



BAY CITY

MINUTES • DECEMBER 21, 2017

Council Chambers

Regular Meeting

7:00 PM

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

1. CALL TO ORDER

2. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILWOMAN, CHRYSTAL FOLSE

Texas State Flag Pledge:

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

Attendee Name	Title	Status	Arrived
Becca Sitz	Councilwoman	Present	
Jason Childers	Councilman	Present	
Mark A. Bricker	Mayor	Present	
Chrystal Folse	Councilwoman	Present	
William Cornman	Mayor Pro-Tem	Present	
Julie Estlinbaum	Councilwoman	Excused	

3. CERTIFICATION OF QUORUM

Mayor Bricker certified a quorum was present.

4. APPROVAL OF AGENDA

The agenda was unanimously approved as written. Councilman Jason Childers made the motion and it was seconded by Councilwoman Chrystal Folse.

5. 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.

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Essau Rodriguez - Bay City Youth Little Cats - Use of Hardeman Park. Thank you! Softball issues resolved. Season starts in two weeks. Gratitude to Parks Director, Mr. Shawn Blackburn. Mother in law on 2200 Block of Live Oak - sewer backing up. Rain causes the sewer to backup out of the clean outs.

Jo Halbert - Christmas Food box drive Police and Methodist Church served 460 people. Turkey, crackers, flour, and sugar were handed out. Chief Lister assisted. Captain Rodriguez assists yearly. She would like to see the City and City employees be more active in the future.

DC Dunham - Vice Chair CVB - Surprised to see letter sent to the Chamber. Consider a transition time. Few weeks notice is too short.

6. 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.

NONE

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

1. Amendment

~ DISCUSS, CONSIDER, AND/OR APPROVE AN AMENDMENT TO THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION BUDGET FOR ONE-HUNDRED THOUSAND (\$100,000.00) DOLLARS TO PURCHASE PROPERTY ON 5TH STREET AND STATE HIGHWAY 60.

Bay City CDC Executive Director, DC Dunham

Bay City Community Development Corporation Executive Director, DC Dunham, gave the presentation to Council members. Funds were previously approved by Council. Budget amendment requested.

The Amendment was approved unanimously by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Sitz, Childers, Folse, Cornman
EXCUSED:	Estlinbaum

Enacted and approved this 21st day of December, 2017, at Bay City

2. Amendment

~ DISCUSS, CONSIDER, AND APPROVE AN AMENDMENT TO THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION BUDGET FOR SEVENTY THOUSAND (\$70,000.00) DOLLARS FOR A SECOND RESTROOM REPLACEMENT AT LETULLE PARK.

Bay City CDC Executive Director, DC Dunham

Bay City Community Development Corporation Executive Director, DC Dunham, gave the presentation to Council members. Funds were previously approved by Council of seventy thousand dollars(\$70,000.00). Budget amendment requested for a total of one-hundred forty thousand dollars (\$140,000.00) for the two restrooms to be constructed at LeTulle Park.

The Amendment was approved unanimously by motion. Councilman Jason Childers made the motion and Councilwoman Chrystal Folse seconded.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Sitz, Childers, Folse, Cornman
EXCUSED:	Estlinbaum

Enacted and approved this 21st day of December, 2017, at Bay City

3. Presentation

~ DISCUSS THE CITY'S TAX INCREMENT REINVESTMENT ZONE BOARDS AND THE DEVELOPMENT FINANCING AGREEMENTS RELATED TO THE TAX INCREMENT REINVESTMENT ZONE BOARDS.

Assistant City Attorney, Shannon Kackley

The City's Tax Increment Reinvestment Zone Boards and Development Financing Agreement was presented to Council members by Finance Director, Scotty Jones along with Mayor Bricker.

4. Policy

~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION TO ADOPT THE CITY'S INVESTMENT POLICY.

Scotty Jones, Finance Director

Finance Director, Scotty Jones reviewed the Resolution to adopt the City's Investment Policy. Consent agenda item in the future. The Resolution was unanimously approved by motion. The motion was made by Councilman Bill Cornman and Seconded by Councilman Jason Childers.

5. Agreement

~ DISCUSS, CONSIDER, AND/OR APPROVE THE PROFESSIONAL SERVICES AGREEMENT WITH GARVER, LLC FOR THE APPLICATION PREPARATION AND PROJECT IMPLEMENTATION TO INSTALL GENERATORS AND ELECTRICAL COMPONENTS FOR A HAZARD MITIGATION FUND PROJECT FUNDED WITH FEMA MITIGATION FUNDS THROUGH THE TEXAS DIVISION OF EMERGENCY MANAGEMENT FOR DIASTERS DECLARED IN 2015 AND 2016.

Barry Calhoun, Director of Public Works

Assistant Public Works Director, Marla Jasek presented the service agreement information to Council members. This is an agreement that was made with Garver in December 2016. The City was waiting for the project to be funded. The contract was approved for the three, natural gas generators.

The Agreement was approved unanimously by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded.

6. Presentation

~ DISCUSS AND CONSIDER A DEVELOPMENT INCENTIVE FOR NEW BUSINESSES AND NEW CONSTRUCTION WITHIN THE CITY LIMITS OF BAY CITY.

Councilwoman, Becca Sitz

Councilwoman Becca Sitz presented this agenda item.

She would like to see the City offer property owners, and developers an incentive to construct new business/buildings/homes in Downtown Bay City. To many empty buildings and vacant properties.

Groups are interested in downtown Bay City. She suggests we show them that the City is development friendly and we want to promote our downtown.

One suggestion was to explore waving fees for new construction and renovations. Limit to \$2500.00. Fees? Councilman Childers asked.

Councilman Jason Childers offered to assist Councilwoman Becca Sitz with writing a proposal for Mayor and Council. Mayor Bricker suggested listing priority areas.

7. Presentation

~ DISCUSS, CONSIDER, AND/OR APPROVE REVISING THE PARKING DESIGN FOR DOWNTOWN HIGHWAY 35 AND HIGHWAY 60.

Councilwoman, Becca Sitz

Councilwoman Becca Sitz presented this agenda item. Assistant Public Works Director, Marla Jaseek assisted.

She would like to see the City revise the parking design downtown on Highway 35 and Highway 60 to parallel parking due to safety concerns.

Marla Jasek has notified TxDot. A letter from the Mayor requesting parallel parking is needed. Usually supported by TxDot. They would design the change and do the stripping possibly.

Mayor asked if Main Street should be involved.

Councilman Bill Cornman suggested speaking with business owners and property owners in the area for their input. Motion was made for letters to be sent to TxDot and the local property owners simultaneously from the Mayor's office. The plan was unanimously approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Becca Sitz.

8. Presentation

~ DISCUSS AND CONSIDER POSSIBLE LOCATIONS FOR THE RELOCATION OF THE BAY CITY RECYCLING CENTER.

Councilwoman, Becca Sitz

This agenda item was presented by Councilwoman Becca Sitz.

There is currently no funds budgeted for this agreement with the contractor, Stuart Lynn.

The City has investigated several properties listed on the market and properties currently owned by the City. Nothing has been decided at this time.

Curbside recycle was questioned by Councilman Jason Childers. Cost estimate would roughly be around \$250,000.00 to start. Difficult to get a contracting company to work with the City regarding Curbside service.

Councilman Bill Cornman requested a report be prepared for Council regarding possible properties and funding ideas.

9. Budget

~ DISCUSS, CONSIDER AND/OR APPROVE HOLDING A SPRING 2018 CITY "CLEAN UP DAY." WCA COST ESTIMATE IS FOUR THOUSAND (\$4,000.00) TO FIVE THOUSAND (\$5,000.00) DOLLARS, WHICH IS UN-BUDGETED.

Councilman, Bill Cornman

This agenda item was presented by Councilman Bill Cornman.

He recommends placing "Clean Up Days" in the contracts with WCA in the future.

Motion to have the clean up day and incorporate scrap tire issue. Budget amendment to follow.

The idea to hold a Spring Clean Up Day was unanimously approved by motion. The motion was made by Councilwoman Becca Sitz and seconded by Councilman Jason Childers.

10. Presentation

~ DISCUSS THE MATAGORDA COUNTY CONVENTION AND VISITORS BUREAU ADMINISTRATIVE TRANSITION, EXPECTATIONS, AND ADMINISTRATOR'S JOB DESCRIPTION.

Mayor Mark A. Bricker

Chamber of Commerce Chairman, Robert Lister presented this agenda item along with Mayor Mark A. Bricker.

Much discussion was made by Council members on how the transition was handled. Future budgeting concerns were also brought up for discussion. It was requested by Councilman Bill Cornman that the City do a financial analysis regarding the CVB and report to Council at a workshop.

8. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Mayor Mark A. Bricker wished everyone in attendance Merry Christmas, and Happy Holiday.

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 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 Regular Called Council Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on Friday, December 15, 2017 before 5:00 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

David Holubec
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2941

AGENDA ITEM (ID # 2941)

**~ DISCUSS, CONSIDER, AND/OR APPROVE AN AMENDMENT
TO THE BAY CITY COMMUNITY DEVELOPMENT
CORPORATION BUDGET FOR ONE-HUNDRED THOUSAND
(\$100,000.00) DOLLARS TO PURCHASE PROPERTY ON 5TH
STREET AND STATE HIGHWAY 60.**

COMMENTS - Current Meeting:

Bay City Community Development Corporation Executive Director, DC Dunham, gave the presentation to Council members. Funds were previously approved by Council. Budget amendment requested.

The Amendment was approved unanimously by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Becca Sitz, Jason Childers, Chrystal Folse, William Cornman
EXCUSED:	Julie Estlinbaum



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 2942)

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2942

**~ DISCUSS, CONSIDER, AND APPROVE AN AMENDMENT TO
THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION
BUDGET FOR SEVENTY THOUSAND (\$70,000.00) DOLLARS
FOR A SECOND RESTROOM REPLACEMENT AT LETULLE
PARK.**

COMMENTS - Current Meeting:

Bay City Community Development Corporation Executive Director, DC Dunham, gave the presentation to Council members. Funds were previously approved by Council of seventy thousand dollars(\$70,000.00). Budget amendment requested for a total of one-hundred forty thousand dollars (\$140,000.00) for the two restrooms to be constructed at LeTulle Park.

