised June 18, 2008
 Revised October 14, 2008
 Revised January 6, 2009

Job Number R0017-002-00

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Attachment: Interlocal Agreement Between the City & LCRA -2009 (1532 : Interlocal Agreement - LCRA)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/26/14 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1534

DISCUSSION ITEM (ID # 1534)

**CITY COUNCIL SHALL RECONVENE IN OPEN SESSION AND
MAY CONSIDER AND/OR TAKE ACTION ON ANY ITEM
LISTED ABOVE FOR CONSIDERATION/DISCUSSION IN
EXECUTIVE SESSION (IF NECESSARY).**