The Amendment was approved unanimously by motion. Councilman Jason Childers made the motion and Councilwoman Chrystal Folse seconded.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Becca Sitz, Jason Childers, Chrystal Folse, William Cornman
EXCUSED:	Julie Estlinbaum



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2944

DISCUSSION ITEM (ID # 2944)

**~ DISCUSS THE CITY'S TAX INCREMENT REINVESTMENT
ZONE BOARDS AND THE DEVELOPMENT FINANCING
AGREEMENTS RELATED TO THE TAX INCREMENT
REINVESTMENT ZONE BOARDS.**

COMMENTS - Current Meeting:

The City's Tax Increment Reinvestment Zone Boards and Development Financing Agreement was presented to Council members by Finance Director, Scotty Jones along with Mayor Bricker.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 2930)

Meeting: 12/21/17 07:00 PM
Department: Finance
Category: Policy
Prepared By: Scotty Jones
Initiator: Scotty Jones
Sponsors:
DOC ID: 2930

~ DISCUSS, CONSIDER AND/OR APPROVE A RESOLUTION TO ADOPT THE CITY'S INVESTMENT POLICY.

BACKGROUND:

The Public Funds Investment Act (Chapter 2256, Government Code) requires the City's Investment Policy to be reviewed by the governing body at least annually.

FINANCIAL IMPLICATIONS:

An Investment Policy protects City dollars by restricting certain types of transactions to minimize risk. It also enables the City to invest in other instruments to increase interest earnings.

IMPACT ON COMMUNITY SUSTAINABILITY:

It provides policy guidelines to protect the investments of tax dollars.

RECOMMENDATION:

Staff recommends City Council approve the Resolution to re-adopt the City's Investment Policy.

ATTACHMENTS:

Resolution and Investment Policy

COMMENTS - Current Meeting:

Finance Director, Scotty Jones reviewed the Resolution to adopt the City's Investment Policy. Consent agenda item in the future. The Resolution was unanimously approved by motion. The motion was made by Councilman Bill Cornman and Seconded by Councilman Jason Childers.

RESOLUTION NO. _____**A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, ADOPTING AN INVESTMENT POLICY**

WHEREAS, the City Council of Bay City recognizes that the administration of City funds and the investment of those funds as its highest public trust; and

WHEREAS, City Council annually adopts an investment policy to protect the administration of City funds and the investment of such funds; and

WHEREAS, the City's Finance Director has recommended the adoption of the Investment Policy attached hereto; and

WHEREAS, deems it appropriate to adopt such policy.

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

Section one.

The Investment Policy attached hereto is hereby adopted annually beginning on January 1, 2018 and ending on December 31, 2018.

Section two.

Unless otherwise amended or revised by resolution of City Council, the Investment Policy shall remain in full force and effect and shall supersede such investment policies of prior date.

Section three.

This Resolution shall become effective December 21, 2017.

PASSED AND APPROVED AT BAY CITY TEXAS THIS 21st DAY OF DECEMBER 2017.

Mark Bricker, Mayor
City of Bay City

ATTEST:

APPROVED AS TO FORM:

David Holubec, City Secretary

M. Shannon Kackley, Assist. City Attorney

Attachment: RESOLUTION_Investment Policy_2018 (2930 : Investment Policy)



Investment Policy and Strategy

I. POLICY STATEMENT

It is the policy of the City that the administration of its funds and the investment of those funds shall be handled as its highest public trust. Investments shall be made in a manner which will provide the maximum security of principal invested through limitations and diversification while meeting the daily cash flow needs of the City and conforming to all applicable state statutes governing the investment of public funds.

II. SCOPE

This investment policy applies to all the financial assets and funds of the City. The City commingles its funds into one pooled investment fund for investment purposes to provide efficiency and maximum investment opportunity. These funds are defined in the City's Comprehensive Annual Financial Report (CAFR).

Any new funds created by the City shall be included unless specifically exempted by the City Council and this policy.

III. OBJECTIVES

It is the policy of the City that all funds shall be managed and invested with four primary objectives, listed in order of their priority: safety, liquidity, diversification and yield.

Effective cash management is recognized as essential to good fiscal management. Cash management is defined as the process of managing monies in order to ensure maximum cash availability/flow.

Safety

The primary objective of the City's investment activity is the preservation of capital. Each investment transaction shall be conducted in a manner to avoid capital losses, whether from security defaults, safekeeping, or erosion of market value.

Liquidity

The City's investment portfolio shall be structured to meet all cash flow obligations in a timely manner. This shall be achieved by matching investment maturities with forecasted cash flow liabilities and maintain additional liquidity for unexpected liabilities.

Cash Flow Forecasting

Cash flow forecasting is designed to protect and sustain cash flow requirements of the City. Supplemental to the financial and budgetary systems, the Investment Officer will develop and use a cash flow forecasting process as needed to monitor and forecast cash positions for investment purposes.

Diversification

The City's portfolio shall be diversified by market sector and maturity in order to avoid market risk.

Yield

The benchmark of the City's portfolio shall be the 3 month or 6 month U.S. Treasury, designated for its comparability to the City's expected average cash flow pattern. The benchmark will serve as a risk measurement of the portfolio.

IV. STRATEGY

The City maintains one commingled portfolio for investment purposes which incorporates the specific investment strategy considerations and the unique characteristics of the fund groups represented in this portfolio. The investment strategy has as its primary objective assurance that anticipated liabilities are matched and adequate investment liquidity provided. The City shall pursue a conservative portfolio management strategy. This may be accomplished by creating a ladder maturity structure with some extension for yield advancement. **The maximum weighted average maturity (WAM) of the portfolio shall not exceed 1 year.**

V. LEGAL LIMITATIONS, RESPONSIBILITIES AND AUTHORITY

Direct specific investment parameters for the investment of public funds in Texas are found in the Public Funds Investment Act, Chapter 2256, Texas Government Code, (the "Act"). The Public Funds Collateral Act, Chapter 2257, Texas Government Code, specifies collateral requirements for all public funds deposits. All investments will be made in accordance with these statutes.

VI. INVESTMENT COMMITTEE

An Investment Committee consisting of the Finance Director and at least one Council Member shall meet at least quarterly to determine operational strategies and to monitor results. The Investment Committee shall discuss things such as economic outlook, portfolio diversification, maturity structure, and any potential risk of the City's funds. In addition, this committee shall review investment purchases that occurred since the last investment committee meeting and approve new brokers.

VII. DELEGATION OF INVESTMENT AUTHORITY

The Finance Director acting on behalf of the City, is designated as the Investment Officer of the City and is responsible for investment management decisions and activities. All participants in the investment process shall seek to act responsibly as custodians of the public trust.

The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials and staff. The Investment

Officer shall attend at least one training session relating to the Officer's responsibility under this act within 12 months after assuming duties and thereafter, a training session should be attended not less than once every two years with at least 8 hours of instruction from an independent source. The Investment Officer shall designate a staff person as a liaison/deputy in the event circumstances require timely action and the Investment Officer is not available.

No officer or designee may engage in an investment transaction except as provided under the terms of this Policy and the procedures established.

Limitation of Personal Liability

The investment Officer and those delegated investment authority under this Policy, when acting in accordance with the written procedures and this Policy and in accord with the Prudent Person Rule, shall be relieved of personal responsibility and liability in the management of the portfolio provided that deviations from expectations for a specific security's credit risk or market price change or portfolio shifts are reported in a timely manner and that appropriate action is taken to control adverse market effects.

VIII. PRUDENCE

The standard of prudence to be used in the investment function shall be the "prudent person" standard and shall be applied in the context of managing the overall portfolio. This standard states:

"Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the expected income to be derived."

IX. INTERNAL CONTROLS

The Investment Officer shall establish and maintain an internal control structure which will be reviewed annually with the independent auditor of the City. The controls shall be designed to prevent loss of public funds due to fraud, employee error, misrepresentation by third parties, unanticipated market changes, or imprudent actions by employees of the City. The internal controls shall address the following points at a minimum:

- Control of collusion,
- Separation of transaction authority from accounting and record keeping,
- Custodial safekeeping,
- Clear delegation of authority,
- Documentation of all transactions,

Monitoring Credit Ratings

The Investment Officer will monitor, on at least a monthly basis, the credit rating on all authorized investments in the portfolio that require a credit ratings based upon independent information from a nationally recognized credit agency. If any security falls below the minimum rating required by this Policy; the Investment Officer will immediately advise the Investment Committee of the loss of rating and the possible loss of principal. The Investment Committee and Investment Officer will decide on the prudent liquidation of the security.

X. AUTHORIZED INVESTMENTS

Acceptable investments under this policy shall be limited to the instruments listed below and as further defined and described by the Public Funds Investment Act. If changes are made to the Act, they are not authorized until this Policy is modified and adopted by City Council.

- A. Obligations of the United States Government, its agencies and instrumentalities, and government sponsoring enterprises, not to exceed five years to stated maturity, including collateralized mortgage obligations (CMOs); CMO's cannot be either an Interest-Only or Principal-Only CMO nor can it be an inverse floater.
- B. Fully insured or collateralized certificates of deposit from a bank doing business in the State of Texas, with a maximum maturity of 18 months, collateralized with 102% coverage with:
 - In accordance with 2256.010 of the Act, certificates of deposit may be purchased from a Texas depository institution through a nationally coordinated program in which (a) the depository arranges for deposits in one or more federally insured depositories allowing for full FDIC coverage and (b) the depository receives comparable deposits from other linked depositories.
 - Collateral agreements must be in writing and require a bank resolution of approval.
- C. FDIC insured *brokered certificates of deposit securities* from a bank in any US State, delivery versus payment to the safekeeping agent, not to exceed two years to maturity. Before purchase, the Investment Officer must verify FDIC status of the bank on www.fdic.gov to assure that the bank is FDIC insured.
- D. Commercial paper rated A-1/P-1 or the equivalent by at least two nationally recognized rating agencies not to exceed 90 days to stated maturity.
- E. AAA-rated money market mutual funds as defined by the Public Funds Investment Act.
- F. Obligations of the States, agencies thereof, Counties, Cities, and other political subdivisions of any state, with a maximum maturity not to exceed five years, and having been rated as investment quality by a nationally recognized investment rating firm of not less than "A" or its equivalent.
- G. AAA-rated, constant dollar Texas Local Government Investment Pools as defined by the Public Funds Investment Act - must be approved by City Council.

No additional security will be eligible for investment by the City until this policy has been amended and the amended version approved by the City Council. *Exceptions* to investment maturities may be approved by council in order to meet debt service requirements.

Competitive Bidding Requirement

Generally, the City will seek competitive offerings for all securities, including certificates of deposit before it invests to verify that the City is receiving fair market value/price for the investment with the *exception* of new issues that are still in syndicate.

The City recognizes that a competitive offering process is not always necessary or is not always in the best interest of the City. On these occasions, the Investment Officer is authorized to purchase a security without seeking competitive offerings. Examples of these occasions are:

- A. Market conditions are changing rapidly.
- B. The security is a “new issue” that is still in the primary market.
- C. A specific type of security, maturity date, or rate of return is sought that may not be immediately available.

Delivery versus Payment

All security transactions, including collateral for repurchase agreements, entered into by the City, shall be conducted on a delivery versus payment (DVP) basis. Funds shall not be released until receipt of the security by the City’s approved custodian.

Diversification

The City recognizes that investment risks can result from issuer defaults, and market price changes. Risk is controlled through portfolio diversification. The maximum limits for diversification will be:

Security Type	Max % of Portfolio
US Obligations	not to exceed 80%
US Agencies/Instrumentalities	not to exceed 80%
-MB Securities	not to exceed 50%
Certificates of Deposits*	not to exceed 40%
Brokered CD*	not to exceed 20%
Commercial Paper	not to exceed 25%
Money Market Funds*	100%
Local Government Investment Pools	100%

*Limit per bank up to \$250,000 without collateralization agreement.

XI. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

Depository

The City will designate **at least one** banking institution through a competitive process as its central banking services provider at least every five years in accordance with the Texas Government Code 105. Other banking institutions from which the City may purchase certificates of deposit will also be designated after they provide their latest audited financial statements to the City. All depositories will execute a depository agreement and have the Bank’s Board or Bank Loan Committee pass a resolution approving the agreement if collateral is required.

Security Broker/Dealers

The Investment Committee will review the list of authorized broker/dealers annually. The Investment Officer will obtain and maintain information on each broker/dealer. Securities broker/dealers not affiliated with a bank, who desire to transact business with the City must supply the following documents to be maintained by the Finance Department:

- audited financial statement for the most recent period,
- proof of certification by the National Association of Securities Dealers (NASD),
- proof of current registration with the State Securities Commission

Every broker/dealer and bank with whom the City transacts business will be provided a copy of this Investment Policy to assure that they are familiar with the goals and objectives of the City's investment program. A representative of the firm will be required to return a signed certification stating the Policy has been received and reviewed and that controls are in place to assure that only authorized securities are sold to the City.

XII. SAFEKEEPING AND COLLATERALIZATION

The laws of the State and prudent treasury management require that all purchased securities be bought on a delivery versus payment (DVP) basis and be held in safekeeping by either the City, an independent third party financial institution, or the City's designated depository.

All safekeeping arrangements shall be designated by the Investment Officer and an agreement of the terms executed in writing. The third party custodian shall be required to issue safekeeping receipts to the City listing each specific security, rate, description, maturity, cusip number, and other pertinent information. Each safekeeping receipt will be clearly marked that the security is held for the City or pledged to the City.

All securities pledged to the City for time or demand deposits shall be held by an independent third party bank doing business in Texas. The safekeeping bank may not be within the same holding company as the bank where the securities are pledged. The bank is responsible for monitoring collateral.

Collateralization

Collateralization shall be required on certificates of deposits over the FDIC insurance coverage of \$250,000. In order to anticipate market changes and provide a level of additional security for all funds, the collateralization level required will be 102% of the market value of the principal and accrued interest. Collateral will be held by an independent third party safekeeping agent.

XIII. PERFORMANCE EVALUATION AND REPORTING

The Investment Officer shall submit quarterly reports to the City Council containing sufficient information to permit an informed outside reader to evaluate the performance of the investment program and consistent with statutory requirements. The Investment officer will report to the Investment Committee a report that will include the following at a minimum:

- A full description of all securities held at the end of the reporting period,
- Overall change in market value for each security and the change during the period as a measure of volatility (obtained by an independent source),

- Weighted average maturity (WAM) of the portfolio,
- Total earnings for the period,
- Compare market value of pledged securities to the ending balance of the City's portfolio,
- Analysis of the total portfolio by maturity, by book value, and
- Statement of the compliance of the investment portfolio with the Act and the Investment Policy and Strategy of the City.

XIV. INVESTMENT POLICY AMENDMENTS

The Director of Finance and the Investment Committee shall review the Investment Policy and Strategy on an annual basis. Future recommended changes will be approved by the City Council amending the current Investment Policy and Strategy resolution on record.

WITNESS MY HAND AND SEAL OF OFFICE THIS 21st DAY OF DECEMBER 2017
PASSED AND APPROVED THIS 21st DAY OF DECEMBER 2017.

MARK BRICKER, MAYOR
CITY OF BAY CITY, TEXAS

ATTEST:

DAVID HOLUBEC, CITY SECRETARY



City Council
1901 5th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 2935)

Meeting: 12/21/17 07:00 PM
Department: Public Works
Category: Agreement
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 2935

**~ DISCUSS, CONSIDER, AND/OR APPROVE THE
PROFESSIONAL SERVICES AGREEMENT WITH GARVER,
LLC FOR THE APPLICATION PREPARATION AND PROJECT
IMPLEMENTATION TO INSTALL GENERATORS AND
ELECTRICAL COMPONENTS FOR A HAZARD MITIGATION
FUND PROJECT FUNDED WITH FEMA MITIGATION FUNDS
THROUGH THE TEXAS DIVISION OF EMERGENCY
MANAGEMENT FOR DIASERS DECLARED IN 2015 AND
2016.**

The City of Bay City applied for several grants through the U.S. Department of Homeland Security Federal Emergency Management Agency Hazard Mitigation Grant Program (HMGP) Fund to install generators to provide emergency power at critical City facilities located at City Hall, Fire Department, Municipal Services Building, Civic Center, Bay City Regional Airport, Wastewater Treatment Plant, Ave B & 4th St Water Plant, Ave I Sewer Lift Station, and two portable generators to provide uninterrupted emergency services to our community during severe weather conditions, hazardous chemical spills and other natural or man-made emergency situations. This agenda item is to approve an engineering agreement with Garver, LLC to aide in the application submission and implementation of the grant project. Garver was selected through an RFQ process as required by the grant terms and was designated as the engineering service provider during the December 15, 2016 regular City Council meeting by resolution. The City was awarded funding in May-2017 to install 3 generators at City Hall, Municipal Services Building, and Civic Center. There is a 25% match associated with this grant. The City match is currently funded in the 2018 Fiscal Year Budget and amounts to \$133,066.75. Is the recommendation of the Director of Public Works that the agreement between the City of Bay City and Garver, LLC be executed so this project can move forward. The estimated costs are listed below:

No	FEMA No	Location	Federal	City Match	Amount
1	DR-4245-032	City Hall	\$122,236.50	\$40,745.50	\$162,982.00
2	DR-4255-017	Fire Department	\$47,238.00	\$15,746.00	\$62,984.00
3	DR-4245-033	Municipal Services Building	\$118,727.25	\$39,575.75	\$158,303.00
4	DR-4245-034	Civic Center	\$158,236.50	\$52,745.50	\$210,982.00
5	DR-4272	Bay City Regional Airport	\$215,625.00	\$71,875.00	\$287,500.00
6	DR-4272	Wastewater Treatment Plant	\$735,000.00	\$245,000.00	\$980,000.00
7	DR-4272	Ave B/4th St Water Plant	\$177,000.00	\$59,000.00	\$236,000.00
8	DR-4272	Ave I Sewer Lift Station	\$90,000.00	\$30,000.00	\$120,000.00
9	DR-4272	Two Portable Generators	\$120,260.94	\$40,086.98	\$160,347.92
		TOTAL:	\$1,784,324.19	\$594,774.73	\$2,379,098.92

Listed below are the disaster declarations:

Texas Severe Storms, Tornadoes, Straight-line Winds, and Flooding (DR-4245)

Incident period: October 22, 2015 to October 31, 2015
Major Disaster Declaration declared on November 25, 2015

Texas Severe Winter Storms, Tornadoes, Straight-line Winds, and Flooding (DR-4255)
Incident period: December 26, 2016 to January 21, 2016
Major Disaster Declaration declared on February 9, 2016

Texas Severe Storms and Flooding (DR-4272)
Incident period: May 22, 2016 to June 24, 2016
Major Disaster Declaration declared on June 11, 2016

The purpose of the HMGP program is to help communities implement hazard mitigation measures following a Presidential major disaster declaration. Hazard mitigation is any action taken to reduce or eliminate long term risk to people and property from natural hazards. Mitigation planning is a key process used to breaking the cycle of disaster damage, reconstruction, and repeated damage. The HMPG is authorized under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

State, tribal, and local governments engage in hazard mitigation planning to identify risks and vulnerabilities associated with natural disasters, and develop long-term strategies for protecting people and property from future hazard events. FEMA requires state, tribal, and local governments to develop and adopt hazard mitigation plans as a condition for receiving certain types of non-emergency disaster assistance, including funding for HMA mitigation projects.

COMMENTS - Current Meeting:

Assistant Public Works Director, Marla Jasek presented the service agreement information to Council members. This is an agreement that was made with Garver in December 2016. The City was waiting for the project to be funded. The contract was approved for the three, natural gas generators.

The Agreement was approved unanimously by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded.

THE STATE OF TEXAS §
 §
 COUNTY OF MATAGORDA §

CITY OF BAY CITY, TEXAS
STANDARD PROFESSIONAL SERVICES AGREEMENT
Lump Sum or Specified Rate
Indefinite Deliverable Contract with Work Authorizations

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made by and entered by and between **The City of Bay City, Texas**, a Texas home rule municipality located at **1901 5th St, Bay City, TX 77414** (the “City”) and **Garver, LLC**, an Arkansas limited liability company having its principal business address at **12141 Wickchester Lane Suite 640, Houston, Texas 77079** (“Professional and/or Engineer”) for the purpose of contracting for engineering and surveying services. City and Professional may be referred to singularly as “Party” and collectively as “Parties.”

WITNESSETH

WHEREAS, The City desires to contract for engineering services generally described as **Engineering and Surveying Professional Services**, and,

WHEREAS, The City has selected the Engineer to provide the needed services and the Engineer has agreed to provide the services subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, The City and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows.

AGREEMENT

ARTICLE 1. SCOPE OF SERVICES. The City and the Engineer will furnish items and perform those services for fulfillment of the Agreement as identified in individual work assignments to be provided by The City for a period of two (2) years. All services provided by the Engineer will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers. All services provided by Professional’s Surveyor will conform to standard surveying practices and applicable rules and regulations of the Texas Professional Land Surveying Practices. Engineers shall not practice surveying, and surveyors shall not practice engineering.

ARTICLE 2. COMPENSATION.

A. Basis of Payment. The basis of payment for the Agreement shall not exceed the amount agreed upon by both parties as described in the Work Authorizations. Reimbursement of costs incurred under a work authorization shall be in accordance the Fee Schedule.

B. Reimbursement of Eligible Costs. To be eligible for reimbursement, the Engineer’s costs must be incurred in accordance with the terms of a valid work authorization and be in accordance with Attachment B – Standard Rate Schedule. Satisfactory progress of work shall be maintained as a condition of payment.

C. Engineer Payment of Subproviders. No later than ten (10) days after receiving payment from The City, the Engineer shall pay all subproviders for work performed under a subcontract authorized hereunder.

Payment to subprovider may be delayed if subprovider does not have a current certificate of insurance on file with the Engineer in accordance with their contract. The City may withhold all payments that have or may become due if the Engineer fails to comply with the 10-day payment requirement. The City may also suspend the work under the Agreement or any work authorization until subproviders are paid. This requirement also applies to all lower-tier subproviders, and this provision must be incorporated into all subcontracts.

ARTICLE 3. PAYMENT REQUIREMENTS.

A. Monthly Billing Statements. The Engineer shall request reimbursement of costs incurred by submitting the original and one copy of an itemized billing statement in a form acceptable to The City. The Engineer is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

B. Billing Statement. The billing statement shall show the work authorization number for each work authorization included in the billing, the total amount earned to the date of submission, and the amount due and payable as of the date of the current billing statement for each work authorization. The billing statement shall indicate if the work has been completed or if the billing is for partial completion of the work. The fixed fee will be paid in proportion to the percentage of work completed per work authorization.

C. Thirty Day Payments. Upon receipt of a billing statement that complies with all invoice requirements set forth in this article, the City shall make a good faith effort to pay the amount which is due and payable within thirty (30) days.

D. Withholding Payments. The City reserves the right to withhold payment of the Engineer's billing statement in the event of any of the following: (1) If a dispute over the work or costs thereof is not resolved within a thirty day period; (2) pending verification of satisfactory work performed; (3) required reports are not rectified. In the event that payment is withheld, the City shall notify the Engineer and give a remedy that would allow the City to release the payment.

E. Subproviders and Suppliers List. The Engineer must provide the City of all subproviders and suppliers that submitted quotes or proposals for subcontracts. This list shall include subproviders and suppliers names, address, telephone numbers, and type of work desired.

ARTICLE 4. WORK AUTHORIZATIONS. The City will issue work authorizations to authorize all work under this Agreement. The Engineer must sign and return a work authorization within seven (7) working days after receipt. Refusal to accept a work authorization may be grounds for termination of this Agreement. The City shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to work not directly associated with or prior to the execution of all work authorizations.

ARTICLE 5. SIGNATORY WARRANTY. The undersigned signatory for the Engineer hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the firm. These representations and warranties are made for the purpose of inducing the City to enter into this Agreement.

ARTICLE 6. NOTICES. All notices to either Party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such Party at the following addresses:

Engineer: Jeffrey L. Sober, PE, Garver, LLC 12141 Wickchester Lane Suite 640 Houston, Texas 77079	City of Bay City, Texas: Mayor Mark Bricker City of Bay City 1901 5 th St Bay City, TX 77414
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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either Party may change the above address by sending written notice of the change to the other Party. Either Party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other Party.

IN WITNESS WHEREOF, The City and the Engineer have executed this Agreement in duplicate. The Effective Date of this Agreement shall be the date last signed below by either the City or the Engineer.

GARVER, LLC



(Signature)

Frank McIlwain, P.E.

(Printed Name)

Vice President

(Title)

12/8/17

(Date)

CITY OF BAY CITY, TEXAS

(Signature)

Mark A. Bricker

(Printed Name)

Mayor

(Title)

(Date)

ATTEST:

David Holubec, City Secretary

**Attachments to Agreement for Engineering Services
Incorporated into the Agreement by Reference**

Attachments	Title
A	General Provisions
B	Standard Rate Schedule
C-1	Work Authorization Form
C-2	Supplemental Work Authorization Form
D	Required Contract Provisions
Appendix A	Scope of Services
Appendix B	Fee Schedule
Exhibit A	City Contract and Purchasing Rider
Exhibit B	Insurance
Exhibit C	Reserved
Exhibit D	Required Contract Provisions (Refer to Attachment D)

ATTACHMENT A

GENERAL PROVISIONS

INDEX TO PROVISIONS

ARTICLE	TITLE
1	Work Authorizations
2	Progress
3	Suspension of Work Authorizations
4	Additional Work
5	Changes In Work
6	Supplemental Agreements
7	Ownership of Data
8	Public Information and Confidentiality
9	Personnel, Equipment and Material
10	Subcontracting
11	Inspection of Work
12	Submission of Reports
13	Violation of Contract Terms
14	Termination
15	Compliance with Laws
16	Indemnification
17	Engineer's Responsibilities
18	Noncollusion
19	Insurance
20	Maintenance, Retention and Audit of Records
21	Disputes
22	Successors and Assigns
23	Severability
24	Prior Contracts Superseded
25	Conflict of Interest

ATTACHMENT A

General Provisions

ARTICLE 1. WORK AUTHORIZATIONS.

A. Use. The Engineer shall not begin any work until the City and the Engineer have signed a work authorization. Costs incurred by the Engineer before a work authorization is fully executed or after the completion date specified in the work authorization are not eligible for reimbursement. All work must be completed on or before the completion date specified in the work authorization and no work authorization completion date shall extend beyond the Contract Period set forth in **Article 1** of the Agreement (Scope of Services).

The maximum contract time is the time needed to complete all work authorizations that will be issued in the first two (2) years of the Contract. All work authorizations must be issued within the initial two-year period, starting from the Contract execution date.

B. Contents. Each work authorization will specify the types of services to be performed and will include (1) a period of performance with a beginning and ending date; (2) a full description of the work to be performed; (3) a work schedule with milestones; (4) a cost not to exceed amount, (5) the basis of payment whether cost plus fixed fee, unit cost, lump sum, or specified rate; and (6) a work authorization budget calculated using fees set forth in **Attachment B**, Standard Rate Schedule. The Engineer is not to include additional contract terms and conditions in the work authorization. In the event of any conflicting terms and conditions between the work authorization and the Contract, the terms and conditions of the Contract shall prevail and govern the work and costs incurred.

C. Work Authorization Budget. A work authorization budget shall set forth in detail (1) the computation of the estimated cost of the work as described in the work authorization, (2) the estimated time (hours/days) required to complete the work at the hourly rates established in **Attachment B**, Standard Rate Schedule; (3) a work plan that includes a list of the work to be performed, (4) a stated maximum number of calendar days to complete the work and (5) a cost-not-to-exceed-amount or unit or lump sum cost and the total cost or price of the work authorization. The City will not pay items of cost that are not included in or rates that exceed those approved in **Attachment B**.

D. No Guaranteed Work. Work authorizations are issued at the discretion of the City. While it is the City's intent to issue work authorizations hereunder, the Engineer shall have no cause of action conditioned upon the lack or number of work authorizations issued.

E. Incorporation into Contract. Each work authorization shall be signed by both Parties and become a part of the Contract. No work authorization will waive the City's or the Engineer's responsibilities and obligations established in this Contract. The Engineer shall promptly notify the City of any event that will affect completion of the work authorization.

F. Supplemental Work Authorizations. Before additional work may be performed or additional costs incurred, a change in a work authorization shall be enacted by a written supplemental work authorization in the form identified and attached hereto as **Attachment C-1**. Both Parties must execute a supplemental work authorization within the period of performance specified in the work authorization. The City shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance or prior to the execution of the work authorization. The Engineer shall allow adequate time for review and approval of the supplemental work authorization by the City prior to expiration of the work authorization. Any supplemental work authorization must be

executed by both Parties within the time period established in **Article 1** of the Agreement, (Scope of Services). Under no circumstances will a work authorization be allowed to extend beyond the contract's expiration date or will the total amount of funds exceed the maximum amount payable set forth in **Article 2** of the Agreement (Compensation).

F-1. More Time Needed. If the Engineer determines or reasonably anticipates that the work authorized in a work authorization cannot be completed before the specified completion date, the Engineer shall promptly notify the City. The City may, at its sole discretion, extend the work authorization period by execution of supplemental authorization, using the form attached hereto as **Attachment C-2**, Supplemental Work Authorization.

F-2. Changes in Scope. Changes that would modify the scope of the work authorized in a work authorization must be enacted by a written supplemental work authorization. The Engineer must allow adequate time for the City to review and approve any request for a time extension prior to the expiration of the work authorization. If changes in the scope affect the amount payable under the work authorization, the Engineer shall prepare a revised work authorization budget for the City's approval.

G. New Work Authorizations. If the Engineer does not complete the services authorized in a work authorization before the specified completion date and has not requested a supplemental work authorization, the work authorization shall terminate on the completion date. At the sole discretion of the City, it may issue a new work authorization to the Engineer for the incomplete work using the unexpended balance of the preceding work authorization for the project. If approved by the City, the Engineer may calculate any additional costs for the incomplete work using the rates set forth in the preceding work authorization and in accordance with **Attachment A**, Standard Rate Schedule.

H. Emergency Work Authorizations. The City, at its sole discretion, may accept the Engineer's signature on an electronic copy of the work authorization as satisfying the requirements for executing the work authorization, provided that the signed original is received by the City within five business days from the date on the faxed copy.

I. Deliverables. Upon satisfactory completion of the work authorization, the Engineer shall submit the deliverables as specified in the executed work authorization to the City for review and acceptance.

ARTICLE 2. PROGRESS.

A. Progress Meetings. The Engineer shall from time to time during the progress of the work confer with the City. The Engineer shall prepare and present such information as may be pertinent and necessary or as may be requested by the City in order to evaluate features of the work.

B. Conferences. At the request of the City or the Engineer, conferences shall be provided at the Engineer's office, the office of the City, or at other locations designated by the City. These conferences shall also include evaluation of the Engineer's services and work when requested by the City.

C. Reports. The Engineer shall promptly advise the City in writing of events that have a significant impact upon progress of a work authorization, including:

1. problems, delays, adverse conditions that will materially affect the ability to meet the time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by statement of the action taken or contemplated, and assistance needed to resolve the situation; and
2. favorable developments or events which enable meeting the work schedule goals sooner than anticipated.

- D. Corrective Action.** Should the City determine that the progress of work does not satisfy the milestone schedule set forth in a work authorization, the City shall review the work schedule with the Engineer to determine the nature of corrective action needed.

ARTICLE 3. SUSPENSION OF WORK AUTHORIZATION.

- A. Notice.** Should the City desire to suspend a work authorization but not terminate the Contract, the City may verbally notify the Engineer followed by written confirmation, giving (30) thirty days notice. Both Parties may waive the thirty-day notice in writing.
- B. Reinstatement.** A work authorization may be reinstated and resumed in full force and effect within sixty (60) business days of receipt of written notice from the City to resume the work. Both Parties may waive sixty-day notice in writing.
- C. Contract Period Not Affected.** If the City suspends a work authorization, the contract period as determined in **Article 1** of the Agreement (Scope of Services) is not affected and the Contract and the work authorization will terminate on the date specified unless the Contract or work authorization is amended to authorize additional time.
- D. Limitation of Liability.** The City shall have no liability for work performed or costs incurred prior to the date authorized by the City to begin work, during periods when work is suspended, or after the completion date of the Contract or work authorization.

ARTICLE 4. ADDITIONAL WORK.

- A. Notice.** If the Engineer is of the opinion that any assigned work is beyond the scope of this Contract and constitutes additional work, it shall promptly notify the City in writing, presenting the facts of the work authorization and showing how the work authorization constitutes additional work.
- B. Supplemental Agreement.** If the City finds that the work does constitute additional work, the City shall so advise the Engineer and a written supplemental agreement will be executed as provided in General Provisions, **Article 6**, Supplemental Agreements.
- C. Limitation of Liability.** The City shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with or prior to the execution of a supplemental agreement.

ARTILCE 5. CHANGES IN WORK.

- A. Work Previously Submitted as Satisfactory.** If the Engineer has submitted work in accordance with the terms of this Contract but the City requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under the Contract, the Engineer shall make such revisions as requested and as directed by the City. This will be considered as additional work and paid for as specified under **Article 4**, Additional Work.
- B. Work Does Not Comply with Contract.** If the Engineer submits work that does not comply with the terms of this Contract, the City shall instruct the Engineer to make such revision as is necessary to bring the work into compliance with the Contract. No additional compensation shall be paid for this work.
- C. Errors/Omissions.** The Engineer shall make revisions to the work authorized in this Contract which are necessary to correct errors or omissions appearing therein, when required to do so by the City. No additional compensation shall be paid for this work.

ARTICLE 6. SUPPLEMENTAL AGREEMENTS.

- A. Need.** The terms of this Contract may be modified if the City determines that there has been a significant increase or decrease in the duration, scope, cost, complexity or character of the services to be performed. A supplemental agreement will be executed to authorize such significant increases or decreases. Significant is defined to mean a cost increase of any amount and a cost decrease of twenty percent (20%) or more of the original estimated project cost.
- B. Compensation.** Additional compensation, if appropriate, shall be calculated as set forth in **Article 2** of the Agreement (Compensation). Significant changes affecting the cost or maximum amount payable shall be defined to include but not be limited to new work not previously authorized or previously authorized services that will not be performed. The Parties may reevaluate and renegotiate costs at this time.
- C. When to Execute.** Both Parties must execute a supplemental agreement within the Contract Period specified in **Article 1** of the Agreement (Scope of Services).

ARTICLE 7. OWNERSHIP OF DATA.

- A. Work for Hire.** All services provided under this Contract are considered work for hire and as such all data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this Contract are the property of the City.
- B. Disposition of Documents.** All documents prepared by the Engineer and all documents furnished to the Engineer by the City shall be delivered to the City upon request by the City. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the City under this Contract, but further use of the data is subject to permission by the City.
- C. Release of Design Plan.** The Engineer (1) will not release any plan created or collected under this Contract except to its subproviders as necessary to complete the Contract; (2) shall include a provision in all subcontracts which acknowledges the City's ownership of the plan and prohibits its use for any other than the project identified in this Contract; and (3) is responsible for any improper use of the plan by its employees, officers or subproviders, including costs, damages, or other liability resulting from improper use. Neither the Engineer or any subproviders may charge a fee for the portion of the plan created by the City.

ARTICLE 8. PUBLIC INFORMATION AND CONFIDENTIALITY.

- A. Confidentiality.** The Engineer shall not disclose information obtained from the City under this Contract without the express written consent of the City.

ARTICLE 9. PERSONNEL, EQUIPMENT AND MATERIAL.

- A. Engineering Resources.** The Engineer shall furnish and maintain quarters for the performance of all services, in addition to providing adequate and sufficient personnel and equipment to perform the services required under the Contract. The Engineer certifies that it presently has adequate and qualified personnel in its employment for performance of the services required under this Contract, or it will be able to obtain such personnel from sources other than the City.
- B. Removal of Contractor Employees.** All employees of the Engineer assigned to this Contract shall have such knowledge and experience as will enable them to perform the duties assigned to them. The City may instruct the Engineer to remove any employee from association with work authorized in this Contract if, in the sole opinion of the City, the work of that employee does not comply with the terms of this Contract or if the conduct of that employee becomes detrimental to the work.

- C. Replacement of Key Personnel.** The Engineer must notify the City in writing as soon as possible, but no later than three business days after a project manager or other key personnel is removed from association with this Contract, giving the reason for removal.
- D. The City Approval of Replacement Personnel.** The Engineer may not replace the project manager or key personnel without consent of the City. The City must be satisfied that the new project manager or other key personnel is qualified to provide the authorized services. If the City determines that the new project manager or key personnel is not acceptable, the Engineer may not use that person in that capacity and shall replace him or her with one satisfactory to the City within forty-five (45) days.

ARTICLE 10. SUBCONTRACTING.

- A. Prior Approval.** The Engineer shall not assign, subcontract or transfer, any portion of professional services related to the work under this Contract without prior written approval from the City.
- B. Required Provisions.** All subcontracts for professional services shall include the provisions included in **Attachment A**, General Provisions, and any provisions required by law. The Engineer is authorized to pay subproviders in accordance with the terms of the subcontract, and the basis of payment may differ from the basis of payment by the City to the Engineer.
- C. Engineering Responsibilities.** No subcontract relieves the Engineer of any responsibilities under this Contract.

ARTICLE 11. INSPECTOR OF WORK.

- A. Review Rights.** The City and any of its authorized representatives shall have the right at all reasonable time to review or otherwise evaluate the work performed hereunder and the premises in which it is being performed.
- B. Reasonable Access.** If any review or evaluation is made on the premises of the Engineer or a subprovider, the Engineer shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of the City representatives in the performance of their duties.

ARTICLE 12. SUBMISSION OF REPORTS.

All applicable study reports shall be submitted in preliminary form for approval by the City before a final report is issued. The City's comments on the Engineer's preliminary report must be addressed in the final report.

ARTICLE 13. VIOLATION OF CONTRACT TERMS.

- A. Increased Costs.** Violation of contract terms, breach of contract, or default by the Engineer shall be grounds for termination of the Contract, and any increased or additional cost incurred by the City arising from the Engineer's default, breach of contract or violation of contract terms shall be paid by the Engineer.
- B. Remedies.** This Contract shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either Party and shall be cumulative.

ARTICLE 14. TERMINATION.

- A. Causes.** The Contract may be terminated before the stated completion date by any of the following conditions.

1. By mutual agreement and consent, in writing from both Parties.
 2. By the City by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the services set forth herein in a satisfactory manner.
 3. By either Party, upon the failure of the other Party to fulfill its obligations as set forth herein.
 4. By the City for reasons of its own, not subject to the mutual consent of the Engineer, by giving thirty business days' notice of termination in writing to the Engineer.
 5. By the City, if the Engineer violates the provisions of **Attachment A**.
 6. By satisfactory completion of all services and obligations described herein.
- B. Measurement.** Should the City terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination, the City shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the City terminate this Contract under **Section A**, Paragraph (4) or (5) above, the Engineer shall not incur costs during the thirty-day notice period in excess of the amount incurred during the preceding thirty days.
- C. Value of Completed Work.** If the Engineer defaults in the performance of this Contract or if the City terminates this Contract for fault on the part of the Engineer, the City will give consideration to the following when calculating the value of the completed work: (1) the actual costs incurred (not to exceed the rates set forth in **Attachment B**, Standard Work Authorization) by the Engineer in performing the work to the date of default; (2) the amount of work required which was satisfactorily completed to the date of default; (3) the value of the work which is useable by the City; (4) the costs to the City of employing another firm to complete the required work; (5) the time required to employ another firm to complete the work; and (6) other factors which affect the value to the City of the work performed.
- D. Calculations of Payment.** The City shall use the fee schedule set forth in **Attachment B** to the Agreement (Standard Rate Schedule) in determining the value of the work performed up to the time of termination. In the case of partially completed engineering services, eligible costs will be calculated as set forth in **Attachment B**, Standard Rate Schedule. The sum of the provisional overhead percentage rate for payroll additives and for general administrative overhead costs during the years in which work was performed shall be used to calculate partial payments. Any portion of the fixed fee not previously paid in the partial payments shall not be included in the final payments.
- E. Excusable Delays.** Except with respect to defaults of subproviders, the Engineer shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Engineer. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
- F. Surviving Requirements.** The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish the rights, duties, and obligations of the City and the Engineer under this Contract, except for those provisions that establish responsibilities that extend beyond the Contract Period.
- G. Payment of Additional Costs.** If termination of this Contract is due to the failure of the Engineer to fulfill its contract obligations, the City may take over the project and prosecute the work to completion, and the Engineer shall be liable to the City for any additional costs.

ARTICLE 15. COMPLIANCE WITH LAWS.

The Engineer shall comply with all applicable federal, state and local laws, statues, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations. **Attachment D** provisions, where applicable, apply to this contract.

ARTICLE 16. INDEMNIFICATION.

- A. Errors, Omissions, Negligent Acts.** The Engineer shall save harmless the City and its elected officials, officers and employees from all claims and liability due to the activities of itself, its agents, or employees, performed under this Contract and which are caused by or result from error, omission, or negligent act of the Engineer or of any person employed by the Engineer.
- B. Attorney Fees.** The Engineer shall also save harmless the City from any and all expense, including, but not limited to, attorney fees which may be incurred by the City in litigation or otherwise resisting said claim or liabilities which may be imposed on the City as a result of activities by the Engineer, its agents, or employees.

ARTICLE 17. ENGINEER'S RESPONSIBILITIES.

- A. Accuracy.** The Engineer shall be responsible for the accuracy of work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation.
- B. Errors and Omissions.** The Engineer's responsibility for all questions arising from design errors and/or omissions will be determined by the City. The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.
- C. Seal.** The responsible Engineer shall sign, seal, and date all appropriate engineering submissions to the City in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Profession Engineers. The responsible surveyor shall sign, seal, and date all appropriate survey submissions to the City in accordance with the Texas Professional Land Surveying Practices Act.
- D. Resealing of Documents.** Once the work has been sealed and accepted by the City, the City as the owner, will notify the Party to this Contract, in writing, of the possibility that another engineer or surveyor, as a second engineer or second surveyor will affix his seal to any work altered, completed, corrected, revised or added. If necessary, the second engineer or second surveyor will then become responsible for any alterations, additions, or delegations to the original design including any effect or impacts of those changes on the original engineer's design.

ARTICLE 18. NONCOLLUSION.

- A. Warranty.** The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract and that it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- B. Liability.** For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 19. INSURANCE.

The Engineer certifies that it will keep current insurance on file for the duration of the Contract Period. If insurance lapses during the Contract Period, the Engineer must stop work until a new certificate of insurance is provided.

- General Liability 1,000,000.00
- Auto Liability 1,000,000.00
- Excess/Umbrella Liability 4,000,000.00
- Professional Liability 1,000,000.00

See **Exhibit "B"** for additional insurance requirements.

ARTICLE 20. MAINTENANCE, RETENTION AND AUDIT OF RECORDS.

A. Retention Period. The Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and services provided (hereinafter called the Records). The Engineer shall make the records available at its office during the Contract Period and for four years from the date of final payment under this Contract.

ARTICLE 21. DISPUTES.

A. Disputes Not Related to Contract Services. The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the services authorized herein.

ARTICLE 22. SUCCESSORS AND ASSIGNS.

The Engineer and the City do each hereby bind themselves, their successors, executors, administrators and assigns to each other in respect to all covenants of this Contract. The Engineer shall not assign, subcontract, or transfer its interest in this Contract without the prior written consent of the City.

ARTICLE 23. SEVERABILITY.

In the event any one or more of the provisions contained in this Contract is for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision had never been contained herein.

ARTICLE 24. PRIOR CONTRACTS SUPERSEDED.

This Contract constitutes the sole agreement of the Parties hereto for the services authorized herein and supersedes any prior understandings or written or oral contracts between the Parties respecting the subject matter defined herein.

ARTICLE 25. CONFLICT OF INTEREST.

The undersigned represents that its firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for the City of which in any way conflicts with the interests of the City. The firm shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the City interest.

ATTACHMENT B
Standard Rate Schedule
(NOT USED)

ATTACHMENT C-1

WORK AUTHORIZATION NO. 01 AGREEMENT FOR ENGINEERING SERVICES

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of **Article 4** of **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) entered by and between the City of Bay City, Texas (the “City”) and Garver, LLC (“Professional and/or Engineer”).

PART I. The Engineer will perform engineering services generally described as:

Provide professional services for the design, bidding, and construction support services for standby generator improvements at the following locations:

1. City Hall
2. Municipal Services Building
3. Civic Center

Improvements will consist primarily of new natural gas generator sets and associated electrical transfer switches for the purpose of providing standby power during utility outages. The scope will include detailed design services for the installation of the generator sets, natural gas fuel supply, and transfer switch equipment. The generator sets will be housed within self-contained enclosures suitable for outdoor installation.

In accordance with the project description attached hereto and made a part of this Work Authorization. The responsibilities of the City and the Engineer as well as the work schedule are further detailed in **Attachments B, C-1 and C-2** which are attached hereto and made a part of the Work Authorization.

PART II. The maximum amount payable under this Work Authorization is \$75,822.00, payable on a lump sum basis. This amount is based upon fees set forth in **Attachment B**, Standard Rate Schedule, of the Contract and the Engineer’s estimated Work Authorization costs which is attached and made a part of this Work Authorization. The maximum amount payable must be negotiated for the work authorization scope.

PART III. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with **Articles 2 thru 5** of the Agreement, and **Attachment A, Article 1**.

PART IV. This Work Authorization shall become effective on the date of final acceptance of the Parties hereto and shall terminate on May 15, 2019, unless extended by a supplemental Work Authorization as provided in **Attachment A, Article 1**.

PART V. This Work Authorization does not waive the Parties’ responsibilities and obligations provided under the Agreement.

IN WITNESS WHEREOF, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

THE ENGINEER:

	
Signature	Date 12/8/17
Frank McIlwain, P.E., Vice President	
Typed/Printed Name and Title	

THE CITY OF BAY CITY, TEXAS:

Signature	Date
Mark A. Bricker, Mayor	
Typed/Printed Name and Title	

ATTACHMENT C-2

SUPPLEMENTAL WORK AUTHORIZATION NO. _____
TO WORK AUTHORIZATION NO. _____
AGREEMENT FOR ENGINEERING SERVICES

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of **Article 4 of PROFESSIONAL SERVICES AGREEMENT** ("Agreement") entered by and between the City of Bay City, Texas (the "City") and Garver, LLC ("Professional and/or Engineer").

The following terms and conditions of Work Authorization No. _____ are hereby amended as follows:

This Supplemental Work Authorization shall become effective on the date of final execution of the Parties hereto. All other terms and conditions of Work Authorization No. _____ no hereby amended are to remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

THE ENGINEER:

	
Signature	12/8/17 Date
Frank McIlwain, P.E., Vice President	
Typed/Printed Name and Title	

THE CITY OF BAY CITY, TEXAS:

Signature	Date
Mark A. Bricker, Mayor	
Typed/Printed Name and Title	

ATTACHMENT D
Required Contract Provisions

Exhibit D: REQUIRED CONTRACT PROVISIONS

2 CFR 200.326 Contract provisions. The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

All Contracts

THRESHOLD	PROVISION	CITATION
>\$150,000 (Simplified Acquisition Threshold)	Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.	2 CFR 200 APPENDIX II (A)
>\$10,000	All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.	2 CFR 200 APPENDIX II (B)
None	Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.	2 CFR 200 APPENDIX II (F)
None	Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.	2 CFR 200 APPENDIX II (H)
None	Records of non-Federal entities. The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas General Land Office (GLO), and the pass-through entity , or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity 's personnel for the purpose of interview and discussion related to such documents.	2 CFR 200.336
None	Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following: (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency	2 CFR 200.333

	for indirect costs, or pass-through entity to extend the retention period. (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition. (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity. (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned. (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates). (1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.	
None	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.	2 CFR 200.321
Option Contract Language for	The contract award is contingent upon the receipt of CDBG-DR funds. If no such funds are awarded, the contract shall terminate.	Optional

contracts awarded prior to Grant Award		
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EO Clause for Construction Contracts > \$10K including administration & engineering contracts associated with construction contracts

THRESHOLD	PROVISION	CITATION
>\$10,000	Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” 41 CFR 60-1.4 Equal opportunity clause. (b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause: The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish	41 CFR §60-1.4(b) and 2 CFR 200 APPENDIX II (C)

information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965,

with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Inclusion of the equal opportunity clause by reference. The equal opportunity clause may be included by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director of OFCCP may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

[80 FR 54975, Sept. 11, 2015]

THRESHOLD	PROVISION	CITATION
>\$2,000	<i>Compliance with the Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3):</i> Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.	2 CFR 200 APPENDIX II (D)
>\$100,000	Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.	2 CFR 200 APPENDIX II (E)
>\$150,000	Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).	2 CFR 200 APPENDIX II (G)
>\$100,000	Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303

	forwarded from tier to tier up to the non-Federal award.	
>\$100,000	All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause): A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations. C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135. E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135. F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).	24 CFR §135.38
	A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste	2 CFR 200 APPENDIX II (J)

	Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]	
	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.	42 U.S.C. 6201

APPENDIX A
Scope of Services

APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes design services, bidding services, and construction support services for standby generator improvements at the following locations:

1. City Hall
2. Municipal Services Building
3. Civic Center

Improvements will consist primarily of new natural gas generator sets and associated electrical transfer switches for the purpose of providing standby power during utility outages. The scope will include detailed design services for the installation of the generator sets, natural gas fuel supply, and transfer switch equipment. The generator sets will be housed within self-contained enclosures suitable for outdoor installation.

2.2 Preliminary Design

The preliminary design phase submittal will include preliminary layouts of the generators, transfer switches, and associated electrical and site improvements, as well as an opinion of probable construction cost. The sites plans will show estimated dimensions of the proposed equipment. Technical design drawings will be partially developed. The preliminary design phase will represent approximately 60 percent of final construction contract plans. This submittal will not include technical specifications or “front end” contract documents. Garver will not begin final design until the preliminary design is approved by the Owner in writing.

2.3 Final Design

During the final design phase of the project, Garver will conduct final designs to prepare construction plans and specifications for one construction contract, including final construction details and quantities, special provisions, technical specifications, front-end contract documents, and opinion of probable construction cost.

2.4 Bidding Services

During the bidding phase of the project, Garver will:

1. Prepare and submit Advertisement for Bids to newspaper(s) for publication as directed by the Owner. Owner will pay advertising costs outside of this contract.
2. Dispense construction contract documents to prospective bidders (at the approximate cost of reproduction and handling).
3. Support the contract documents by preparing addenda as appropriate.
4. Participate in a pre-bid meeting if necessary.
5. Attend the bid opening.
6. Prepare bid tabulation.
7. Evaluate bids and recommend award.
8. Prepare construction contracts.

2.5 Construction Phase Services

During the construction phase of work, Garver will accomplish the following:

1. Issue a Notice to Proceed letter to the Contractor.
2. Attend one (1) progress/coordination meeting with the Owner/Contractor.

3. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
4. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review the Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
6. When authorized by the Owner, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.
7. Participate in one (1) final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

The proposed fee for Construction Phase Services is based on a calendar-day construction contract performance time. If the construction time extends beyond the time established, and the Owner wants Garver to continue the applicable Construction Phase Services, the Owner will pay Garver an additional fee agreed to by the Owner and Garver.

In performing construction phase services, Garver will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Garver cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

2.6 Project Deliverables

The following will be submitted to the Owner, or others as indicated, by Garver:

1. Electronic copy (pdf) of the Preliminary Design with opinion of probable construction cost.
2. Electronic copy (pdf) of the Preliminary Plans to each potentially affected utility company.
3. Electronic copy (pdf) of the Final Design with opinion of probable construction cost.
4. Electronic copy (pdf) of the Final Plans to each potentially affected utility company.
5. Electronic copy (pdf) of the Final Plans and Specifications to the Contractor.
6. Electronic copy (pdf) of approved shop drawings/submittals from the Contractor.

7. Electronic files as requested.

2.7 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Submittals or deliverables in addition to those listed herein.
3. Pavement Design beyond that furnished in the Geotechnical Report.
4. Existing utility locate services
5. Design of any utilities relocation.
6. Retaining walls or other significant structural design beyond generator pad design.
7. Street lighting or other electrical design beyond that required for generator and transfer switch installation.
8. Preparation of a Storm Water Pollution Prevention Plan (SWPPP). The construction contract documents will require the Contractor to prepare, maintain, and submit a SWPPP to TCEQ.
9. Construction materials testing.
10. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
11. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
12. Services after construction, such as warranty follow-up, operations support, etc.
13. Permanent or part-time construction observation services.
14. Survey services of any kind.
15. SCADA design or programming services of any kind.
16. Permitting related to generator emissions or fuel storage.
17. Arc flash or other power system studies.

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Garver.

2.8 Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Preliminary Design	60 days from approval of start date
Final Design	60 days from Approval of Preliminary Design
Prepare Bid Documents	14 days from Approval of Final Design

APPENDIX B
Fee Schedule

APPENDIX B

CITY OF BAY CITY CITY HALL GENERATOR IMPROVEMENTS

FEE SUMMARY

Title I Services	Fees
Preliminary Design	\$7,705.00
Final Design	\$7,001.00
Bidding Services	\$2,554.00
Subtotal for Title I Services	\$17,260.00
Title II Services	
Construction Phase Services	\$6,774.00
Subtotal for Title II Services	\$6,774.00
TOTAL	\$24,034.00

APPENDIX B

CITY OF BAY CITY CIVIC CENTER GENERATOR IMPROVEMENTS

FEE SUMMARY

Title I Services	Fees
Preliminary Design	\$10,125.00
Final Design	\$7,968.00
Bidding Services	\$2,554.00
Subtotal for Title I Services	\$20,647.00
Title II Services	
Construction Phase Services	\$7,107.00
Subtotal for Title II Services	\$7,107.00
TOTAL	\$27,754.00

APPENDIX B

CITY OF BAY CITY MUNICIPAL SERVICES GENERATOR IMPROVEMENTS

FEE SUMMARY

Title I Services	Fees
Preliminary Design	\$7,705.00
Final Design	\$7,001.00
Bidding Services	\$2,554.00
Subtotal for Title I Services	\$17,260.00
Title II Services	
Construction Phase Services	\$6,774.00
Subtotal for Title II Services	\$6,774.00
TOTAL	\$24,034.00

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 Garver, LLC (Contractor). The Contract involved in this Rider is described as follows:

Provide professional services for the design, bidding, and construction support services for standby generator improvements.

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 Contractor to be non-compliant with contractual obligations.**

10. Annual Contractor Performance Review. The City reserves the right to review the Contractor's performance annually and to cancel all or part of the Contract (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 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 Contractor 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 Matagorda County, Texas.

21. No Boycott. By executing this Contract, Engineer verifies that it does not Boycott Israel, and agrees that during the term of this Contract will not Boycott Israel, as that term is defined in Section 808.001 of the Texas Government Code, as amended.

CITY OF BAY CITY, TEXAS

GARVER, LLC

By: _____
 Mark Bricker, Mayor

By: Frank McIlwain

Frank McIlwain, P.E.
 Print Name

Vice President
 Title

 Date

12/8/17
 Date

ATTEST:

 David Holubec, City Secretary

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 insurance policies. 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.

RESOLUTION NO. R-2016-26

A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICE PROVIDER CONTRACTS FOR APPLICATION PREPARATION AND PROJECT IMPLEMENTATION FOR A HAZARD MITIGATION FUND PROJECT FUNDED WITH FEMA MITIGATION FUNDS THROUGH THE TEXAS DIVISION OF EMERGENCY MANAGEMENT FOR DISASTERS DECLARED IN 2016.

WHEREAS, the City seeks assistance in the preparation of an application for funding;

WHEREAS, upon award of said funding, a Hazard Mitigation Fund construction project would require implementation by professionals experienced in the administration of federally-funded projects;

WHEREAS, in order to identify qualified and responsive providers for these services a Request for Proposals (RFP) process for administration services and a Request for Qualifications (RFQ) for engineering services has been completed;

WHEREAS, the submissions received by the due date have been scored to determine the most qualified and responsive provider.

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

- Section 1A. That **GrantWork, Inc.** be awarded a contract to provide Hazard Mitigation project-related **application preparation** and **administration services**.
- Section 1B. That **Garver** be awarded a contract to provide Hazard Mitigation project-related **application preparation** and **professional engineering services**.
- Section 2. That any and all contracts or commitments made with the above-named services providers are dependent on the successful negotiation of a contract with the service provider.

PASSED AND APPROVED on first and final reading this 15th day of December 2016.

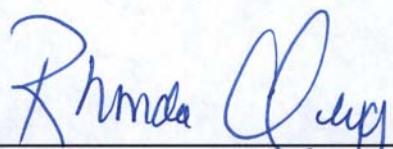
Attachment: R-2016-26 - Garver (2935 : Approve Contract Garver Engineering - FEMA HMGP Generators)

CITY OF BAY CITY, TEXAS



Mark Bricker, Mayor

ATTEST:



Rhonda Clegg, City Secretary

APPROVED as to FORM:



M. Shannon Kackley, City Attorney
City of Bay City
DENTON, NAVARRO, ROCHA,
BERNAL, HYDE & ZECH, P.C.

Scoring Summary

Contractor Locality City of Bay City

HMA Contract No. Generators

*Please note: If only one submission was received for either service, the submission does not need to be scored. Please just make a note below.

Administrative Firm	Total Score
GrantWorks, Inc.	97+93+92+100=382
Provision Specialized Resources, LLC	100+86+85+88=359

Engineering Firm	Total Score
Jones Carter	94+94+93+95=376
John D. Mercer & Associates	95+84+84+90=353
Garver	100+94+95+95=384

Signature: Barry Calpin
Any member of the Selection Review Committee may sign.

Date: 12/7/2016



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2939 B

AGENDA ITEM (ID # 2939)

**~ DISCUSS AND CONSIDER A DEVELOPMENT INCENTIVE
FOR NEW BUSINESSES AND NEW CONSTRUCTION WITHIN
THE CITY LIMITS OF BAY CITY.**

Councilwoman, Becca Sitz requested this agenda item.

COMMENTS - Current Meeting:

Councilwoman Becca Sitz presented this agenda item.

She would like to see the City offer property owners, and developers an incentive to construct new business/buildings/homes in Downtown Bay City. To many empty buildings and vacant properties.

Groups are interested in downtown Bay City. She suggests we show them that the City is development friendly and we want to promote our downtown.

One suggestion was to explore waving fees for new construction and renovations. Limit to \$2500.00. Fees? Councilman Childers asked.

Councilman Jason Childers offered to assist Councilwoman Becca Sitz with writing a proposal for Mayor and Council. Mayor Bricker suggested listing priority areas.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2925 A

AGENDA ITEM (ID # 2925)

**~ DISCUSS, CONSIDER, AND/OR APPROVE REVISING THE
PARKING DESIGN FOR DOWNTOWN HIGHWAY 35 AND
HIGHWAY 60.**

This agenda item was requested by Councilwoman Becca Sitz.

COMMENTS - Current Meeting:

Councilwoman Becca Sitz presented this agenda item. Assistant Public Works Director, Marla Jasek assisted.

She would like to see the City revise the parking design downtown on Highway 35 and Highway 60 to parallel parking due to safety concerns.

Marla Jasek has notified TxDot. A letter from the Mayor requesting parallel parking is needed. Usually supported by TxDot. They would design the change and do the stripping possibly.

Mayor asked if Main Street should be involved.

Councilman Bill Cornman suggested speaking with business owners and property owners in the area for their input. Motion was made for letters to be sent to TxDot and the local property owners simultaneously from the Mayor's office. The plan was unanimously approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Becca Sitz.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2940

DISCUSSION ITEM (ID # 2940)

**~ DISCUSS AND CONSIDER POSSIBLE LOCATIONS FOR
THE RELOCATION OF THE BAY CITY RECYCLING CENTER.**

Councilwoman, Becca Sitz requested this agenda item.

COMMENTS - Current Meeting:

This agenda item was presented by Councilwoman Becca Sitz.

There is currently no funds budgeted for this agreement with the contractor, Stuart Lynn.

The City has investigated several properties listed on the market and properties currently owned by the City. Nothing has been decided at this time.

Curbside recycle was questioned by Councilman Jason Childers. Cost estimate would roughly be around \$250,000.00 to start. Difficult to get a contracting company to work with the City regarding Curbside service.

Councilman Bill Cornman requested a report be prepared for Council regarding possible properties and funding ideas.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 2943)

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Budget
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2943

**~ DISCUSS, CONSIDER AND/OR APPROVE HOLDING A
SPRING 2018 CITY "CLEAN UP DAY." WCA COST ESTIMATE
IS FOUR THOUSAND (\$4,000.00) TO FIVE THOUSAND
(\$5,000.00) DOLLARS, WHICH IS UN-BUDGETED.**

This agenda item was requested by Councilman Bill Cornman.

COMMENTS - Current Meeting:

This agenda item was presented by Councilman Bill Cornman.

He recommends placing "Clean Up Days" in the contracts with WCA in the future.

Motion to have the clean up day and incorporate scrap tire issue. Budget amendment to follow.

The idea to hold a Spring Clean Up Day was unanimously approved by motion. The motion was made by Councilwoman Becca Sitz and seconded by Councilman Jason Childers.

David Holubec

From: williamg cornman <wgccornman@sbcglobal.net>
Sent: Wednesday, December 13, 2017 11:07 PM
To: David Holubec
Subject: Fw: Spring Clean Up

David -

Please add the below to our next Council agenda and attach the below e-mail to the agenda item.

"Consider, discuss, &/ approve holding a spring, 2018 city clean up day just like the clean up day conducted in October, 2017. WCA cost for this is estimated at \$ 4,000 to 5,000, which is unbudgeted."

WGC

On Wednesday, December 13, 2017 8:39 AM, Matthew Cartier <mcartier@wcamerica.com> wrote:

Councilman Cornman,

The pricing would be \$300 per hour all in for the Grapple truck/driver and the two helpers. Plus the cost of the roll offs that you use. The Bay City franchise roll off pricing is as follows:

Perm & Temp Pricing			
Size	Delivery Fee	Daily Rental	Haul Rate
20 Yd	\$ 178.15	\$ 8.14	\$402.11
30 Yd	\$ 178.15	\$ 8.14	\$483.55
40 Yd	\$ 178.15	\$ 8.14	\$507.98

Please let me know if you have any questions. I apologize on the delay of this email.

Thanks,

Matt Cartier

Site Manager | WCA Waste

700 Ave F Bay City, TX 77414

t: 844-523-0976 | m: 832-919-5132

mcartier@wcamerica.com | www.wcawaste.com



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From: williamg cornman [mailto:wgcornman@sbcglobal.net]
Sent: Monday, November 20, 2017 10:28 AM
To: Matthew Cartier <mcartier@wcamerica.com>
Cc: Becca Sitz <bsitz000@gmail.com>; Barry Calhoun <bcalhoun@cityofbaycity.org>
Subject: Spring Clean Up

Hi Matt -

Wonder if you could provide me with a "budget estimate" of WCA cost to conduct a City spring clean up day (like the one we just did in October). We haven't made any decision to actually do this and nothing has been budgeted, but the October event seemed to be well received & executed, and I would like to open it for discussion any way - can't do that though without a cost estimate.

No big hurry on this.

WGC

Attachment: Fw Spring Clean Up (2943 : Spring Clean Up Day)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 12/21/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2938

DISCUSSION ITEM (ID # 2938)

**~ DISCUSS THE MATAGORDA COUNTY CONVENTION AND
VISITORS BUREAU ADMINISTRATIVE TRANSITION,
EXPECTATIONS, AND ADMINISTRATOR'S JOB
DESCRIPTION.**

Heidi Martinez is the CVB Administrator.

COMMENTS - Current Meeting:

Chamber of Commerce Chairman, Robert Lister presented this agenda item along with Mayor Mark A. Bricker.

Much discussion was made by Council members on how the transition was handled. Future budgeting concerns were also brought up for discussion. It was requested by Councilman Bill Cornman that the City do a financial analysis regarding the CVB and report to Council at a workshop.

RESOLUTION NO. R-2013-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, AUTHORIZING THE EXECUTION OF AGREEMENT WITH BAY CITY CHAMBER OF COMMERCE FOR THE PAYMENT OF \$48,000.00 OF CITY FUNDS FOR OPERATION OF THE BAY CITY CONVENTION AND VISITORS BUREAU

WHEREAS, Recipient provides services that promote the health, safety morals and or general welfare of the residents of Bay City; and

WHEREAS, City has provided certain funds from its general fund to promote the type of public services provided by Recipient; and

WHEREAS, Recipient has submitted an application to CITY for funding for the operation of the Bay City Convention and Visitors Bureau; and

WHEREAS the CITY has allocated \$48,000 from the Civic and Cultural Arts (Hotel Occupancy Tax) Fund budget for the above-described Project.

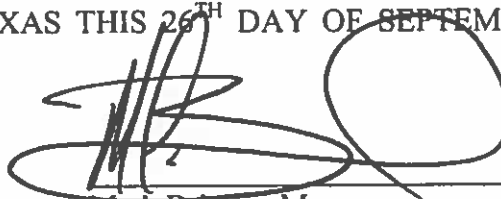
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BAY CITY, TEXAS, THAT:

Section one. The Agreement to Use Funds of the City of Bay City, attached hereto as Exhibit "A" is hereby approved.

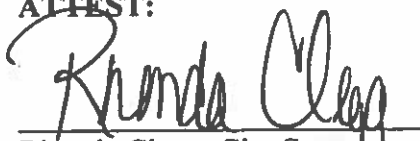
Section two. The Mayor is hereby authorized to execute said agreement.

Section three. Upon execution of said agreement, the Finance Director is hereby authorized to release funds in accordance with the terms of the agreement.

PASSED AND APPROVED AT BAY CITY TEXAS THIS 26TH DAY OF SEPTEMBER, 2013


 Mark Bricker, Mayor
 City of Bay City

ATTEST:


 Rhonda Clegg, City Secretary

APPROVED AS TO FORM:


 George Hyde, City Attorney

Attachment: CVB Resolution - R-2013-33 (2938 : CVB)

AGREEMENT TO USE FUNDS of the City of Bay City

THIS AGREEMENT is entered into by and between the City of Bay City, a Texas Municipal Corporation ("CITY") acting by and through its Mayor, and the Bay City Chamber of Commerce and Agriculture, ("Recipient");

WITNESSETH:

WHEREAS, Recipient provides services that promote the health, safety morals and or general welfare of the residents of Bay City; and

WHEREAS, City has provided certain funds from its Hotel Occupancy Tax Fund to promote the type of public services provided by Recipient; and

WHEREAS, Recipient has submitted an application to CITY for funding for the Bay City Chamber of Commerce CVB ("Project"), as described in **Attachment I –Scope of Work**; and

WHEREAS, pursuant to Resolution No. R-2013-33, passed and approved on September 26, 2013, the City Council authorized the execution of this Agreement with Recipient; and

WHEREAS the CITY has allocated \$48,000 from the Civic and Cultural Arts (Hotel Occupancy Tax) Fund budget for the above-described Project; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the City of Bay City and health, safety morals and or general welfare of its residents, the parties agree as follows:

1. In consideration of the payment of the sum of \$48,000 to Recipient by the CITY, Recipient agrees to spend these funds only as described in **Attachment I - Scope of Work**. Recipient agrees to provide CITY with invoices to support the expenditures under this Agreement no later than thirty (30) days from the date that Recipient makes such expenditures. Accounting records for all expenditures shall be maintained by Recipient in accordance with generally accepted accounting practices, and shall be subject to audit by the CITY or its contracted auditor. These records shall be maintained for a period of four years from the termination date of this Agreement.
2. This Agreement will commence immediately upon execution hereof and terminate upon the completion of all obligations herein contained or September 30, 2014, whichever is sooner.
3. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein.
4. In the event that all of the above-described funds are not used for the purposes set out in Section 1 of this Agreement and in accordance with all terms and provisions hereof,

Contract Number: _____

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: - Premises operations - Independent Contractors - Products/completed operations - Personal Injury - Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability - Owned/leased vehicles - Non-owned vehicles - Hired Vehicles ** if transportation of participants is conducted	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

- (D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City Council. The Recipient shall agree to carry the same coverage as the City at all times. The City will notify the Recipient at any time that the City changes its limits (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Recipient shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Recipient and the City shall negotiate any costs incurred resulting from said changes.

Cathy Ezell
Finance Director
City of Bay City
1901 5th Street
Bay City, Texas 77414

- (E) Recipient agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured (Bay City Chamber of Commerce and Agriculture) performed under contract with

demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RECIPIENT'S activities under this AGREEMENT, including any acts or omissions of RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor of RECIPIENT, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RECIPIENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

RECIPIENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RECIPIENT known to RECIPIENT related to or arising out of RECIPIENT'S activities under this AGREEMENT.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Recipient in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Recipient shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Recipient fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Recipient shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Recipient, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Recipient or any subcontractor under worker's compensation or other employee benefit acts.

8. Recipient shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

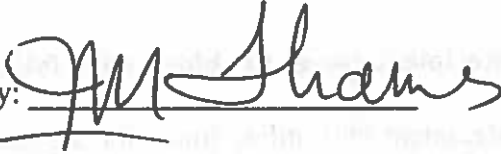
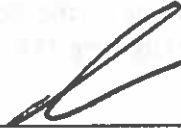
Contract Number: _____

IN WITNESS OF WHICH this Agreement has been executed on this 26th day of September, 2013.

CITY OF BAY CITY

AGENCY

By: _____

By:  _____Approved as to Form:  _____
Assistant City Attorney

Attachment I: Scope of Work

Attachment: CVB Resolution - R-2013-33 (2938 : CVB)



MARK BRICKER
MAYOR

CITY OF BAY CITY

1901 FIFTH STREET ★ BAY CITY, TEXAS 77414
(979) 245-2137 ★ FAX (979) 323-1626
cityofbaycity.org

December 7, 2017

Robert Lister, Chairman
Bay City Chamber of Commerce

Dear Robert Lister, Chairman,

I appreciate our recent conversations regarding the Chambers operation of the Convention Visitors Bureau. I feel it is in the interest of both parties for the City to formalize their leadership in the promotion of local tourism.

As we agreed, the current City-Chamber CVB contract would terminate on December 31, 2017. After this date, the Chambers CVB operational support will cease and be utilized to fund a full-time city position. To ensure a smooth transition, the current BCCVB director has been offered the position. Once this transition has taken place, there will be a collaborative effort with the director, CVB board members, and City Council to update and adopt new bylaws for the CVB board and fill any vacant board positions.

On behalf of the City of Bay City, I want to thank the Chamber for their past dedication and work bringing the CVB where it is today. I look forward to seeing a smooth transition.

Sincerely,

Mark Bricker
Mayor

Attachment: CVB Letter-Bricker-Lister (2938 : CVB)